LEXOLOGY®
Getting The Deal Through

Competition Compliance

in Romania

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Romania

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GENERAL

General attitudes

What is the general attitude of business and the authorities to competition compliance?

Businesses have started to become more aware of the importance of competition compliance. Many of the international companies with a presence in Romania already have in place competition compliance systems at the group level. However, there are still numerous companies that do not feel that competition compliance requirements concern them. Those companies are usually under the wrong impression that competition compliance only deals with a small number of types of conduct (such as price fixing) and only with dominant companies.

The Romanian Competition Council (RCC) has intensified its efforts to raise awareness with regard to competition compliance and educate companies in this regard by issuing guidelines and taking part in various conferences, seminars and workshops.

Government compliance programmes

Is there a government-approved standard for compliance programmes in your jurisdiction?

The RCC has published a competition compliance guide (the RCC Compliance Guide) that provides the main elements of an efficient compliance programme and its implementation in practice, while also providing useful examples of anticompetitive conduct. The guide also emphasises that effective implementation of a compliance programme entails several stages: risk identification, risk evaluation, risk management and due diligence in the competition area.

However, there is no standard, government-approved compliance programme.

Moreover, the guide mentioned above leaves room for companies to address specific issues encountered in their respective business sectors and depending on their relevant business models, the structure of the relevant markets on which they are present, etc.

Applicability of compliance programmes

Is the compliance guidance generally applicable or do best practice and obligations depend on company size and the sector of the economy it operates in?

Some aspects of compliance depend on the company's position on the relevant markets. For instance:

- a company with a small market share will not have the same obligations and would not be required to have the same cautious approach in respect of unilateral conduct as a company that may be considered dominant;
- in the case of vertical agreements, there are safe harbours related to market share that prevent certain parties from being sanctioned for certain conducts that would otherwise amount to breaches of competition legislation; and
- merger control would only apply to businesses with certain annual turnovers in Romania and abroad.

However, there are many other facets of competition compliance that apply to all businesses, irrespective of their size, including the following aspects regarding anticompetitive agreements.

- Safe harbours concerning market shares do not apply in the event of hardcore infringements of competition legislation; hence, a company may be sanctioned for being a party to an anticompetitive agreement considered hardcore irrespective of its share on the relevant market.

- For infringements of competition by object, a competition authority would not be required to prove the actual anticompetitive effects thereof, and, in some cases, a competition authority would also be spared from defining a relevant market; thus, a company may be sanctioned for a restriction by object irrespective of its market share and of its degree of market power.

Likewise, although each business sector has its own specificities in (1) competition assessment (depending on the structure of the market and the degree of competitive constraints from outside the market, the extent of spare production capacities, the definition of the relevant market, etc) as well as (2) in terms of competition practices that may be more or less prevalent, there are many caveats that should be observed irrespective of the sector.

If the company has a competition compliance programme in place, does it have any effect on sanctions?

The existence of a competition compliance programme may lead to a reduction in the fine when the RCC establishes the fine for an anticompetitive deed. However, for the reduction to be granted, the company is to prove the effective implementation of the programme. Thus, the mere existence of a competition compliance manual, for instance, would not be sufficient.

IMPLEMENTING A COMPETITION COMPLIANCE PROGRAMME

Commitment to competition compliance

How does a company demonstrate its commitment to competition compliance?

First, any company should be able to prove the existence of a competition compliance programme tailored to its needs and its exposure to potential risks. The company's shareholders and top management should be actively involved in the implementation of the competition compliance programme and in explaining its rationale.

It is important to nominate both internal employees as well as specialised external counsel, each having clear roles with respect to competition law compliance.

Furthermore, it is essential to ensure that all directors, officers, employees and other collaborators, irrespective of their roles or seniority, are familiar with the requirements of competition law via tailored training and tests concerning the level of knowledge. Due evidence regarding attendance to training and tests should be carefully preserved.

It is also very important that the competition compliance programme be qualified as mandatory via the company's corporate documents and policies, and to ensure that failure to observe this has sizeable legal consequences for those concerned.

Finally, an effective whistle-blowing system should be implemented to make sure that potential risks and breaches are brought to the attention of the management as soon as possible.

Risk identification

What are the key features of a compliance programme regarding risk identification?

According to the Romanian Competition Council Compliance Guide, the risk identification process should take into account elements such as the size of the company, its activity, geographic presence, the level of the supply chain where it is active, market conditions, the intensity of the interaction with other competitors and contractual relationships with third parties.

The following examples are listed among potential vulnerabilities that usually generate risks for companies:

- the lack of knowledge on competition law;
- approaching competition compliance formally;
- the lack of a competition compliance culture within the company; and
- the perception of a low detection risk from the authority, etc.

First and foremost, an internal audit should be conducted before drafting a competition compliance programme, with the purpose of identifying all specific risks arising from the specific features of the company's activity and of the markets on which it is present. The programme should encompass clear procedures for enabling the identification of risks of infringements before these take place as well as shortly thereafter, including by means of an effective whistle-blowing system.

It is then vital to organise periodical audits to (1) verify the degree of implementation of the compliance programme, (2) verify the status of the measures addressing the risks formerly identified and whether these were properly mitigated, and (3) to detect any new risk of infringements.

Risk assessment

What are the key features of a compliance programme regarding risk assessment?

The key features of a competition compliance programme in terms of risk assessment encompass procedures to ensure immediate communication of the identified risks to (1) the internal staff in charge of competition compliance and where those internal staff deems necessary and (2) the specialised competition counsel appointed to deal with the company's compliance programme.

In the event of dawn raids or other investigation measures, communication to the specialised competition counsel should be immediate. This is required not only to make sure that company's rights are properly preserved but also to enable an early assessment of the potential risks involved, which is crucial for adopting a proper strategy throughout an investigation.

Risk mitigation

What are the key features of a compliance programme regarding risk mitigation?

Competition-related risks can be avoided only if:

- the awareness level of the employees with respect to competition legislation is high, hence proper training and tests are paramount;
- the compliance programme encompasses clear procedures explaining the different measures to be taken in various circumstances;
- there is adequate personnel with clear roles regarding competition compliance as well as specialised competition counsel within easy reach; and
- the observance of competition legislation and the implementation of the compliance programme is mandatory for the entire organisation.

Compliance programme review

What are the key features of a compliance programme regarding review?

The periodic review of (1) the degree of implementation of the compliance programme, (2) the degree of mitigation of risks previously identified and (3) the specific risks pertaining to the activity of the company and of the markets on which it is present (as these may change throughout the time) should be a priority for companies. In addition, periodic training and evaluation sessions should be held for employees.

Reviews should also be conducted in the event of exceptional circumstances that may trigger new risks as well as the need to observe certain procedures (eg, when the company decides to extend its activity, when there are amendments to the competition law and in the event of a merger that needs to be notified).

DEALING WITH COMPETITORS

Arrangements to avoid

What types of arrangements should the company avoid entering into with its competitors?

Article 5, paragraph 1 of the Competition Law (Law No. 21/1990) prohibits all types of arrangements, whether implicit or explicit, between competitors that have as their object or effect the prevention, restriction or distortion of competition on a significant part of the market.

Arrangements to be avoided in principle include price-fixing, output restrictions, sharing markets or sources of supply, bid rigging, agreements to delay or prevent innovation and technical progress, etc.

Additionally, exchange of commercially sensitive information with competitors should be avoided as it may either amount to an infringement of competition legislation by itself or contribute to the implementation and monitoring of such an infringement.

Suggested precautions

What precautions can be taken to manage competition law risk when the company enters into an arrangement with a competitor?

Companies should include in their competition compliance programmes procedures for interacting with competitors.

If it cannot be avoided, any interaction with a competitor should be carefully documented and should be assessed beforehand by counsel specialising in competition matters.

If improper discussions between competitors occur during those interactions, a company's representatives should clearly and immediately withdraw themselves from the discussions, making clear that the company and themselves are against such conduct.

As a precautionary measure, counsel specialising in competition should be part of all meetings and other interactions with competitors.

Other specific precautions may be required depending on the nature of the interaction, for example:

- clean teams in the case of mergers and acquisitions transactions between competing businesses to avoid potential exchanges of sensitive information that may amount to gun jumping or anticompetitive agreements. The team could comprise external independent parties or, where imperatively required for the purposes of the transaction, parties' staff who are not involved in competitive planning, pricing or any other aspects of the parties'

commercial strategy (or the commercial strategy of the relevant group of companies);

- measures required to prevent the dissemination of individual sensitive information among the members of a trade association and the appointment of members' officers, employees, among others, as bodies of the trade association; and
- refusal to sign or implement an agreement with a competitor until it is reviewed and vetted by counsel specialising in competition.

CARTELS

Cartel behaviour

What form must behaviour take to constitute a cartel?

Cartels are usually defined as agreements between competitors concerning price-fixing, production restraints, customers and market sharing. However, many other forms of agreements between competitors (termed 'horizontal agreements') may infringe competition legislation, and these should not be treated lightly.

Moreover, the term 'cartel' has little practical interest under Romanian law as legislation makes reference to horizontal agreements, practical examples of conduct and hardcore restrictions that do not fall under block exemptions rather than to the term cartel.

In any case, cartel arrangements can be written or verbal and binding or non-binding (eg, a gentlemen's agreement). Concerted actions (known as 'concerted practice') may equally amount to competition infringements.

In certain cases (eg, agreements that require the exchange of competitively sensitive information), even the attempt at performing the action may be deemed unlawful. For instance, in the event of cartels perpetrated (also) by exchanges of information, a single, unilateral disclosure of information may be deemed as an infringement, there being a presumption that the information would be taken into account by competitors when deciding their conduct on the market.

Avoiding sanctions

Under what circumstances can cartels be exempted from sanctions?

Cartels can only be exempted from sanctions based on the leniency policy of the Competition Council as the current block exemptions based on market shares do not apply to the types of horizontal agreements that are normally part of the definition of cartel.

Other types of horizontal agreements than those usually defined as cartels are exempted if the cumulative market share of the undertakings involved does not exceed 10 per cent of a market that is not one of the relevant affected markets. Furthermore, a horizontal agreement may be deemed to be compatible with the Competition Law if it:

- contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit;
- imposes on the undertakings concerned only restrictions that are indispensable to the attainment of these objectives; and
- does not afford the companies the possibility of eliminating competition in respect of a substantial part of the products in question.

Exchanging information

Can the company exchange information with its competitors?

Although not all exchanges of information with competitors infringe competition legislation, since the definition of competitively sensitive information is very wide and since in many cases the stance of a competition authority regarding an exchange cannot be fully anticipated, it is usually advisable for a company to refrain from exchanging any type of commercially sensitive information with its competitors.

In the event that exchanges are imperatively required (eg, for envisaged cooperation agreements for legitimate purposes or for mergers and acquisitions transactions), these should not take place unless and until a counsel specialising in competition endorses them.

Competitively sensitive information may concern, among other things, prices, production capacities, market shares, sales, clients and business or marketing strategies and any other business secrets. Exchanges of information concerning future prices and quantities and, in general, information concerning future strategies on the market have a high level of risk. However, there are cases where exchanges of past information have equally been punished.

A unilateral disclosure of information is sufficient for an infringement to exist, there being a presumption that the competitor receiving the information will make use of it.

LENIENCY

Cartel leniency programmes

Is a leniency programme available to companies or individuals who participate in a cartel in your jurisdiction?

A leniency programme is available to companies that participate in an anticompetitive agreement, either in the form of immunity from fines or of a fine reduction. The leniency policy does not, however, apply to agreements that may be exempted based on the applicable safe harbours.

The general conditions for granting leniency are:

- the company cooperates genuinely, fully, on a continuous basis and promptly with the Romanian Competition Council (RCC);
- the company ended its involvement in the alleged cartel immediately following its application unless otherwise requested by the RCC; and
- when contemplating applying for leniency to the RCC, the company must not have destroyed, falsified or concealed evidence of the alleged cartel nor disclosed the fact or any of the content of its contemplated application, except to other competition authorities.

To obtain immunity, the company must also be the first to provide evidence to the RCC, and at the date of providing the information, the RCC did not have sufficient evidence for commencing the investigation or carrying out dawn raids.

Upon request, the RCC must keep confidential the identity of the party applying for leniency until the investigation report (equivalent to the statement of objections) is served. Access to the statements submitted for leniency purposes may be granted only to the parties to the anticompetitive agreements, which may only use the statements for the purpose of the relevant investigation.

Can the company apply for leniency for itself and its individual officers and employees?

The company can apply for leniency for itself.

The deeds of the company's individual officers and employees are not covered by the leniency procedure governed by the competition legislation as they are deemed to be individuals with management positions who intentionally conceive or organise anticompetitive agreements or practices commit criminal offences.

As such, leniency procedures governed by the criminal law apply to individuals, as follows.

- Individuals disclosing their deed before the commencement of the criminal investigation, thus allowing the identification and punishment of other participants, will not be sanctioned.
- If the disclosure is made during the criminal investigation and facilitates the identification and punishment of other participants, a 50 per cent reduction of the punishment limits is applicable.

Can the company reserve a place in line before a formal leniency application is ready?

It is possible to reserve a place in line for leniency by obtaining a marker. To obtain a marker, the company should provide the RCC with information regarding its name, address, parties to the agreements, affected products and territories, the estimated duration of the infringement, as well as a short description of the working ways of the agreement.

Whistle-blowing

If the company blows the whistle on other cartels, can it get any benefit?

A company may benefit from leniency when it provides information on cartels in which it participated; however, providing information on cartels in which the company did not participate does not bring any benefits.

DEALING WITH COMMERCIAL PARTNERS (SUPPLIERS AND CUSTOMERS)

Vertical agreements

What types of vertical arrangements between the company and its suppliers or customers are subject to competition enforcement?

All vertical agreements that adversely affect competition may be subject to enforcement. Examples include non-compete and non-solicitation obligations, resale price maintenance, single branding, exclusive distribution, restrictions regarding costumers to which one may sell, exclusive supply, selective distribution that does not fulfil certain conditions, exclusive distribution, export bans or restrictions to parallel imports, etc.

Would the regulatory authority consider the above vertical arrangements per se illegal? If not, how do they analyse and decide on these arrangements?

As under EU law, in Romania there is a distinction between the following types of infringements:

Infringements by object

Infringements by object (the relative equivalent of per se infringements under US antitrust law) are considered anticompetitive by their very nature and do not require a fully fledged assessment of effects on the market for the Romanian Competition Council (RCC) to enforce sanctions. Infringements deemed as hardcore (those for which no block exemption can be invoked, such as minimum resale price maintenance and absolute territory protection) are usually deemed as infringements by object; however, this qualification will depend on the circumstances of each case. To escape liability for a by-object infringement, a party may, in principle, prove either the lack of market effects or that the positive effects of the infringement outweigh its negative effects on competition; however, in the case of hardcore infringements, the chance of these attempts succeeding is usually very slim.

Infringements by effect

For infringements by effect, no sanction may be imposed unless the RCC shows that they may have anticompetitive effects on the relevant markets. In this case, as with infringements by object (although with more chance of success), a party may prove that the positive effects of the infringement outweigh its negative effects on competition.

Under what circumstances can vertical arrangements be exempted from sanctions?

According to the Competition Law, vertical agreements are exempted if the market share of each of the companies involved in the agreement does not exceed 15 per cent on any of the relevant markets.

In addition, block exemptions set out under EU law are equally applicable in Romania. As such, subject to certain conditions in certain cases and provided that they do not amount to or do not contain certain restrictions deemed as hardcore, vertical agreements may be deemed as compatible with Romanian competition laws if neither party has a market share higher than 30 per cent of the market on which it purchases or sells, respectively, the goods or services contemplated by the agreement.

HOW TO BEHAVE AS A MARKET DOMINANT PLAYER

Determining dominant market position

Which factors does your jurisdiction apply to determine if the company holds a dominant market position?

An undertaking is considered to have a dominant market position if it has the possibility to act independently in relation to its competitors, customers and the end consumers.

An indicator of the undertaking's market power is its market share. Under the Competition Law, there is a presumption of dominance where the market share exceeds 40 per cent. However, the market share does not in and of itself amount to dominance.

The key factors considered for the assessment of a dominant position are (1) the market position of the undertaking, (2) the barriers to entry and expansion within the relevant market, and (3) the countervailing power of competitors or customers.

Abuse of dominance

If the company holds a dominant market position, what forms of behaviour constitute abuse of market dominance? Describe any recent cases.

The dominant undertaking has a special responsibility not to allow its conduct to harm genuinely undistorted

competition on the market. Abusive behaviour may include, among other things:

- directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- limiting production, markets or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions with other trading parties;
- making the conclusion of contracts subject to acceptance of additional obligations that do not have any connection with the subject of the contracts;
- margin squeeze;
- tying and bundling;
- refusal to afford access to essential facilities or supplies; and
- refusal to sell.

The list is not exhaustive, and assessment shall be made on a case-by-case basis. For example, in a recent case, the Romanian Competition Council found that an operator having a monopoly over an internet network had been imposing inequitable network access conditions for its customers.

Another recent case involved a pharmaceutical manufacturing company that eliminated its competitors on the downstream market of medicine distribution by selling products to competing distributors at higher prices than those it was bidding in public tender procedures; thus, the producer excluded its competitors from the relevant tender procedures.

Under what circumstances can abusing market dominance be exempted from sanctions or excluded from enforcement?

Although not expressly provided by the Competition Law, an undertaking may defend its abusive behaviour by way of objective justification when the effects of its actions are proportionate with any personal legitimate interest or public policy objective.

In addition, if the undertaking shows that the efficiency gains resulting from the abusive conduct can neutralise the negative effects of the abuse, that the conduct was necessary for the achievement of the efficiency gains and that effective competition is not eliminated, the abusive conduct may be considered lawful.

COMPETITION COMPLIANCE IN MERGERS AND ACQUISITIONS

Competition authority approval

Does the company need to obtain approval from the competition authority for mergers and acquisitions? Is it mandatory or voluntary to obtain approval before completion?

A transaction is usually deemed to be an economic concentration if a change of control on a lasting basis arises from:

- the merger of previously independent companies or parts thereof;
- the acquisition of direct or indirect control over an undertaking or parts thereof by the acquisition of assets or stock, or by contractual provisions, natural persons or legal entities that already control an undertaking or by one or more companies; and
- the creation of a full-function joint venture.

Approval from the Romanian Competition Council (RCC) is required where the following cumulative conditions are met: (1) the aggregated global turnover of the undertakings involved for the preceding financial year exceeds the Romanian leu equivalent of €10 million, and (2) each of at least two of the undertakings concerned has obtained in Romania in

the preceding financial year an individual turnover exceeding the Romanian leu equivalent of €4 million.

As a rule, it is the company (or companies) acquiring control that is responsible for submitting the notification.

How long does it normally take to obtain approval?

According to the Competition Law, within 30 days of the receipt of a complete notification form, the RCC may inform the notifying parties in writing in the event that the economic concentration does not fall within the scope of the competition law.

When the transaction does fall within the scope of the competition law, the RCC issues a non-objection decision within 45 days of the receipt of a complete notification if there are no serious competition concerns or if the concerns have been removed based on commitments assumed by the concerned parties and approved by the RCC.

The RCC may decide the commencement of an investigation (Phase II assessment) within 45 days of the receipt of a complete notification form if it deems that the economic concentration raises serious competition concerns.

In Phase II, the RCC must issue a decision within five months of the receipt of a complete notification.

The time until a notification becomes complete varies depending on the complexity of the notification as well as the level of detail and quality of the information provided by the parties.

Under Romanian law, there is no accelerated procedure; however, in some cases, the filing of a simplified notification form is allowed. The simplified notification form requires less information from the parties regarding certain market elements and can be used in certain cases where there are no substantial overlaps between the parties.

Under practical terms, the average assessment period for concentrations that do not raise concerns is currently around two months.

If the company obtains approval, does it mean the authority has confirmed the terms in the documents will be considered compliant with competition law?

Restrictions that are directly connected to and necessary for the implementation of a transaction are automatically covered by an authorisation decision issued by the RCC and, thus, are not subject to individual assessment. However, if the restrictions are not deemed as directly related to and necessary for the implementation of a transaction, the relevant antitrust rules (on anticompetitive agreements or the abuse of dominant position) may become applicable.

Failure to file

What are the consequences for failure to file, delay in filing and incomplete filing? Have there been any recent cases?

Failure to notify or the implementation of a concentration after the notification but before clearance is sanctioned with fines between 0.5 per cent and 10 per cent of the annual turnover achieved in the fiscal year preceding the sanction.

INVESTIGATION AND SETTLEMENT

Legal representation

Under which circumstances would the company and officers or employees need separate legal representation? Do the authorities require separate legal representation during certain types of investigations?

Separate legal representation is not required but is advisable as officers and employees may have conflicting interests with those of the company.

Dawn raids

For what types of infringement would the regulatory authority launch a dawn raid? Are there any specific procedural rules for dawn raids?

Dawn raids may be carried out based on court authorisation if there are strong indications that a competition infringement took place. To that end, the inspectors of the Romanian Competition Council (RCC) have effective investigation powers, including the right to:

- enter spaces, plots or transport means where the company conducts its business;
- examine any documents with regard to the company's activity;
- ask any representative or member of the personnel for explanations and make records of their responses;
- collect copies or excerpts from any documents; and
- seal any space destined for the activities of the company or any other records of the company's activity.

The RCC inspectors may also conduct dawn raids in any other space, including the homes, plots or means of transport of the managers, directors and other employees of the companies.

In certain cases, during the dawn raid, the RCC may proceed to copy data using forensic procedures without having viewed the documents.

What are the company's rights and obligations during a dawn raid?

Before the dawn raid is commenced, the inspectors are obliged to present their badge, court order and the inspection order.

Any company may be assisted during a dawn raid by its lawyer (even via telephone); however, the lawyer's absence cannot delay the dawn raid.

The company is entitled to make sure that the investigation is carried out strictly with respect to the alleged infringement that is the object of the inspection order and the relevant court order.

After the dawn raid is concluded, the company may submit a reasoned request that other parties not be permitted access to information it deems as confidential from what was seized during the dawn raid.

Settlement mechanisms

Is there any mechanism to settle, or to make commitments to regulators, during an investigation?

During the investigation of a potentially anticompetitive deed, the companies under investigation may propose commitments with respect to certain types of infringements to eliminate the competition concerns that triggered the

investigation.

If the RCC intends to accept the commitments, it shall publish a summary of them on its website so that the interested third parties may present their observations.

In addition, during investigations, the RCC may grant a favourable treatment to investigated companies that recognise they have breached the law, in which case the fine may be reduced by between 10 per cent and 30 per cent of its basic level.

What weight will the authorities place on companies implementing or amending a compliance programme in settlement negotiations?

Settlement negotiations are not influenced by the existence or implementation of a competition compliance programme. However, a compliance programme may lead to a reduction of the fine upon calculation of it by the RCC.

Corporate monitorships

Are corporate monitorships used in your jurisdiction?

Usually the monitorisation of commitments is carried out by the RCC. However, depending on the nature and complexity of the commitments, the RCC may request the parties use a monitoring agent.

Statements of facts

Are agreed statements of facts in a settlement with the authorities automatically admissible as evidence in actions for private damages, including class actions or representative claims?

On a general note, if a decision of the RCC or the European Commission or court of law establishes an infringement of competition law, the infringement is deemed to have been established irrefutably for the court entrusted with the judgment of a claim for damages.

The decision usually reflects the total or partial agreement of the RCC and the relevant parties with regard to the anticompetitive deeds.

However, during private claims for damages, the court cannot order, at any point in time, that a party to the proceedings or a third party disclose leniency applications and proposals for the conclusion of a settlement.

Invoking legal privilege

Can the company or an individual invoke legal privilege or privilege against self-incrimination in an investigation?

Communications between the company and its external lawyer conducted within the context and with the exclusive purpose of exercising its right of defence, either after the commencement of the RCC's procedure or before, and provided that the communications are related to the object of the procedure cannot be seized during a dawn raid or subsequently used as evidence. The burden of proof rests with the interested company.

Although not expressly provided for by law, the principle of avoiding self-incrimination can be raised based on the relevant judgments of the European Court of Justice.

Moreover, the proposals made for the acknowledgement of an anticompetitive deed (a settlement proposal) that is subsequently withdrawn or not accepted by the RCC cannot be used as evidence against any of the parties.

Nonetheless, outside the acknowledgement procedure, since there is a very fine line between the principle of avoiding self-incrimination and the downright obstruction of the investigation, parties are in practice weary of invoking such principle.

Confidentiality protection

What confidentiality protection is afforded to the company or individual, or both, involved in competition investigations?

Throughout the investigation and with respect to the content of the RCC decision, parties are entitled to the protection of certain categories of information, such as trade secrets, as well as other confidential information of which the disclosure may significantly affect a company's or other party's interest or justified option to remain anonymous.

However, the identity of the parties involved is made public both upon the commencement of an investigation (after dawn raids are conducted) and within the decision issued by the RCC, which is published on the RCC's website.

Refusal to cooperate

What are the penalties for refusing to cooperate with the authorities in an investigation?

Providing inaccurate, incomplete or misleading information is sanctioned by a fine ranging from 0.1 per cent to 1 per cent of the total turnover obtained in the year preceding the sanction.

The refusal to cooperate with the RCC or the obstruction of the investigation amounts to an aggravating circumstance, the application of which may increase the basic level of the fine by between 10 per cent and 25 per cent.

Infringement notification

Is there a duty to notify the regulator of competition infringements?

There is no duty to notify the regulator of competition infringements. However, companies and individuals may apply for leniency with respect to their involvement in a potential anticompetitive deed and, thus, benefit from immunity or a reduction of the fine.

Limitation period

What are the limitation periods for competition infringements?

The sanctions for competition infringements are time-barred after three years in the event of failure to cooperate with the RCC, and five years for all other infringements.

The limitation period starts on the day on which the infringement is committed. However, in the event of a continuing or repeated infringement, the limitation period starts on the day when the infringement ceases.

MISCELLANEOUS

Other practices

Does your competition regime specifically regulate anticompetitive practices that are not typically covered by antitrust rules?

Other anticompetitive practices are unfair competition practices that are covered by a different law.

Unfair competition practices are defined as commercial practices that are against fair dealing and the principle of goodwill and that may prejudice any participants to the market.

Examples of those practices as provided by the relevant law are the following:

- the denigration of a competitor or its products or services by disseminating false information; and
- client embezzlement by a current or former employee or representative or by any other person through the use of trade secrets.

The Romanian Competition Council (RCC) is equally in charge of enforcing unfair competition legislation.

Future reform

Are there any proposals for competition law reform in your jurisdiction? If yes, what effects will it have on the company's compliance?

In 2019, the RCC published on its website a project for an emergency ordinance that will modify the Competition Law as required to implement Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the member states to be more effective enforcers and to ensure the proper functioning of the internal market.

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

In the past year, the Romanian Competition Council (RCC) finalised 14 investigations regarding infringements of competition law, half of which were cases of abuse of dominance. Several investigations concerned key economic areas, such as pharma, services related to gas installations, access to essential facilities and public procurement. Of the total fines applied by the RCC, 91 per cent concerned cases of abuse of dominance, while 9 per cent concerned cartels.

In 2019, the RCC also published a guide for compliance with competition law by associations of undertakings as well as new enactments on leniency and the individualisation of the sanctions for the main antitrust infringements (anticompetitive agreements, abuse of dominance, failure to notify economic concentrations, gun jumping, etc).

LAW STATED DATE

Correct on

Give the date on which the information above is accurate.

4 March 2020.