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izazovi i očekivanja**

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Crna Gora donijela je Zakon o postupku za naknadu štete prouzrokovane povredom konkurencije, čime se po prvi put uvodi sveobuhvatan okvir za privatno sprovođenje prava konkurencije. Zakon je usklađen sa Direktivom 2014/104/EU i predstavlja važnu prekretnicu u procesu pristupanja Crne Gore Evropskoj uniji.

Iako je usvajanje ovog Zakona nesumnjivo od velikog značaja, njegov praktični efekat će se razvijati postepeno. Novi pravni okvir pruža mogućnost za pokretanje tužbi za naknadu štete, ali istovremeno otvara i pitanja: koliko brzo i u kojoj mjeri će se Zakon zaista primjenjivati u praksi.

Istorijski posmatrano, sprovođenje prava konkurencije u Crnoj Gori bilo je gotovo u potpunosti na inicijativu i u nadležnosti državnih organa, dok su privatne tužbe za naknadu štete bile rijetke.

Montenegro has adopted the Law on actions for damages arising from infringements of competition law, thereby introducing, for the first time, a comprehensive framework for the private enforcement of competition law. The Law is aligned with Directive 2014/104/EU and represents an important milestone in Montenegro's EU accession process.

While the adoption of this Law is undoubtedly significant, its practical impact is expected to develop gradually. The new legal framework creates opportunities for bringing damages actions, but also raises questions as to how quickly and to what extent it will be applied in practice.

Viewed in its historical context, competition law enforcement in Montenegro has been almost entirely driven by, and within the remit of, public authorities, with private damages actions remaining uncommon.

Novim Zakonom se uvodi mogućnost svakog oštećenog lica da zahtijeva punu naknadu štete, uključujući stvarnu štetu i izgubljenu dobit, zajedno sa kamatom. Na ovaj način se s jedne strane, nacionalni zakonodavni okvir dodatno usklađuje sa EU pravnim okvirom u oblasti zaštite konkurencije. S druge strane, uvodi se prelazak na dvostruki sistem sprovođenja prava koji kombinuje upravne sankcije sa privatnim tužbama za naknadu štete.

Zakon uvodi mehanizme koji olakšavaju pokretanje postupaka. Sudovi su sada vezani pravosnažnim odlukama Agencije ili drugih nadležnih sudova kojima je utvrđena povreda prava konkurencije. Dodatno, ovlašćenje suda nadležnog za postupke za naknadu štete usljed utvrđene povrede prava konkurencije podrazumijeva mogućnost pribavljanja relevantnih dokumenata. Pod određenim uslovima nadležni sud ima pravo da izvrši uvid i u spise predmeta koji su vođeni pred Agencijom.

Ako je šteta nastala zbog prevelike cijene koja je prenesena na kupce unutar lanca snabdijevanja, naknada štete može se tražiti samo za stvarno pretrpljenu štetu na tom nivou lanca, a odgovornost prekršioca se time ne smanjuje.

The new Law provides that any injured party is entitled to claim full compensation for harm suffered, including both actual loss and loss of profit, together with interest. On the one hand, this further aligns the national legal framework with the EU *acquis* in the field of competition law. On the other hand, it marks a shift towards a dual enforcement system combining administrative sanctions with private damages actions.

The Law introduces mechanisms that facilitate the initiation of proceedings. Courts are now bound by final decisions of the Agency or other competent courts establishing an infringement of competition law. In addition, courts adjudicating damages claims are vested with the authority to order the disclosure of relevant evidence. Under certain conditions, they may also access the case files of proceedings conducted before the Agency.

Where harm has arisen from an overcharge passed on to customers along the supply chain, compensation may be claimed only for the actual harm suffered at the relevant level of that chain, without reducing the liability of the infringer.

Sud ima ovlašćenje da procijeni koliki dio prekomjerne cijene je zapravo prenesen kroz lanac snabdijevanja. Tokom postupka, tuženi može tvrditi da je tužilac cijelu ili dio prekomjerne cijene prenio na svoje kupce, čime bi se odgovarajući dio štete umanjio.

Pravo na naknadu imaju kako direktni, tako i indirektni kupci, pri čemu učesnici u povredi mogu odgovarati solidarno za cjelokupan iznos štete. Kada je precizno utvrđivanje štete otežano, nadležni sud ima ovlašćenje da izvrši njenu procjenu, čime se uklanjaju mnoge tradicionalne procesne prepreke.

Međutim, jasno je da dobar zakonodavni okvir ne garantuje i dobar neposredni uticaj samog Zakona. Ovo iz razloga što Crna Gora još uvijek nema značajan broj odluka o povredi konkurencije, a imajući u vidu da je u postupku za naknadu štete, nadležni sud vezan utvrđenjem o povredi Zakona o zaštiti konkurencije sadržanim u pravosnažnoj odluci Agencije ili nadležnog suda po tužbi na tu odluku Agencije.

The court is empowered to assess the extent to which the overcharge has been passed on. During the proceedings, the defendant may argue that the claimant passed on all or part of the overcharge to its own customers, in which case the recoverable damage may be reduced accordingly.

Both direct and indirect purchasers are entitled to claim damages, and infringers may be held jointly and severally liable for the full amount of harm. Where the precise quantification of harm is excessively difficult, the competent court is empowered to estimate its amount, thereby removing many traditional evidentiary obstacles.

However, a good legislative framework does not, in itself, guarantee a good immediate impact. Montenegro still has a limited number of infringement decisions, and in damages proceedings, courts are bound by a finding of infringement established in a final decision of the Agency or of the competent court reviewing such a decision.

Nadalje, sporovi za naknadu štete zbog povrede konkurencije su po svojoj prirodi složeni. To znači da isti zahtijevaju ekonomsku analizu, vještačenja i sposobnost kvantifikovanja štete kroz čitav lanac snabdijevanja. Uprkos tome što Zakon široko definiše opseg dokaza koji se izvode u postupku naknade štete, radi se o složenom postupku izvođenja dokaza. Uzimajući u obzir navedeno, za pretpostaviti je mali broj tužbi na samom početku primjene Zakona.

U konačnom, iskustvo Crne Gore uklapa se u širi regionalni trend. U većini zemalja Centralne i Istočne Evrope slični zakoni su već usvojeni, ali je praksa naknade štete zbog povrede konkurencije i dalje relativno slabo razvijena. To odražava uobičajen razvojni put – najprije dolazi zakonodavno usklađivanje, a tek kasnije, kroz sudsku praksu i prilagođavanje tržišta, razvija se i stvarna primjena.

Furthermore, competition damages actions are inherently complex. They require economic analysis, expert evidence and the ability to quantify harm across the supply chain. Although the Law provides for a broad scope of evidence, evidentiary proceedings remain demanding. Accordingly, a limited number of cases can be expected in the early stages of implementation.

Ultimately, Montenegro's experience reflects a broader regional trend. In most Central and Eastern European jurisdictions, similar legislative frameworks have already been adopted, yet the practice of competition damages litigation remains relatively underdeveloped. This follows a typical trajectory: legislative alignment is followed, over time, by the gradual development of case law and market adaptation.

Da zaključimo, usvajanje Zakona o postupku za naknadu štete prouzrokovane povredom konkurencije predstavlja nužan i pozitivan korak. Njime se uspostavlja savremen pravni okvir i uklanjaju ključne procesne prepreke za pokretanje tužbi za naknadu štete. Istovremeno, očekivanja treba da budu realna.

Sam zakon neće automatski stvoriti razvijeno tržište sudskih sporova. Njegova efikasnost zavisice od razvoja institucionalne prakse, kapaciteta sudova i na kraju, spremnosti učesnika na tržištu da zaista pokreću takve postupke. U tom smislu, ovu reformu je korisno posmatrati kao osnovu za dugoročni razvoj sprovođenja prava konkurencije u oblasti naknade štete u Crnoj Gori.

In conclusion, the adoption of the Law on actions for damages arising from infringements of competition law represents a necessary and positive step. It establishes a modern legal framework and removes key procedural barriers to bringing damages claims. At the same time, expectations should remain measured.

The Law alone will not automatically generate a mature litigation landscape. Its effectiveness will depend on the development of institutional practice, the capacity of the courts, and, ultimately, the willingness of market participants to bring such claims. In this respect, the reform is best understood as a foundation for the long-term development of competition law enforcement in the field of damages in Montenegro.

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