Tax & Legal Weekly Alert

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Bill granting National Authority for Consumer Protection similar sanctioning powers to those of the Competition Council

A bill for amending the statute of the National Authority for Consumer Protection ("NACP") is currently pending before the Senate. Among other substantial changes, the bill provides the NACP sanctioning powers similar to those of the Competition Council, and in some instances it would allow the Authority to take even stricter measures. More precisely, if the bill is adopted, NACP may impose fines ranging from 0.5% to 10% of a company's turnover. If the penalized company is part of a group of companies, in order to determine its turnover, the cumulative turnover of the group will be taken into consideration, according to its consolidated financial statements. If applying sanctions by reference to turnover is justified in the competition field due to the negative impact that anticompetitive practices have on the market, applying a similar sanctioning mechanism in the consumer protection field seems disproportionate.

Bill granting National Authority for Consumer Protection similar sanctioning powers to those of the Competition Council

A bill for amending the National Authority for Consumer Protection's statute is currently pending before the standing committees of the Senate (hereinafter referred to as the "Bill"). In June 2016, the bill was adopted by the Chamber of Deputies and registered at the Senate for debate.

As adopted by the Chamber of Deputies, the Bill contains a series of substantial changes regarding the statute of the National Authority for Consumer Protection (hereinafter referred to as "NACP "). One of the most important changes regards the possibility for NACP to apply contravention fines by reference to the turnover of the penalized company. Under the Bill, the sanctioning mechanism applied by NACP (including the amount, procedure, calculation of the turnover) is similar to the one currently applied by the Competition Council, as provided by Law no. 21/1996 on competition, and in some cases the Authorities' measures are even stricter. The sanctioning mechanism provided by the Bill as adopted by the Chamber of Deputies:

- **The amount of the sanction:** NACP can sanction offenders with a fine between 0.5% and 10% of a company's turnover or an association of companies in the financial year prior to the sanctioning of the deeds committed intentionally or with negligence;
- **Admission of guilt:** If a company explicitly acknowledges committing the deed before the hearings and, if possible, proposes remedies that eliminate the causes of the breach, NACP may reduce the fine by between 10% and 30 % of the determined base value in accordance with the norms to be adopted for applying this provision. The reduction applies even if a fine is established at the minimum amount allowed by law, as long as the fine is not lower than 0.2% of the turnover achieved in the financial year prior to the sanction.
- **Determining the turnover's amount to which the fine is applied**
    - The amount of turnover to which the fine is applied is composed by the sum of revenues obtained from product sales and/or service provision performed by the company during the last financial year minus the amounts due as tax liabilities and the accounted value of exports carried out directly or through a representative, including intra-Community supplies.
    - If one of the sanctioned companies is part of a group of companies, the cumulative turnover of that group will be taken into consideration, according to the consolidated financial statements. While the Competition Council applies the fine only by reference to the turnover of the sanctioned company, the Bill provides a more severe sanction for the company that is in breach of consumer protection legislation, by applying the fine based on the turnover of the entire group.

The Bill is currently under debate and it may be amended with respect to the sanctioning mechanism. The debates can be followed on the Senate website at the following LINK (no. 468/2016). The Bill must pass the Senate to become law.

For further questions regarding the aspects mentioned in this alert, please contact us.

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