

Romanian Competition Council seeks to tighten unfair competition rules

According to the Romanian Competition Council (RCC), the changes in the draft legislation have been designed to address various new forms of unfair competition, which are not covered by the current wording of the unfair competition law. The Draft seeks to bridge the gap between regulation and current market practices in order to foster fair and honest competition. It also regulates new practical cases of unfair competition and higher penalties for those who breach the Law.

This article sets out the key takeaways from the Draft that businesses across all industries should be alert to in the future, if the Draft is approved into law.

The Draft regulates “abuse of a superior bargaining position” (ASBP) as a novel case of unfair competition and a new enforcement tool. In practical terms, ASBP is a form of commercial “bullying”, where an undertaking exploits its superior bargaining position over another undertaking with which it has or had commercial relations, causing the second undertaking to suffer material damages or otherwise distorting normal competition on the market.

Examples of ASBP provided in the Draft include unjustified refusal to supply or to buy goods or services; breach of contract terms regarding payment, supply or acquisition; imposing conditions that are unusually onerous or discriminatory in relation to the scope of the contract; or amending or terminating commercial relations with the partner undertaking without cause. The Draft makes it clear that these are simple examples of ASBP, and that ASBP may also manifest itself in other ways.

The Draft defines “superior bargaining position” as a situation an undertaking (which is not “dominant” within the classical meaning of competition law) may be in, determined by:

- ◆ market conditions likely to facilitate the appearance of material imbalances triggered by factors, such as the specific structure of the manufacturing or distribution chain; vulnerability to external factors; perishability or seasonality; or,
- ◆ the specific relationship between two undertakings operating in different markets whereby: there is an unbalance between undertakings (e.g. due to size or market position); the commercial relationship is more important for one undertaking than the other due to factors, such as the significant weight or ratio represented by the sales or acquisitions of one undertaking in the activity of the other undertaking; the critical nature of the products or services of one undertaking for the performance of the activity of the other undertaking; or the existence of significant investments by an undertaking made for the purpose of maintaining and honouring commercial relations with the other undertaking; and the existence of difficulties (or even the impossibility) to source alternative and equivalent solutions.

The Draft regulates additional forms of unfair competition, such as discrediting the reputation or goodwill of a company or destabilising a company’s activity (e.g. through soliciting its personnel). It also provides further clarity on existing manifestations of unfair competition, such as denigrating the business of a competitor and soliciting a company’s clientele through the use of sensitive information.

In order to discourage such conduct, fines for breach of the Law have been increased and now range from 0.01% to 1% of the turnover of the defaulting company in the year prior to the sanction. Fines cannot be less than RON 5,500 (EUR 1,137) or more than RON 100,000 (EUR 20,686) if the acts do not constitute a criminal offence.

The Draft also introduces the possibility of a “leniency” application, allowing companies to benefit from a fine reduction of between 10% and 20% if they acknowledge the infringement.

The Draft is open for public consultation until 3 July 2020.

For more information on this Draft and the Law that it is amending, contact your regular CMS advisor or local CMS expert [Cristina Popescu](#).