

Opinion on the Working version of the Law on Misdemeanours

The proposed text from Article 35 (“Fines”) in the part considered significant for the protection of competition stipulates the following: “By way of derogation from the provisions referred to in paragraphs 1 through 3 of this Article, specific fines can be prescribed by law for the following misdemeanours: - in proportion to the damage caused or default in fulfilling obligations, the value of goods or other items being the subject of the misdemeanour, but not exceeding an amount twenty times greater than that value - misdemeanours in the area of public revenues, public information, customs, foreign-trade and foreign-exchange business operations, environment protection, trade in goods, services and securities; - in a percentage ratio of no more than 10% of the income earned by the legal entity or person in charge in the legal entity or entrepreneur in the fiscal year preceding the year when the misdemeanour was committed; - misdemeanours in the area of restriction, distortion or prevention of competition.” The Commission for Protection of Competition has pointed to the obviously made omission when preparing the Working version of this legislation, and alluded to the Ministry of Justice as the line ministry that the Law on Protection of Competition (“Official Gazette of the RS”, no. 51/09) establishes that imposition of measures pertaining to the protection of competition in respect of infringements performed on the part of undertakings is in exclusive competence of the Commission, and in accordance with this fact, which is withal established in the rulings of misdemeanor courts as well, it is clear that these acts are no longer misdemeanors but competition infringements, which are, as already mentioned, the matter of exclusive administrative acting on the part of Commission for Protection of Competition.