

Coronavirus & competition. Breach of Competition Law? “Price gouging” or not?



First one: Coronavirus & competition – any potential link?

Second one – close related with the first one: Breach of Competition Law? “Price gouging” or not?

Facts: As a result of the fear generated by the Coronavirus outbreak in Europe in the last past days, the demand for protective masks has risen, including in Romania. The same goes for the prices... higher and higher...

So? What is this when looking through competition lens? Do we have a breach of Competition Law? Short answer: Maybe...

When: Let's see!

The increase of the prices in a crisis is known as “price gouging” – the increase of prices of goods & services to a level which is deemed to be unreasonable and unfair.

The feeling of unfairness comes not from the increase in itself, but from the *context* in which such price increases occur (e.g., **after hurricanes & other natural disasters** – *thanks God we do not have (yet) hurricanes*) and the products they target – basic necessities.

In some way, price gouging makes us think about pure exploitation - **of the consumer mainly**.

USA has some experience on this- but they have hurricanes -some states have special rules on [this](#)

In Romania, there are no specific rules which address the issue of price gouging. Nonetheless we have Competition Law and Competition Council (and Mr. President Bogdan Chiritoiu). In this sense, the Romanian Competition Council (RCC) did not watch passively the situation regarding the increase of prices for protective masks and has launched a new investigation. The President of the Romanian Competition Council has [recently announced](#) that it is currently investigating the behaviour of companies which commercialize products & protection equipment consisting in the sudden and excessive increase of their prices.

Even though the main aim of competition law is to ensure free competition, competition regulations also protect indirectly consumer welfare. Having this in mind, if price gouging may be included in one of the categories sanctioned by competition regulation, then this practice is not fostered from potential sanctions. At first glance, price gouging may be qualified as an abuse of dominant position under the form of excessive pricing.

Are there any precedents?

Price gouging has already been under the scrutiny of competition authorities, especially in the pharmaceutical sector.

At European level, the European Commission has opened [*an investigation*](#) with respect to the excessive price increases concerning five life-saving cancer medicines. This comes after [*the Italian Competition Authority*](#) has sanctioned the same company for excessive pricing concerning some essential off-patent drugs. In UK, [*the Competition Market Authority \(CMA\)*](#) has also sanctioned a similar deed – excessive prices for anti-epilepsy drugs. However, the Competition Appeal Tribunal has quashed the CMA's decision arguing that the CMA did not prove that the prices practiced were unfair.

Having the above in mind, is price gouging truly effectively sanctioned under competition law? Should the competent authorities intervene through specific regulations in order to limit exploitive increases of prices? Any piece of legislation required? Or we have the Competition Council with enough instruments to solve the issue?