

## Tax & Legal Weekly Alert

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#### Legal Updates

##### Amendments to Unfair Competition Law and Competition Law

On September 5, 2014 the last amendments brought through Government Ordinance no. 12/2014 to regulations in the competition field entered into force.

Among the most important amendments we mention:

- Although there are identified as practices of unfair competition only the acts of denigration of a competitor or its products/services as well as undermining the client base, the "unfair competition" practices are defined extensively;
- It was given the opportunity to Competition Council not to act when it considers that the effects of unfair practices are minor and to prioritize investigations of anticompetitive practices based on certain criteria;
- It is introduced the rule of appealing against the order related to access the confidential part of investigation file only at the end of the investigation – [page 2](#)



# Amendments to Unfair Competition Law and Competition Law

On July 31, 2014, the Romanian Government enacted the Government Ordinance no. 12/2014 amending and supplementing the Law no. 11/1991 on unfair competition and other regulations in the competition field. By entering into force of these amendments, it is envisaged the modernization of a regulation which was applied with difficulties in practice in the last years due to the evolution of the economic and social environment.

## I. Amendments brought to the Law no. 11/1991 on unfair competition (Unfair Competition Law)

We present below the main amendments brought to the Unfair Competition Law:

- a) *The sphere of "business practices" considered "unfair competition"*
  - **There are removed from the scope of the Unfair Competition Law those practices that are covered by specific legislation** such as protection against misleading and comparative advertising for traders, protection of consumers' economic interests, protection of collective interests of the public in the field of audiovisual media services or protection of industrial property rights related to trademarks and geographical indications;
  - **There are maintained as practices of unfair competition only the acts of denigration of a competitor or its products/services as well as undermining the client base**, if several specific conditions are met;
  - **"Unfair competition"** practices are defined extensively by including any commercial practices that are contrary to the principles of fair dealing and good faith, which cause or may cause damage to any market participants.
- b) *Provisions with impact on the procedural aspects of Unfair Competition Law*
  - **It was given the opportunity to Competition Council, the competent authority to ensure the protection of undertakings against unfair competition practices, not to act when it considers that the effects of unfair practices are minor** (relative to the seriousness of the deed, the circumstances in which it was committed and the importance of the economic sector concerned);
  - **The competition inspectors who solve unfair competition complaints may use the same investigation powers as those used when investigating anticompetitive practices** such as the possibility to conduct down raids or apply a fine in case the undertaking under investigation does not supply the information required by the competition authority;
  - **It has been established an Interministerial Council** for fighting unfair competition practices 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. The Secretary of the Council will be the Competition Council.

## II. Amendments brought to the Competition Law no. 21/1996 (Competition Law)

Amendments brought to the Competition Law mainly cover investigations carried out by the Competition Council, as follows:

- a) *The Competition Council's possibility to prioritize cases based on certain criteria*

The Competition Council can prioritize cases based on the potential impact on effective competition, the general interest of consumers or the strategic importance of the economic sector concerned, in order to use reasonable the resources during investigations.

- b) *Appeal against the order related to access the investigation file may only be submitted at the end of the investigation*

To avoid a long period of postponement of the hearing and issuance of the final decision, it was provided that the Order of the president of the Competition Council on the availability of some confidential documents obtained during investigation (allowing or denying access to the file) may be appealed only by appealing against the decision to terminate the investigation. Under the previous legislation, the order could have been appealed separately within 15 days of the decision being communicated and the investigation was suspended until the finalization of the respective challenge.

- c) *The obligation of the Competition Council to inform the undertakings regarding the closure of investigations*

In the event that, after opening an investigation ex officio, finds out that it has not led to the discovery of evidence of the violation of law by the undertaking investigated, the President of the Council will be required to close the investigation and inform the parties immediately.

The Ordinance of the Government no. 12/2014 has been published in the Official Gazette of Romania on August 6, 2014. Some amendments have already entered into force on August 9, 2014 and procedural amendments to the Law no. 11/1991 on unfair competition entered into force on September 5, 2014.

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