



sela
south east legal alliance

Competition & Antitrust

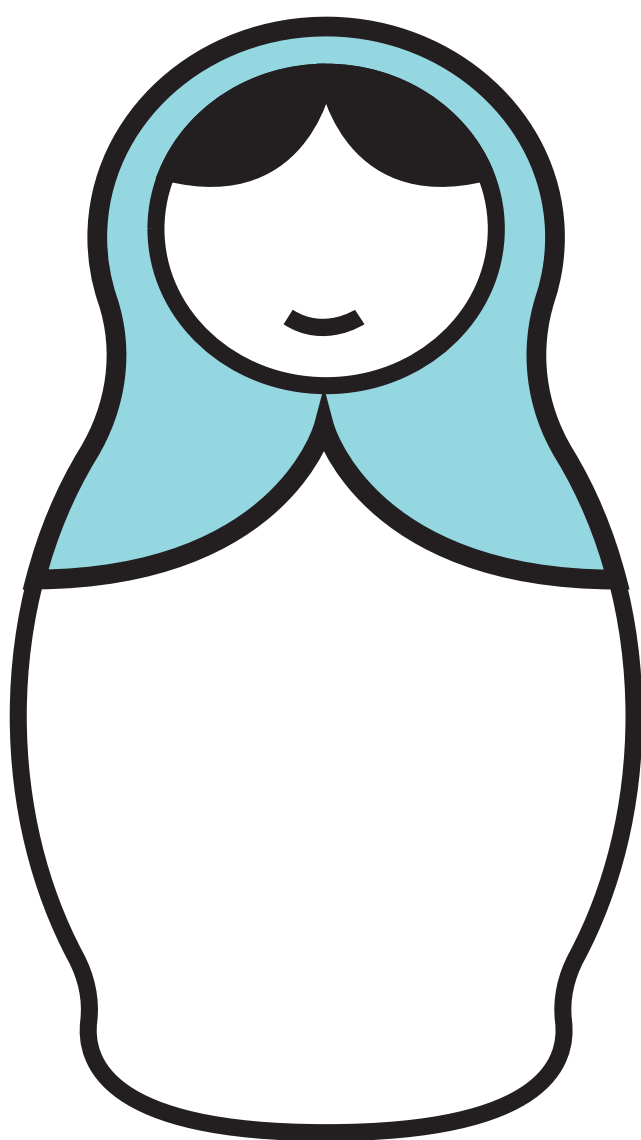




What we do

Competition & Antitrust

SELA - South East Legal Alliance
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Competition and EU Law

Being aware of competition law policies and obligations is a crucial factor in today's everchanging business environment. Especially over the past few years, it has become eminent that the different regulatory bodies, such as the European Commission and EU national competition agencies, are increasing their efforts to regulate the markets and to prevent unfair practice. The continuation of the enforcement of competition, in particular in the technology, digital media and telecommunications sectors, and the importance of compliance with merger control obligations, has been shown by the decision of the EU Merger Regulation committee on the recent Facebook case. Increased restrictions on foreign direct investments to protect domestic markets, the review of the EU level of merger control thresholds and the forthcoming Brexit and its implications are other recent competition trends that

organizations need to be on the lookout for. With an innovative and preventive approach to the steadily increasing complexity in the field of competition, the South East Legal Alliance – SELA takes legal advice to the next level. With coverage in seven jurisdictions across South East Europe, SELA's regional competition team is perfectly placed to assist clients not only on local competition matters, but also offer outstanding cross-border legal advice on supranational issues. Through maintaining excellent working relations with national competition authorities, as well as keeping abreast of the latest legislative developments and closely monitoring any arising market trends, SELA lawyers offer commercially savvy advice to clients in all competition law related matters, including contentious and non-contentious matters.

Broad Expertise

Members of SELA advise their clients on all aspects of EU, national competition and regulatory law, representing organizations before the European Commission as well as local authorities, with a particular focus on merger control, antitrust, state aid, investigations, compliance and risk management and disputes and litigations. Leading market players ranging from technology, media & telecommunications, retail & consumer goods, pharmaceutical and healthcare, to energy, automotive or manufacturing, trust the profound and seamless advice of SELA member firms.

Merger Control

The lawyers in each of the member firms have longstanding experience and in-depth knowledge in merger control proceedings, which is necessary to help clients successfully navigate merger control obligations and overcome possible foreign direct investment obstacles. SELA strives to always finding the best possible solution for each individual client in its particular situation taking all the local particularities into account.

Our Services

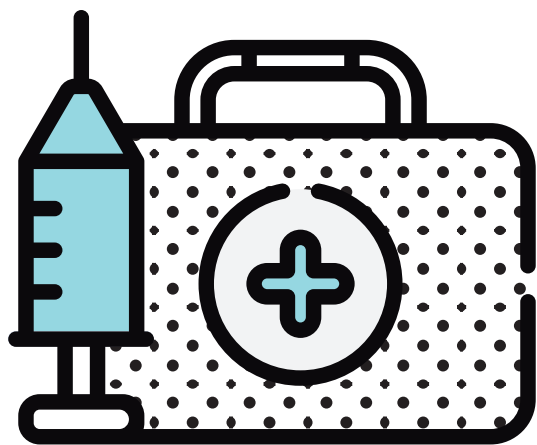
- Advice and coordination of national and international merger control proceedings
- Negotiation of remedies
- Representation in litigations arising from merger proceedings
- Representation in merger filings before the European Commission and national competition authorities
- Advice on foreign investment procedures

Antitrust

With antitrust law being a highly complex and delicate topic, SELA's regional competition team is well aware of potential implications to clients in case particular aspects are brought into the pictures. The competition lawyers from each member firm have effectively und successfully guided numerous clients on antitrust related problems.

Our Services

- Out-of-court legal advice and assessment of transactions and commercial policies regarding compliance with antitrust rules
- Legal representation before competent authorities in proceedings concerning:
 - Cartels and vertical agreements (e.g. cooperation, distribution, marketing, licensing, R&D);
 - Abuse of dominant position;
 - Abuse of collective dominance.
- Assistance in proposing commitments in antitrust proceedings;
- Assistance in dawn raids;
- Representation in appeal procedures before competent courts.



State Aid

SELA member firms have a deep understanding and a long track record in advising public and private entities in state aid matters. Since the wake of the financial crisis in 2008, which also heavily affected South Eastern Europe, the lawyers from SELA's competition group have been involved in many ground-breaking cases.

Our Services

- Legal assistance in filings for state aid before the national administrator and notification procedures before the European Commission;
- Advice in procedures before the European Commission for defense of state aid;
- Representation and legal counselling in procedures conducted by national authorities for recovery of state aid



Investigations

The members of SELA's competition team effectively assist and guide clients through all stages of antitrust investigations and unfair competition proceedings, making it as burden less and time-efficient as possible to keep the authority interference to a minimum. Through its involvement in many cases, the competition team is perfectly suited to provide top-quality, tailored and seamless support in any investigation.

Our Services

- Advice on the merits and legal assistance in all stages of the respective procedure
- Sector inquiries
- Market investigations
- Competition advocacy
- Representation before national competition authorities



Compliance and Risk Management

Regulatory compliance is especially prone to change because of the steadily adjusting legislative developments and market trends and therefore is of utmost importance. SELA's regional competition team offers unrivalled market-oriented assistance to clients, which includes designing individually tailored compliance guidelines, taking into account the local legal and economic background and the client's market position and targets. The group gives trainings on all relevant compliance and risk management aspects.

Our Services

- Internal guidelines and policies (manuals)
- Development of tailored competition compliance programs (e.g. employee trainings/workshops, audits)

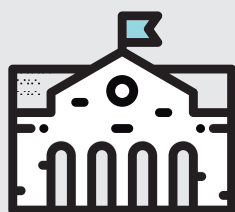


Disputes and Litigation

Having been involved in numerous cartel, market investigations and sector inquiries, the lawyers of SELA's competition group have precise knowledge of all types of competition disputes that a business can potentially face. This advantage puts SELA in the best position to provide clients with commercially sound and detailed advice, while representing them in any type of competition dispute or litigation proceeding.

Our Services

- Representation before national competition and other regulatory bodies;
- Legal assistance in appeal procedures before administrative or court authorities;
- Negotiations for settlement of competition disputes;
- Representation in remedies proceedings



Main agencies and institutions

Country	Institution
ALB	Albanian Competition Authority (ACA) www.caa.gov.al
BiH	Competition Council of Bosnia and Herzegovina www.bihkonk.gov.ba
BG	The Bulgarian Commission for Protection of Competition www.cpc.bg
CRO	Croatian Competition Agency (CCA) www.aztn.hr/en/
MAC	Commission for Protection of Competition (CPC) www.kzk.gov.mk/mak/index.asp
MNE	Agency for the Protection of Competition ("Agency") www.azzk.me
SER	Commission for the Protection of Competition ("Commission") www.kzk.gov.rs
SLO	Slovenian Competition Protection Agency (CPA) www.varstvo-konkurence.si/en/



Primary legal framework

Country	Legislation
ALB	Law no. 9121, dated 28.07.2003 "On the Protection of Competition" as amended (LPC)
BiH	Law on Competition ("Official Gazette of BiH", No. 48/05, 76/07 and 80/09)
BG	<ul style="list-style-type: none"> Protection of Competition Act; Article 101 and 102 of the Treaty for Function of the European Union Regulation 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty Regulation 139/2004 of 20 January 2004 on the control of concentrations between undertakings
CRO	Act on Protection of Competition (Official Gazette No. 79/09, 80/13, APC)
MAC	Law on Protection of Competition (Official Gazette No. 145/10, 136/11, 41/14, 53/16)
MNE	Law on Protection of Competition (Official Gazette of MNE no 44/2012 and 13/2018)
SER	Law on Protection of Competition (Official Gazette of RS nos. 51/2009 and 95/2013)
SLO	<ul style="list-style-type: none"> National: Prevention of Restriction of Competition Act (hereinafter also referred to as PRCA); EU legislation: relevant provisions of EU primary law, namely TFEU (core provisions are 101, 102 and 106) and TUE, secondary EU legislation including Council Regulation 1/2003/EC, implementing legislation and legislation governing exemptions.



Main prohibitions

Country	Prohibition
ALB	<p>The LPC deals with:</p> <ul style="list-style-type: none"> • Anticompetitive agreements; • Abuse of dominance; • Anticompetitive mergers and acquisitions.
BiH	<ul style="list-style-type: none"> • Prohibited agreements; • Abuse of a dominant position; • Prohibited concentrations
BG	<p>Antitrust</p> <ul style="list-style-type: none"> • Abuse of dominance; • Prohibited agreements <p>Unfair competition</p> <ul style="list-style-type: none"> • General prohibition of unfair competition – trading by applying rules contrary to standard commercial practice; • Prohibition for misleading representation in commercial practice; • Prohibition for discrediting the reputation of competitors; • Prohibition for misleading or comparative advertising; • Prohibition for trading goods with misleading appearance as to their origin, producer and other essential characteristics; misuse of company name or trademark; misuse of domain name or misleading appearance of internet site; • Prohibition for unfair soliciting of clients; prohibition of soliciting of clients through gifts or unreasonably expensive awards; prohibition of sales below costs; • Prohibition for disclosure of commercial secret; • Prohibition of abuse of superior bargaining position <p>Merger control</p> <ul style="list-style-type: none"> • Prohibition for carrying out mergers or acquisitions without prior notification when thresholds for notification are met.
CRO	<p>APC provides rules on the prohibition of the following activities:</p> <ul style="list-style-type: none"> • Anticompetitive agreements (so called general prohibition, such agreements are null and void by the virtue of law / <i>ex lege</i>); • Abuse of dominant position; • Anticompetitive concentration: (i) anticompetitive mergers and acquisitions and (ii) anticompetitive gaining of direct or indirect control over another undertaking ("concentration").
MAC	<ul style="list-style-type: none"> • Antitrust; • Prohibited agreements; • Unfair competition; • M&A control.
MNE	<ul style="list-style-type: none"> • Restrictive agreements; • Abuse of dominant position; • Concentrations preventing, restricting or distorting competition or free development of open market economy, and in particular, creating and/or strengthening dominant position in the market
SER	<ul style="list-style-type: none"> • Restrictive agreements; • Abuse of dominant position; • Anticompetitive mergers and acquisitions
SLO	<ul style="list-style-type: none"> • Restrictive agreements; • Abuse of dominant position; • Concentrations - significantly limiting effective competition as a result of the creation or strengthening of a dominant position; • Unfair competition; • Restrictions of the market by regulatory instruments and actions by the Government, state and local community authorities and holders of public authority.

Main exemptions/defenses

Country	Exemption /defense
ALB	<p>The main exemptions under the LCP include cases where the agreement would:</p> <ul style="list-style-type: none"> • contribute in improving the production or distribution of goods and/or services; or • contribute in promoting technical or technological or economic progress; while • allowing customers or consumers a fair share of the resulting benefit; and which do not • impose on the participating undertakings restrictions which are not indispensable to the attainment of these objectives; and • significantly restrict competition in respect of the products or services which are subject of those agreements; • fall into one of the categories of agreements specifically excepted by ACA from the prohibition (block exemptions);¹ • have minor importance and do not significantly restrict competition in the market (de minimis) as specifically defined in the LPC and by ACA
BiH	<p>Individual agreements shall not be prohibited if they contribute to improvement of the production or distribution of goods and/or services within Bosnia and Herzegovina or promotion of technical and economic progress, while allowing consumers a fair share of the resulting benefit and which:</p> <ul style="list-style-type: none"> • impose only those restrictions necessary to achieve these objectives; and • shall not enable the exclusion of competition in the substantial part of the products or services. <p>Block Exemptions include in particular:</p> <ul style="list-style-type: none"> • horizontal agreements, in particular the agreements on research, development and specialization; • vertical agreements, in particular the agreements on exclusive distribution, selective distribution, exclusive purchase and franchising; • agreements on transfer of technology, licenses and know how; • agreements on distribution and servicing of motor vehicles; • insurance agreements. • agreements of minor importance
BG	<p>Cases regarding prohibited agreements or abuse of dominance:</p> <ul style="list-style-type: none"> • Following the market leader; • Meeting the competition; • Economically justified reasons; • Public interest; • Technological development and upgrade of quality; • Passing of cost efficiencies to consumers; <p>Cases regarding unfair competition and abuse of superior bargaining position:</p> <ul style="list-style-type: none"> • No unified rules, depends on the case and the facts and evidence available; • Bringing benefits for the consumers
CRO	<p>APC provides exemptions from the general prohibition on the anticompetitive agreements if all of the following requirements are cumulatively met:</p> <ul style="list-style-type: none"> • contribution to the improvement of the production or distribution of goods and/or services or promoting the technological or economic development; • providing comparative advantage to the consumers; • restrictions that are not necessary for achieving stated goals are not imposed to undertakings; • an exclusion of a substantial part of competition from the market (for goods and/or services covered by the agreement) is not enabled to the entrepreneurs; <p>Burden of proof is on the side of the undertakings (i.e. the undertakings have to prove all of the above requirements are met).</p> <p>ACP also provides so called group exemption that provides rules defined by the Government of the Republic of Croatia on the conditions that have to be fulfilled in order for the agreements to be exempt.</p>

¹ Except for exemptions marked with asterisks, the law does not provide for automatic exemptions; undertakings are required to prove that the agreement concluded would not substantially restrict competition in the relevant market and that the agreement would enable consumers to share the benefits arising from such an agreement.

Country	Exemption /deffense
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MAC	<p>The Law prohibition may not apply to the following agreements:</p> <ul style="list-style-type: none"> • Agreements of minor importance; • Agreements wherein the joint market share of the parties in the agreement and the undertakings on the market have not exceeded the threshold of 10% in the case of horizontal agreement or the threshold of 15% in the case of vertical agreement will be deemed an agreement of minor importance. If it is not possible to determine whether the agreement is horizontal or vertical, the threshold of 10% will apply; • If the market share of the undertaking has not increased by more than 2% in the previous two business years. <p>The CPC may propose to the Government to prescribe additional requirements for the agreements of minor importance.</p> <p>Also, the prohibition not apply to agreements, decisions of associations of undertakings and concerted practices that contribute to the improvement of the production or distribution of goods or services or to the promotion of technical or economic development, provided that the consumers have proportional benefit thereon, and which:</p> <ul style="list-style-type: none"> • do not impose restrictions that are not necessary for the attainment of these objectives on the undertakings concerned; and • do not afford such undertakings the possibility of eliminating the competition in respect of a substantial part of the products or services concerned. <p><i>Ex officio</i> right, the CPC can adopt a decision to determine that the aforementioned exemptions shall not apply on a particular agreement, decision of association or concerted practice, by exception or when is necessary for the purpose of protecting the public interest.</p>
MNE	<ul style="list-style-type: none"> • <i>De minimis</i> agreements; • Block exemption; • Individual exemption in case of improvement of production and trade or incitement of technical or economic progress while providing the consumers with fair share of benefits and without imposing unnecessary restrictions.
SER	<ul style="list-style-type: none"> • <i>De minimis</i> agreements; • Block exemption; • Individual exemption in case of improvement of production and trade or incitement of technical or economic progress while providing the consumers with fair share of benefits and without imposing unnecessary restrictions.
SLO	<ul style="list-style-type: none"> • Agreements that contribute to improving the production or distribution of goods or to promotion of technical and economic progress and provide consumers with fair share of resulting benefit; • Agreements of minor importance; • Block exemptions that contribute to improving the production or distribution of goods or to promotion of technical and economic progress and provide consumers with fair share of resulting benefit; • Certain transactions conducted by the banks, insurance companies, savings institutions or other financial institutions are not deemed as concentration if additional requirements are fulfilled; • Guaranteeing human rights and economic and social relations shall not be considered as restricting the free operation of undertakings in the market. Under conditions contained in PRCA the Government may determine exceptionally permitted market restrictions.

ALB

Under the ACA Leniency Program published in February 2016², undertakings that are part of or have implemented anticompetitive agreements that violate the LPC, may benefit of a full immunity, or partial reduction from relevant penalties, if they voluntarily submit relevant information and important evidence to ACA.

In order to be eligible for immunity, the applicant must admit being party of the alleged infringement, and fulfil a number of conditions, including:

- It is the first party to apply for immunity;
- It must not have coerced others to participate in the cartel nor have been the leader;
- To provide full disclosure of the details of the cartel (including copy of eventual agreements and other documents, identification of other members, etc.);
- To interrupt the involvement in the alleged infringement, to the extent deemed relevant by ACA;
- To fully cooperate with the ACA, and remains at the disposal to reply to any requests from ACA;
- Not to destroy evidence related to the alleged infringement;
- To keep confidentiality of the leniency application pursuant to the requirements of ACA;
- To provide relevant information/evidence, which allow ACA to identify the responsible parties, start an investigation on the alleged infringement and apply the sanctions under the LPC.

Immunity from fines shall not be granted in the ACA at the time of the application had sufficient information to start an investigation on the infringement.

An undertaking not qualifying for an immunity from fines may however benefit from a partial reduction, if it provides to the ACA added value information/evidence regarding the cartel. The information/evidence added value shall be deemed the information/evidence not already available CA, which increase the probability for ACA to prove the alleged infringement, by providing additional arguments of the violation of the law.

Based on the consideration of the time of submission of the infringement, and the order of application by eventual other participants in the cartel, the ACA may grant the following partial reductions from fines:

1. a reduction from 30% - 50% for the first undertaking;
2. a reduction from 20% - 30% for the second undertaking;
3. a reduction of up to 20% - 30% for the all other subsequent undertakings;

² <http://caa.gov.al/laws/read/id/81>

BiH

The Competition Council may reduce a fine or grant immunity from fines to an undertaking which prevents, distorts or restricts competition under the provisions of the Law on Competition, if an undertaking willingly provides the decisive evidence significant for establishing an infringement and ends its involvement in the prohibited activities at the moment when the evidence was submitted.

Immunity from a fine can be full or partial if another taking voluntarily cooperates with Competition Council.

Reduction or immunity from fines can be granted if the following conditions are met:

- the evidence was submitted at the time when the Competition Council does not hold information necessary to initiate the proceedings ex officio;
- an undertaking efficiently cooperates with the Competition Council throughout the proceedings;
- at the time when the evidence was submitted the undertaking ended its participation in written or oral agreement or concerted practice and does not coerce other undertakings to participate in such agreements.

Leniency procedure is defined in more details by the existing bylaws.

An undertaking, an applicant for immunity from fines must fulfill the following conditions at the moment of submission of application to the Council of Competition:

- to end all its activities related to the agreement that violates competition;
- the undertaking must not inform other parties to the agreement concerned on its application;
- the undertaking must cooperate fully, on a continuous basis and expeditiously throughout the proceedings and provide the evidences and information in its possession or under its control, including all forms of information which prove the existence of infringement.

Any oral, written or electronic communication with the Council of Competition shall be considered as the application for immunity from fines.

BG

Immunity from sanction:

- If the undertaking participating in the cartel first discloses enough data and evidence for the Commission to reason a dawn-raid permission from the court;
- Alternatively, if the undertaking first discloses crucial data or evidence that confirms the infringement;
- The Commission has not granted conditional immunity to other undertaking in the cartel;
- At the time of disclosing the crucial evidence, the evidence collected so far by the Commission does not substantiate infringement in an undisputed way;

Reduction of fines:

- If, in the course of the investigation, the undertaking initiates voluntary disclosure of crucial data or evidence that confirms the infringement;
- The reduction of fines could be up to 50% of the sanction to be imposed otherwise;
- If more than one undertaking discloses crucial information, the reduction is (a) for the first undertaking disclosing the information – reduction between 30-50%; (b) for the second undertaking – reduction between 20-30%; (c) for third and any consecutive undertaking – reduction between 10-20%;

Commitments decision

- If the dominant undertaking or if the undertakings participating in the cartel undertake commitments aimed at restoring the competition, the Commission may approve the commitments and no sanction is imposed.

CRO

Provided under the APC and in more details in secondary piece of legislation - Ordinance on the Criteria for Immunity or Reduction of the Administrative-Criminal Injunctions (Official Gazette No. 129/10; "Leniency Ordinance").

Leniency Ordinance provides general criteria for immunity of undertakings participating in the anticompetitive agreements and regulates that CCA can grant immunity to:

- the undertaking who was the first to notify on the existence of the anticompetitive agreement and provides all relevant information, facts and proof sufficient for initiation of the procedure;
- the undertaking who was the first to deliver the CCA the proof sufficient for determining the violation of the APC, in cases when the CCA has already previously initiated the procedure but did not have sufficient evidence on finalization of the procedure (i.e. determining the anticompetitive agreements).

APC and Leniency Ordinance provide that undertakings not qualifying for immunity can be granted partial reduction of the administrative-criminal injunctions if they have provided the CCA additional valid proof which have – in addition to the proof already determined by the CCA – were of a crucial significance in finalization of the procedure (i.e. determining the anticompetitive agreement).

Depending on the (i) moment of submission of infringement and the (ii) order of the application, reduction of the can be applied to the undertakings which have delivered relevant proof, as follows:

- 30-50 % for the first undertaking;
- 20-30% for the second undertaking;
- up to 20% for the third undertaking.

APC provides that in any case an undertaking which was the (i) initiator or (ii) abettor of entering into anticompetitive agreement are not entitled to immunity.

MAC

The leniency program includes granting immunity or a reduction of the allotted fine.

The full immunity may be granted, if an undertaking admits its participation in a cartel and if:

- first presents evidence enabling the Misdemeanor Commission to initiate a misdemeanor procedure; or
- first presents evidence enabling the Misdemeanor Commission to complete the already initiated misdemeanor procedure with a decision establishing the existence of a misdemeanor if the existence of the misdemeanor could not be established without such evidence.

Reduction of the fine may apply if the undertaking requests immunity and cumulatively meets the following requirements:

- terminates its participation in the cartel immediately after the submission of the request for immunity from a fine;
- cooperates with the Misdemeanor Commission fully, on a continuous basis, and submits the necessary data in the shortest possible time period;
- does not notify the other participants in the cartel about the submission of the request for immunity from a fine;
- prior to the submission of the request for immunity from a fine, does not disclose the existence or content of the request, except to bodies responsible for sanctioning the cartel outside the Republic of Macedonia, and
- does not destroy, conceal or falsify relevant evidence used to establish facts being of importance for making a decision by the Misdemeanor Commission.

MNE

Leniency is governed by Article 69 of the Law on Protection of Competition which provides, inter alia, as follows: in case in which a participant in a prohibited agreement is the first to report to the Agency the existence of the agreement, or reports existence of another prohibited agreement in which he is a participant or possesses certain knowledge / has supplied evidence, the Agency may exempt such participant from the proceedings or apply more lenient punishment.

SER

For undertakings that have entered into or implemented prohibited restrictive agreements in violation of the law, the Commission may exercise its discretion to reduce the penalties imposed or grant exemption from penalties for voluntary submission of relevant information and relevant evidence to the Commission.

Under the current leniency rules, in order to be eligible for immunity, an individual or undertaking must satisfy a number of conditions, including that the individual or the undertaking:

- was a restrictive agreement participant;
- is the first person to apply for immunity in respect of the agreement;
- did not force or encourage other undertakings to conclude or implement the restrictive agreement;
- has either ceased involvement in the agreement or indicates to the Commission that involvement will cease in the agreement;
- undertakes to provide full disclosure and cooperation to the Commission

SLO

Under the leniency program members of cartels can benefit from lenient treatment by the CPA in the minor offences proceedings. The CPA can either grant immunity (discharge) from fines or reduce the fines. In addition to provisions of PRCA leniency program is also governed by implementing legislation.

In order to qualify for the IMMUNITY offender must submit AN APPLICATION and fulfill the following conditions:

- fully and completely discloses its participation in the alleged cartel;
- is the first to submit information and evidence that, in the CPA's view, will enable an inspection in connection with the alleged cartel or the finding of a violation of prohibition of restrictive agreements governed by PRCA or TFEU in connection with the alleged cartel;
- cooperates with the CPA throughout the proceedings;
- terminates its involvement in the alleged cartel immediately after the beginning of cooperation with the CPA in view of the discharge unless the CPA considers such termination to be contrary to the interests of the inspection; and
- did not coerce other undertakings to join the cartel or to remain in it.

In order to qualify for the REDUCTION offender must submit AN APPLICATION and fulfill the following conditions:

- provides evidence of its participation in the alleged cartel that represents significant added value with respect to the evidence already in the CPA's possession;
- cooperates with the CPA throughout the proceedings; and
- terminates its involvement in the alleged cartel immediately after the beginning of cooperation with the CPA in view of the discharge or reduction unless the CPA considers such termination to be contrary to the interests of the inspection.

Range of REDUCTION of fines:

- Offender who fulfill conditions and is the first to provide evidence: 30-50%;
- Offender who fulfill conditions and is the second to provide evidence: 20-30%;
- Other offender who fulfill conditions and provides evidence: up to 20%.

The leniency program does not apply to abuse of dominant position and to agreements between undertakings which collaborate on vertical level..



ALB

The LPC provides for the following remedies/sanctions:

- pecuniary penalties;
- orders to cease illegal act;
- order on measures to restore the original status prior to concentration (in relation to mergers).

Under the LPC the ACA may apply fines for:

- non-serious infringements (up to 1% of the aggregate turnover in the preceding business year);
- serious infringements (up to 10% of the aggregate turnover in the preceding business year);

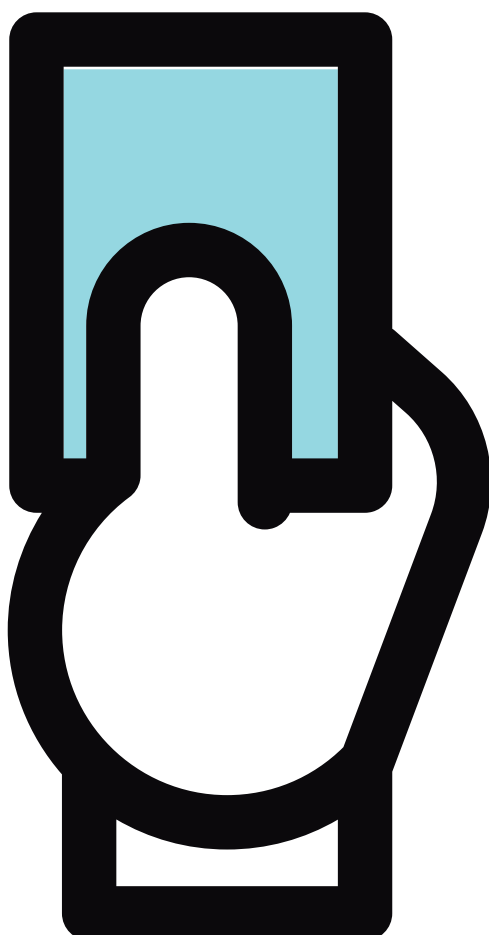
The following are deemed non-serious infringements under the LPC:

- provision of incorrect, incomplete or misleading information in response to an ACA request or decision, or do not provide the data within the deadline specified in the ACA decision or the ACA Secretariat request pursuant to the LPC;

- provision of incorrect, incomplete or misleading information in their merger control notifications or notifications for Exemptions of Individual Agreements pursuant to LPC, or provide inaccurate and incomplete additional data and documents requested by the ACA during such procedures;
- submission of the required books or other business records in incomplete form during inspections pursuant to the LPC, or refuse to submit to inspections ordered by a decision adopted pursuant to LPC;
- refusal to answer any questions on facts and provide inaccurate, incomplete or fraudulent answers or obstruct the inspections of ACA;
- breaking of the seal put on business premises/assets by the officials of the ACA in accordance with LPC;
- failure to notify a merger transaction within the deadline required by the LPC.

The following are deemed serious infringements under the LPC:

- breach of the LPC in relation to entering into prohibited agreements and/or abusing of dominant position, pursuant to the LPC;
- contravention to an ACA decision ordering interim measures due to prohibited agreements and/or abusing of dominant position.
- failure to comply with a condition and obligation established by an ACA decision;
- putting into effect a notifiable concentration which results in the restriction of competition in the market, in contradiction with the obligation of the LPC, without an approval from ACA, or contrary to an ACA decision;
- failure to take the necessary measures to restore the competition as required by ACA



BiH

Competition Council, within its competences, can apply the following remedies and sanctions:

1. Interim measures - suspension of activities, fulfilment of conditions or other measures necessary to eliminate prevention, restriction or distortion of market competition;
2. when it finds that the competition is prevented, restricted or distorted, it can prohibit further actions of an undertaking, impose other appropriate measures and deadlines that insure competition among the undertakings on the relevant market and deadlines for their implementation;
3. if a concentration is implemented contrary to regulations, Competition council can propose all necessary measures intended to ensure free competition, in particular:
 - order the sale or transfer of stocks or share capital acquired;
 - prohibit or restrict the voting rights related to the stocks or the share capital in the undertakings, parties to the concentration and termination of control of the joint venture or any other form deemed as concentration;
4. monetary fines for Infringements of the Law:
 - grave violations - an undertaking or a natural person, shall be fined up to 10 % of value of its total annual turnover earned in the financial year preceding the year when the severe infringement was committed. The Competition Council may impose fines on the responsible persons of the undertaking in the amount of BAM³ 15.000 to BAM 50.000.
 - non-grave violations - Competition Council may impose fines on the undertakings not exceeding 1% of total turnover in the preceding business year. The Competition Council may impose fines on the responsible persons of the undertaking in the amount from BAM 5.000 to BAM 15.000.

BG

- Sanctions: up to 10% of the turnover of the undertaking for the financial year preceding the issuance of the decision.
- The Commission, when ascertaining that a violation has been committed, instructs the termination of the violation and may impose specific structural or behavior measures for restoring the competition;
- Civil claims for damages – on the basis of enforceable decision of the Commission, the undertakings that have suffered damages from established infringement may file claims for damages.

CRO

Remedies/sanctions provided under APC:

- administrative-criminal injunctions;
- measures for monitoring of business activities or structural measures necessary for achieving balance for restoring balance in the market competition with ordering the deadlines for proceeding in line with ordered measures;
- temporary injunctions in emergency cases.

Administrative-criminal injunctions are divided in to categories and provided for:

1. grave violations (punishable with up to 10% of the total (annual) turnover in the last fiscal year);
2. non-grave violations (punishable with up to 1% of the total (annual) turnover in the last fiscal year); and
3. the violations committed by an undertaking which does not have the status of the party of the procedure and does not follow the ACP's order (punishable in the range from HRK 10.000,00 (approx. EUR 1.300,00) and HRK 100.000,00 (approx. EUR 13.300,00)).

³ The Bosnia and Herzegovina convertible mark (BAM) is the currency of Bosnia and Herzegovina. It is divided into 100 pfenigs or fenings and locally abbreviated KM

MAC

Fines

Fines are prescribed as an amount of 1% expressed in absolute and nominal amount for minor misdemeanors, and 10% expressed in absolute and nominal amount for more serious misdemeanors from the sum of the aggregate turnover for each member of the association acting on the relevant market.

The law also prescribes special provision for determining monetary fine, which states that basic amount of the fine may be determined to maximum 30% of the income generated in the last business year with the activity on the relevant market where the misdemeanor was committed, by the perpetrator of the misdemeanor. The amount is multiplied by the number of years in which the misdemeanor lasted. The final amount of the fine may be reduced or increased considering mitigating or aggravating circumstances in every particular case.

Sanctions

In addition to the fine, the Misdemeanor Commission may impose a temporary ban on carrying out a specific activity in duration of 3 to 30 days on the legal entity.

MNE

Civil remedies for infringement of the Law include:

- pecuniary penalties and periodic fines;
- behavioral measures such as orders to undertake or refrain from certain behavior;
- structural measures that require restoration of the original status prior to concentration (in relation to mergers);

such as, e.g.:

- If an undertaking acts contrary to the orders issued by the Agency in the respective proceeding or fails to comply with these orders or fails to comply with the interim measure or fails to submit notification of concentration within the given time period, a procedural penalty measure shall be imposed in the amount between 500 EUR and EUR 5,000 per day of delay, with the limit being 3% of the total annual revenue;
- If an undertaking abuses a dominant position in the relevant market or concludes or implements a prohibited restrictive agreement or fails to perform or implement measures to eliminate the competition infringement, or the imposed measure of deconcentration, the Commission may impose a fine up to 10% of the total annual revenue generated in the year preceding the year of infringement;
- If an undertaking fails to timely notify a notifiable concentration the Agency may impose a monetary fine in the range from EUR 4,000 to EUR 40,000.

SER

Civil remedies for infringement of the Law include:

- pecuniary penalties and fines;
- behavioral measures such as orders to undertake or refrain from certain behavior;
- structural measures that require restoration of the original status prior to concentration (in relation to mergers);

such as, e.g.:

- If an undertaking acts contrary to the orders issued by the Commission in the respective proceeding or fails to comply with these orders or fails to comply with the interim measure or fails to submit notification of concentration within the given time period, a procedural penalty measure shall be imposed in the amount between EUR 500 and EUR 5,000 per day of delay, with the limit being 10% of the total annual revenue.
- If an undertaking abuses a dominant position in the relevant market or concludes or implements a prohibited restrictive agreement or fails to perform or implement measures to eliminate the competition infringement, or the imposed measure of deconcentration, the Commission may impose a fine up to 10% of the total annual revenue generated on the territory of the Republic of Serbia in the year preceding the year of infringement.

SLO

PRCA prescribes following remedies and sanctions:

- measures to eliminate the effects of concentration and restrictive practices;
- interim measures in cases of urgency due to the risk of serious and irreparable damage to the effectiveness of competition on the market;
- fines;
- compensation claim under the rules of the law of obligations; and
- rights of a party affected by unfair competition practices.

Fines for RESTRICTIVE PRACTICES:

1. Up to 10% of the annual turnover of the undertaking in the preceding business year for a legal entity, sole proprietor or an individual who performs an economic activity when:
 - they act in contravention of prohibition of restrictive agreements governed by PRCA or TFEU,
 - they abuse a dominant position in contravention of prohibition of abuse of dominant position governed by PRCA or TFEU
 - they act in contravention of an enforceable decision issued by the CPA.
2. Between EUR 5,000 and 10,000 for the responsible person of a legal entity or the responsible person of a sole proprietor for the minor offence referred to in the preceding paragraph.
3. If the nature of the minor offence referred to in the preceding paragraphs is particularly serious a fine of between EUR 15,000 and 30,000 for the responsible person of a legal entity or the responsible person of a sole proprietor.

Fines in respect of CONCENTRATIONS:

1. Up to 10% of the annual turnover of the undertaking involved in a concentration together with other undertakings in the group in the preceding business year for a legal person and a sole proprietor for a minor offence when:
 - they fail to notify the CPA of a concentration or fail to notify it within the prescribed time limit;
 - they implement rights or obligations arising from the concentration before a decision declaring that the concentration is compatible with the rules on competition;
 - they fail to implement corrective measures or obligations imposed by a decision declaring the concentration compatible with

the rules on competition;

- they act in contravention of a decision declaring a concentration incompatible with the rules on competition;
 - they act in contravention of an enforceable decision issued by the CPA on measures to eliminate the effects of concentration.
2. Between EUR 5,000 and 10,000 for the responsible person of a legal entity or the responsible person of a sole proprietor for the minor offence referred to in the preceding paragraph.
 3. Between EUR 3,000 and 5,000 for a natural person already controlling at least one undertaking for the minor offence referred to in the first paragraph.
 4. If the nature of the minor offence referred to in the preceding paragraphs is particularly serious a fine of between EUR 15,000 and 30,000 for the responsible person of a legal entity or the responsible person of a sole proprietor, and a fine of between EUR 10,000 and 15,000 for a natural person already controlling at least one undertaking.

The rights of a party affected by UNFAIR COMPETITION PRACTICES are:

1. Compensation claim under the rules of the law of obligations.
2. Request through a civil action prohibition of any further actions of unfair competition, the destruction of the goods involved in the act of unfair competition, and restoration of the initial condition.
3. Request the publication of the court decision in the media, when an act of unfair competition has been perpetuated by the media or by similar or has affected a large number of parties.

Merger control regime and thresholds

ALB

Notification of mergers and acquisitions to ACA is mandatory if the concentration of undertakings meets these minimum thresholds:

- the combined annual worldwide turnover of the participating undertakings exceeds Lekë⁴ 7 billion (approx. EUR 53.4 million) and at least one participating undertaking has annual turnover in Albania exceeding Lekë 200 million (approx. EUR 1.5 million); or
- the combined annual turnover of the participating undertakings in the domestic market exceeds Lekë 400 million (approx. EUR 3 million) and the annual turnover of at least one participating undertaking in the domestic market, exceeds Lekë 200 million (approx. EUR 1.5 million);⁵

Concentrations meeting the above thresholds must be notified to ACA within 30 days following the triggering event (conclusion of the agreement, the acquisition of a controlling interest, creation of a full function joint venture or the announcement of the public bid for purchase or exchange).

No notifiable concentration shall be put into effect prior to receiving an approval form ACA.

BiH

Notification of the concentration is mandatory if the following conditions are met:

- the aggregate turnover of all parties to the concentration derived by the sale of goods and/or provision of services on the global market amounts to BAM 100.000.000, according to the financial statements in the year preceding the concentration; and
- the aggregate turnover of each of at least two parties to the concentration derived by the sale of goods and/or provision of services on the market of Bosnia and Herzegovina amounts to at least BAM 8.000.000, according to financial statements for the year preceding the concentration, or if their common share on the relevant market exceeds 40%.

The aggregate turnover shall not include the turnover derived by transaction among the parties.

BG

Notification to the Competition for Protection of Competition in advance of the transaction is compulsory if the following thresholds are met:

- the aggregate turnover of the undertakings participating in the concentration on the territory of Bulgaria for the previous financial year exceeds BGN 25,000,000 (approx. EUR 12 782 297);
- and (alternatively):
 - the turnover of each of at least two participating undertakings on the territory of Bulgaria for the previous financial year exceeds BGN 3,000,000 (approx. EUR 1,533,875); or
 - the turnover realized by the undertaking which is subject to the acquisition on the territory of Bulgaria for the previous financial year exceeds BGN 3,000,000 (approx. EUR 1,533,875).

MAC

In case of a concentration, submitting PRIOR Notification to the CPC regarding the concentration is mandatory when:

- the joint aggregate turnover of all participating undertakings, generated by selling goods/services on the world market exceeds the amount of EUR 10 million in Denar⁶ counter value according to the exchange rate valid on the day of preparing the annual account, gained in the business year preceding the concentration, and where at least one participant has to be registered in the Republic of Macedonia; and/or
- the joint aggregate turnover of all participating undertakings, generated by selling goods/services in the Republic of Macedonia, exceeds the amount of EUR 2.5 million in Denar counter value according to the exchange rate valid on the day of preparing the annual account, gained in the business year preceding the concentration; and/or
- the market share of one of the participants is more than 40% or the aggregate market share of the participants in the concentration on the market is more than 60% in the year preceding the concentration.

MNE

Merger notification is mandatory if the concentration of undertakings meets these minimum thresholds:

- the combined aggregate annual revenue of at least two parties to the concentration achieved in the market of Montenegro exceeds EUR 5 million in the preceding financial year; or
- the combined aggregate annual worldwide revenue of the parties to the concentration achieved in the preceding financial year exceeds EUR 20 million, and at least one party to the concentration had revenue of EUR 1 million in the territory of Montenegro in the same period.

A concentration may not be implemented before the Agency's clearance.

SER

Merger notification is mandatory if the concentration of undertakings meets these minimum thresholds:

- total annual revenue of all concentration participants generated on the international market in the preceding financial year exceeds EUR 100 million, provided that at least one concentration participant's generated revenue on the market of the Republic of Serbia exceeds EUR 10 million;
- total annual revenue of at least two concentration participants generated on the market of the Republic of Serbia exceeds EUR 20 million in the preceding financial year, provided that at least two concentration participants' generated revenue on the market of the Republic of Serbia exceeds EUR 1 million per participant, in the same period;

A concentration may not be implemented before the Commission's clearance.

CRO

APC regulates that notification on the intention of every execution of concentration: (i) mergers and acquisitions and (ii) gaining of direct or indirect control over another undertaking is mandatory if the concentration jointly meets the following conditions:

- total annual consolidated turnover of undertakings participating in the concentration generated by selling goods and/or providing services is minimum of HRK billion (approx. EUR 130 million) in the fiscal year preceding the year of intended concentration, if at least one undertaking has registered seat and/or branch in the Republic of Croatia;

total turnover of each of at least 2 undertakings participating in the cartel, in the Republic of Croatia, is at least HRK 100 million (approx. EUR 13 million) in the fiscal year preceding the year of intended concentration.

SLO

Notification of a concentration to the CPA is mandatory if:

- the total annual turnover of the undertakings involved in a concentration, together with other undertakings in the group, on the market of the Republic of Slovenia in the preceding business year exceeded EUR 35 million; and
- the annual turnover of the acquired undertaking, together with other undertakings in the group, on the market of the Republic of Slovenia in the preceding business year exceeded EUR 1 million; or if the joint venture is created by two or more independent undertakings, performing on a lasting basis with all the functions of an autonomous economic entity and the annual turnover of at least two undertakings concerned in a concentration, together with other undertakings in the group, in the preceding business year exceeded EUR 1 million.

CPA can request from undertakings included in the concentration to notify the concentration to the CPA, even if above described thresholds are not achieved but joint market share held by all undertakings included in the concentration exceeds 60%.

CPA shall be notified of a concentration prior to its implementation, but not later than 30 days after the conclusion of the contract, the announcement of the public bid, or the acquisition of a controlling interest. Undertakings shall not exercise rights and obligations arising from a concentration that is subject to notification until a decision declaring that the concentration is compatible with the rules on competition has been issued.

⁴ The lek (Albanian: Leku, plural lekë) is the official currency of Republic of Albania, internationally abbreviated L.

⁵ All conversion rates effective as of March 2018.

⁶ The Denar is the currency of Republic of Macedonia, internationally abbreviated MKD.



Our Regional Competition & Antitrust Team

Key Contacts

Cross-border transactions and knowledge sharing are the heart of our alliance. To ensure top quality service and a unified approach we have established practice area/industry specific teams spanning across the region. This allows us to deliver commercial and cost-effective advice and to provide a unique service that other legal networks don't offer.



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