




Harmonizing Montenegro's legal framework with the *acquis communautaire* - new drafts of antitrust legislation

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Publisher: JPM | Partners

Delta House, 8a Vladimira Popovića street

www.jpm.law

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Design and prepress: JPM | Partners

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The Montenegrin Agency for the Protection of Competition (“Agency”) has released draft version of the Law on Procedures for Compensation of Damages Resulting from Competition Violations (“Damage Law”) and draft of the amendments and supplements to the Law on the Protection of Competition (“Competition Law”), whose aim is to align Montenegrin legislation with legislation of the European Union as part of Chapter 8 in the negotiations for Montenegro’s accession to the European Union.

One of the most significant changes introduced by the proposed draft of amendments and supplements to the Competition Law is the removal of provisions regulating individual exemptions. As a result, market participants will no longer need to submit a request for individual exemption of their agreements and receive approval for such exemptions from the Agency. Instead, market participants shall self assess all agreements which are executed and determine whether they are in compliance with the Competition Law. In case the Agency initiates proceedings in order to determine whether a restrictive agreement has been concluded, the market participants shall be obliged to prove that their agreement meets all of the conditions for their exemption from prohibition prescribed by the Competition Law.

The proposed draft also introduces a significant change concerning the deadline for submission of concentration notifications. Going forward, these notifications will no longer need to be submitted within 15 days of executing the agreement, announcing a public offer, or acquiring control. The proposed draft of amendments and supplements to the Competition Law also seeks to strengthen the powers and competencies of the Agency, as well as its functional and financial independence.

Namely, it prescribes that the Agency may impose fines as administrative measures – fines in the amount of up to 10% of the total annual turnover in the financial year preceding the year when the violation of the Competition Law has occurred. The minimum fine has been reduced from 1% and can now be set at an amount below 1%. This amendment harmonized Montenegrin legislation with EU legislation, as well as, among others, Serbian legislation, which both prescribe penalties of up to 10% of annual turnover in the financial year preceding the year when the violation occurred. The statute of limitations for imposing penalties is five years.

Furthermore, the proposed draft also prescribes the conditions and methods for reducing or exempting participants from fines for violating competition rules.

Additionally, it prescribes the Agency's authority to initiate procedures and make decisions on its own initiative through its own constant supervision of the market, thereby strengthening its regulatory role.

Submission of requests to initiate misdemeanour proceedings before the competent Misdemeanour Court is limited only to violations of the law governing state aid, while the Agency's obligation to monitor the implementation and effects of granted state aid and to collect data on the use and effects of granted state aid is foreseen.

Finally, the cooperation of the Agency with other state bodies is regulated in more detail. It is stipulated that the Agency may provide the data it possesses to other state bodies and holders of public authority, as well as to the European Commission and competent bodies of foreign countries. At the same time, it is prescribed the duty of state and local administration bodies, holders of public authority and other persons and organizations to provide the Agency with available information necessary for decision-making.

Damage Law

The aim of the draft of the Damage Law is to harmonize Montenegrin legislation with Directive 2014/104/EU of the European Parliament and the Council on certain rules regulating procedures for compensation of damages for the violation of competition law provisions on the market of member states and the European Union.

Firstly, the draft establishes the right to full compensation for damages and specifies that the injured party who has suffered damage caused by the violation of competition on the market can demand and receive full compensation for damages and that the material situation of the injured party is brought to the state in which it would have been if there had been no violation of competition on the market.

Furthermore, the draft prescribes the legal effect of the Agency's decisions, specifically, it specifies that the violation of competition on the market, determined by a final decision of the Agency or the Administrative Court, shall be considered irrefutable evidence in the proceedings for compensation of damages initiated before the competent court, hence the burden of proof will not be on the injured party. On the other hand, a final decision of the national competition authority of an EU member state may be presented before the competent court as prima facie evidence that there has been a violation of competition on the market and may be assessed together with other evidence submitted by the parties.

In terms of liability, when several entities are involved in the infringement of competition, their joint liability is foreseen. Additionally, special rules are prescribed regarding liability when it comes to small and medium-sized enterprises - rules on limiting their liability to their direct and indirect customers.

A photograph of four bright yellow-green tennis balls scattered on a blue tennis court. A dark shadow of a tennis net is cast across the court from the top left towards the bottom right. The balls are positioned at various points: one near the top left, one in the middle left, one in the middle right, and one near the bottom right. The lighting is bright, creating sharp shadows for the balls and the net.

Conclusion

The proposed changes to Montenegrin competition legislation represent a significant step toward aligning with the EU standards. We will continue to closely monitor the progress of adopting these amendments and provide timely updates on their implementation.

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