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CROATIAN
COMPETITION AGENCY

**Challenges of Damages Directive transposition
Croatian experience**

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COMPETENCES AND LEGAL FORM-FIRST STEPS

INTERNAL CHALLENGES

Preparations for the transposition of Directive started during 2015: consultations and meetings betw. relevant state administration bodies.

Two main and related questions:

- **Which public administration body will be responsible for the transposition of Damages Directive?**
- **Which legal form will be the best?**

In Croatia damages claims are regulated with different legal acts: Civil Procedural Act and Civil Obligations Act and Competition Act.

Different legal solutions proposed:

- a) Legal amendments of the existing laws, the Civil Procedural Act and Civil Obligations Act with minor necessary changes in the Competition Act.
- b) Amendments of the Competition Act only
- c) Drafting the new Act on damages claims for the breach of competition rules.

LEGAL SOLUTION: NEW LAW ON DAMAGES CLAIMS

Decision to draft and adopt completely **new Act on Damages Claims for the breach of competition rules.**

The CCA assumed the responsibility from the Ministry of Economy for the preparation of the Draft Law.

In April 2016 it established working group consisted of experts from the relevant institutions: Ministry of Justice, Ministry of Economy, MFA, judges from commercial courts, High Administrative Court, lawyers, association of employers, Law Faculty, Faculty of Economy;

The CCA is chairing the working group and participating in drafting of the law.

DIFFICULT LEGAL ISSUES IN DRAFT LAW ON DAMAGES

1. TYPE OF RESPONSIBILITY

Directive does not envisage guilt requirement but only casual link between the infringement of competition law and damage caused.

Croatian Civil Obligations Act has as a general principle *presumption of liability for damages caused*

Draft Law on Damages claims: *concept of objective responsibility* with presumed guilt without the guilt requirement.

2. QUANTIFICATION OF DAMAGES

Lack of provision in the existing laws, EC Guide too complex for judges

Draft Law on Damages claims: general provision, the judges will freely decide on the amount of damages, judges can seek expert help from the CCA.

3. PASSING ON OVERCHARGES-PASSING ON DEFENCE ON INDIRECT PURCHASERS

Provisions from Article 12 to 15 of Directive; complete novelty in Croatian legal system, Additional guidance needed: future EC guidelines for national courts on how to estimate the share of the overcharge.

LEGAL DRAFTING CHALLENGES: PROBLEMATIC LEGAL ISSUES

4. EFFECT OF NATIONAL DECISIONS

Article 9, paragraph 2 of Damages Directive

What legal standard to use for the recognition of foreign decisions establishing the infringement of competition law?

Directive- *prima facie evidence*; no such legal term in national legislation;

Obligatory nature of final decisions from other MS establishing the breach of EU competition law for national courts

5. LIMITATION PERIODS

Relevant moment for the suspension of limitation period (Article 10, paragraph 4 of Damages Directive)

To determine the exact moment in investigation from which limitation period is suspended as the moment when the proceeding is officially opened or when the proceeding has already started.

STATE OF PLAY-DRAFT LAW ON DAMAGES

- The Drafting of the new Act on damages took place between April and September 2016.
- The first draft of the law is completed, introduction and explanatory part still needs to be prepared and approved by the working group.
- Draft Act on damages goes to public consultation-electronic consultation via website of the Ministry of Economy (30 days for interested public to submit comments)
- Final comments from relevant state administration bodies (Office for Legislation, Ministry of Finance, Ministry of Administration etc).
- Draft Law on damages will be then sent to the urgent legislative procedure due to the dead-line for the transposition of Directive (27 December 2016).

FUTURE CHALLENGES

- Adoption of the Law on damages in time;
- Implementation of the Law in practice;
- Education about damages claims for the breach of competition rules;
- Very few cases on commercial courts
- How to encourage the claims?
- Quantification of damages in competition cases and passing-on overcharges-the biggest challenges for the judges
- Implementation of completely new legal instruments in the civil law proceedings: passing on overcharges, passing on defence on indirect purchasers
- Obligation of the national courts to pay attention to the protection of evidence which can be revealed only after the competition authority completed its proceedings and to the protection of categories of evidence which can never be disclosed (such as leniency statements).

CONCLUSIONS

- Adoption of Damages Directive-big step ahead for private damages claims in Europe;
- Croatian national legal system-richer for another specific Legislation
- Joint work of different stakeholders in the working group for preparation of draft law on damages-very good exercise
- Efforts to encourage the undertakings and other claimants to submit damages claims on the basis of the new Act on Damages;
- Important to educate the public about the Law on Damages and its possibilities: the CCA will organize the conference until the end of the year to present the Law.

Thank you for your attention!



QUESTIONS ???

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