Cartels

2017

Fifth Edition

Contributing Editors:
Nigel Parr & Euan Burrows

glg global legal group

CONTENTS

Romania

Silviu Stoica & Ramona Iancu
Popovici Nițu Stoica & Asociații

Overview of the law and enforcement regime relating to cartels

The legal regime of cartels in Romania is primarily set out in the Competition Act no. 21/1996 (the "**Competition Act**"),[1] then detailed for implementation purposes in wide secondary legislation (the "**Secondary Legislation**"). In the last 12 months, the Competition Act has not been amended on cartels policy.

But the intensive changes brought to the Competition Act, mostly in 2015, raised debates between competition law specialists this year. One of the substantial changes aimed at aligning the wording of article 5(1) of the Competition Act, which deals with anticompetitive agreements, with its corresponding text at European level (i.e., article 101(1) of the Treaty on the Functioning of the European Union ("**TFEU**")). Following the change, Article 5(1) of the Competition Act, which is also applicable to cartel practices, no longer contains the following two examples of anticompetitive behaviours: (a) participation in bid rigging; and (b) elimination of certain competitors from the market through boycott-type practices.

While these amendments were somehow logical, in the past 12 months they raised various discussions between specialists, practitioners and companies with a direct interest in this change. We have in mind here several companies that challenged the Competition Council's (the "**Council**") decisions, trying to obtain the annulment of sanctioning decisions that were grounded on the examples of anticompetitive practices delisted from Article 5(1) of the Competition Act. In their pleas, these companies invoked the most favourable law principle. But, as expected, most courts concluded that the list of anticompetitive practices in Article 5(1) is not exhaustive, but merely serves for example purposes. An important argument was also European Commission and Court precedents: in several antitrust cases, the European Commission decided on refusal, boycott and bid rigging, even lacking express wording for these practices in Article 101(1) of the TFEU. Some examples are:

- The Judgment of the General Court from 2011 in case T-210/08 (Competition – Cartels – International removal services market in Belgium – Decision finding an infringement of Article 81 EC – Price-fixing – Market-sharing – Bid-rigging – Single and continuous infringement – Burden of proof).
- Case T-21/99 *Dansk Rorindustri v Commission* − A cartel agreement between producers of district heating pipes allocating individual projects to designated producers and manipulating the bidding procedure to ensure that the designated producer was awarded the assigned project.
- Case C-68/12 *Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa a.s.* − Three banks monitored a competitor's activity, conferred with each other and

decided, by common agreement, to terminate in a coordinated manner the contracts they had concluded with that competitor.

- Case IV/35.691 − Pre-insulated pipes − Competitors used norms and standards (agreed on by the industry) to prevent or delay the introduction of new technology which would result in price reductions.

In other words, under the Competition Act, any express or tacit agreements between, decisions and any concerted practices of undertakings or associations of undertakings, which have as their object or effect the restriction, prevention or distortion of competition on the entire Romanian market or on a part thereof, are prohibited.

Cartels remain, of course, the most harmful anticompetitive behaviours and are expressly banned, irrespective of the actual means used by the undertakings in order to achieve the anticompetitive objective. These means can be: (a) fixing, directly or indirectly, the selling or the purchase prices, as well as any other trading conditions; (b) limiting or controlling production, sale, technological development or investments; (c) sharing markets or sources of supply; (d) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or (e) making the conclusion of contracts subject to acceptance by the other parties of additional obligations which, by their nature or according to commercial usage, have no connection with the subject matter of those contracts.

Enforcement of cartel policy

The public enforcement body of domestic competition rules is the Council.

Within the Council, the Cartel Office mainly sets the general strategy of the Council's Plenum ("**Plenum**"), examines complaints, proposes the initiation of investigations *ex officio,* etc. The Council's special direction for cartels in bidding markets is the Direction on Bids and Petitions. For proper functioning of public procurement,[2] under the umbrella of the "Module on Bid Rigging",[3] the Council closely cooperates with various public institutions (e.g., National Council for Solving Complaints (CNSC), National Authority for Regulating and Monitoring Public Procurement, etc.). The Council's decisions are subject to first appeal at Bucharest Court of Appeal and second appeal at the High Court of Cassation and Justice. Fines for inaccurate or deceptive information provided or the Council's inspection refusal, may be challenged at District 1 Bucharest Court and appealed at Bucharest Tribunal.

The Council may: (1) apply fines only to cartel parties between 0.5% and 10% of the total turnover in Romania in the financial year before sanctioning; (2) request the parties to end the practice; (3) impose comminatory fines if a party fails to observe obligations imposed by the Council; and (4) inform the criminal investigation bodies of any act the Council finds might represent a criminal offence. For undertakings with no registered turnover, the Council will consider the previous year and so on, until an annual turnover is determined.

Individuals initiating a cartel cannot be sanctioned by the Council. Natural persons can be "punished" based on the company's internal procedures, tort law[4] or criminal law.

The Competition Act regulates criminal liability only for natural persons participating in a cartel with fraudulent intent. However, the New Criminal Code regulates a special criminal offence regarding bid rigging for both natural and legal persons for eliminating, by coercion or corruption, a participant from a public tender, and for agreements to distort the bidding price.

Article 66 of the Competition Act sets the general framework for private enforcement. Legal and natural persons harmed by cartels may seek relief in court. The Council Regulation[5] states that claims for damages may be filed by persons both directly and indirectly affected by anti-competitive behaviour. The Competition Act expressly regulates rights of specific bodies to bring representative damages actions on behalf of consumers (refer to section, "*Developments in private enforcement of antitrust laws*"). Public enforcement activities play the main role in practice.

Overview of investigative powers in Romania

The Council used its wide investigative powers last year as most investigations were *ex officio* (*i.e.*, around 77% of investigations on anti-competitive practices).[6]

Key powers are: information requests sent to undertakings that might have relevant data; dawn raids; and, if consented, questionings of natural persons or representatives of the legal person.

Dawn raids are the most important source of information. An inspection order issued by the Council's President (which qualifies as an administrative act) and a judiciary authorisation from the President of Bucharest Court of Appeal, or by a judge appointed by the latter, are needed. Now, the judiciary authorisation can be appealed at the High Court of Cassation and Justice in 72 hours (instead of the previous 48-hour term) from communication, but the appeal does not suspend the enforcement.

Competition inspectors may legally proceed to the dawn raid and inspect any locations used by the undertaking, not only the ones legally owned (i.e., premises, lands and means of transportation) including the domicile, the lands or the means of transportation of administrators, directors, managers and other employees.

Inspectors may copy any financial and commercial documents (except for correspondence with the external legal adviser exchanged for defence purposes) and seal any premises for preventing concealment or destruction of information.

The inspector may search electronic data storage devices by accessing the equipment and previewing the documents at the company's headquarters, or by just copying data.

Aside from dawn raids, another investigative power of the Council is to send information requests to investigated undertakings or to public authorities. Failure to comply with the Council's request may lead to fines. Fines range between 0.1% and 1% of the turnover achieved in the previous financial year for undertakings, and between Lei 1,000 and Lei 20,000 for public entities.

The Council may also obtain statements from individuals who might have information on the investigation. Thus, the Council may interview any individual or company's representative(s) with their consent.

Overview of cartel enforcement activity during the last 12 months

The Council's activity has increased significantly over the past few years. Investigations opened by the Council in 2015 concerned alleged cartels in various market sectors: electrical energy; distribution of movies to cinemas; insurance; taxi transportation; etc.

At 2015 end, the Council had 48 ongoing investigations on alleged anti-competitive agreements,[7] out of which 69% concerned cartels or abusive practices. Also, the Council opened 13 new investigations (up 44% compared to 2014), out of which 46% were into alleged cartels, and finalised in total 21 investigations, out of which seven were into

cartels or abusive practices. Statistically, at the end of 2015, the Council had 48 ongoing investigations, as the total number of investigations has continued to decrease in recent years as more and more investigations are completed.

In 2015, the Council carried out eight dawn raids at 61 headquarters and working units of various companies.

By 2015-end, the Council finalised the investigation into the market for wholesale distribution of motor fuel, petrol and diesel. The concerned undertakings were accused of alleged sale and resale prices fixing and market sharing. The Council imposed fines of approximately €3.7m. The Council also closed an investigation into the market for automatic processing of correspondence and imposed fines of almost €1m.

Key issues in relation to enforcement policy

The Council is the only administrative domestic authority empowered to apply article 5 of the Competition Act. The Council can apply directly article 101 of the TFEU when Single Market trade may be affected.

The prioritisation principle applies here, allowing the Council to decide what cases come first, based on the potential impact on effective competition, consumers' general interest, or strategic importance of the economic sector concerned.

National courts act as complementary authorities empowered to enforce competition rules, by *ex-post* judicial review of the Council's decisions and hearings on private enforcement.

The Council may initiate an investigation for potential competition infringements either *ex officio* or following the complaint of a natural or legal person proving an interest, and if legal or factual grounds exist (as we will detail in the "*Third party complaints*" section).

The Council also performs sector enquiries. In practice, in many of its sector enquiries, the Council had leads on potential anticompetitive practices, opening *ex officio* investigations.

In 2015, the Council finalised the sector inquiry on the catering and handling services market at "Henri Coanda" International Airport Bucharest – Otopeni.

As announced in the 2015 Annual Report, the Council published in 2016 the following reports regarding sector inquiries on the:

(a) drug distribution sector;

(b) access services to the communications infrastructure of Bucharest (Netcity Project);

(c) auto insurance sector; and

(d) market for services offered by insolvency practitioners in Romania.

The Council has several ongoing sector inquiries on the energy markets, the primary wood market and on the cement production and trade markets in Romania.

Key issues in relation to investigation and decision-making procedures

A balance between the public and private interests of parties involved in an alleged cartel is the main objective of national competition legislation.

The right of defence in its various forms, such as the right to access the investigation file, the right to submit written observations to the investigation report, the right to defence during the hearings before the Plenum, and the right to a separate hearing, act to support private interests. Also the non-guilty presumption means the Council has a legal obligation to prove the alleged infringement.

As a means of protection for undertakings under investigation, the competition legislation contains strict rules for carrying out investigations and, in some cases, for example dawn raids, the Council must have the court's prior formal approval.

Parties also enjoy the right to appeal in court certain acts of the Council like: inspection orders; refusal to access the file; interim decisions; qualification of some information as non-confidential; sanctioning decisions, etc.

As additional protection, the competition legislation usually sets time limits for various phases of the Council's decision-making process, but they are not mandatory. For example, deliberations must take place the same day with the hearings, or on another day if the Plenum decides deliberations will be postponed for certain reasons. After deliberation, the meeting secretary has 120 days to draft and communicate the decision. However, the competition legislation does not stipulate a maximum term for finalising the investigation.

In practice, the duration of investigations changes on a yearly basis. The average duration in 2015 was of approximately two-and-a-half years, showing a significant decrease from 2014 (when the average duration was of approximately three-and-a-half years). In practice, most investigation reports that reach the Plenum finalise with a sanctioning decision. Limited cases exist where the Plenum has issued a rejection decision or returned the investigation report for further analysis.

Before the Competition Act's recent amendment, the statute of limitation concerned Council's right to action, without considering the time necessary for applying the fine. Now, it specifically refers to Council's right to apply sanctions which starts on the date the alleged anticompetitive act was committed.

Leniency/amnesty regime

Domestic leniency policy regulated by the Competition Act and detailed in the Council's Guidelines on the conditions and criteria for the leniency policy applicability ("**Leniency Guidelines**"[8]) is intensively promoted by the Council. The Leniency Module is also a useful tool.

Leniency applies to hard-core anticompetitive agreements, including cartels. Leniency means fine immunity or only reduction. Fine immunity is available before and after the Council initiates an investigation. A basic rule in leniency proceedings says one cartel may only have one successful immunity applicant, so the following applicants may get fine reductions: 30 to 50% for first applicant; 20 to 30% for second applicant; and up to 20% for subsequent applicants.

Before June 2015, neither the initiator of anti-competitive conducts nor undertakings that actively encouraged others to join or stay in the cartel, could qualify for immunity. Now, the Leniency Guidelines say the initiator is eligible for immunity, while for the undertaking that encouraged others to join or stay in the cartel, immunity is still 'off limits'.

Importantly, the undertaking benefiting from immunity will not be jointly liable for damages from anti-competitive practices.[9]

The Council will not disclose the immunity applicant's identity to third parties (including other parties to the alleged infringement) that have access to statements made in the context of leniency (including applicant's identity); only after the investigation report is issued, during access to the file.

Our jurisdiction reports only two cases of "successful" leniencies: (a) in an investigation into taxi companies for fixing transportation tariffs; and (b) in an investigation for bid

rigging in oil and gas drilling works. The latter was actually opened following a leniency application.[10]

The leniency procedure is not very appealing, probably because of the possibility that the acknowledgment of anti-competitive practices might backfire as criminal liability of the applicant's legal representatives; or perhaps it could entitle harmed consumers to file private actions using the applicant's documents submitted with the Council. The New Criminal Code amendments to non-punishment and penalty reduction regimes are, however, expected to lead to more effective coordination between criminal penalties and leniency policy and encourage leniency applications.

It is also true that uncertainty whether a leniency application might expose natural persons to criminal investigations still continues to undermine requests for leniency.

Administrative settlement of cases

Our domestic antitrust legal framework does not regulate a settlement procedure similar to the one in EU legislation. Some procedural options to fast-track the procedures with the Council exist, however.

One is the investigated parties' option to waive the right to hearings before the Plenum, provided the President of the Council decides that hearings are not mandatory. In cartel cases, if only some parties request hearings, the Council organises hearings and invites all parties.

Another option is acknowledgment of involvement in the alleged cartel. Suffice to add here that in practice, the acknowledgment works like a mitigating circumstance that will be applied with priority, before any other mitigating or aggravating circumstances. The Council may also find it necessary for the company acknowledging the antitrust breach to undertake remedies for reinstating the normal competitive environment.

Third party complaints

Generally, any natural or legal person proving an interest can file a complaint for anti-competitive practices, but this does not automatically mean the Council opens an investigation. Following preliminary assessment of the complaint, the Council may decide to: (1) open an investigation; (2) dismiss the complaint; or (3) inform the applicant that the facts described in the complaint fall outside the Competition Act, or are already analysed by the European Commission or other national competition authority. The complainant may challenge the rejection decision in court within 30 days from communication.

Third parties have access to documents from investigation files in limited situations. For example, the author of a complaint which was informed by the Council that it would reject its complaint, may request access to the non-confidential version of the documents considered by the Council in its preliminary assessment. In investigations initiated following complaints, the President of the Council may approve the hearing of the complainant and/or provide a non-confidential version of the investigation report, if the latter demands so.

Civil penalties and sanctions

The Council's procedure on imposing sanctions is transparent, overall. In most procedures, the Council informs the companies on potential (civil) penalties and sanctions, and their right to challenge the Council's acts.

For example, the Council's decision sanctioning a cartel states the right to appeal it before Bucharest Court of Appeal within 30 days since communication. Inspection orders must state that the concerned party has the right to appeal the order before Bucharest Court of Appeal within 15 days.

An interesting aspect related to cartel fines is the individualisation process: the investigation report includes an assessment of the gravity and duration of the alleged anti-competitive practice, and the applicable aggravating and mitigating circumstances. Based on this, the Plenum decides the limits of the fine (in percentages).

In the past few years in cartel cases, the Council has usually set the basic amount of the fine to 4% or 5% of the total turnover achieved in Romania in the previous financial year.

In cases where the parent company's liability for its subsidiary involvement in a cartel is discussed, the Council has found that a rebuttable presumption that the parent company was in a position to exert a decisive influence over the conduct of the subsidiary applies to a wholly owned subsidiary − and thus fines the parent company. In the Council's investigation of private pension funds,[11] the investigation report wanted to hold liable the parent company (a holding) of one fund that participated in the cartel, but following parties' observations to the investigation report, the fine was imposed on the fund.

The principle on responsibility for sanctions is that the offender is personally and individually liable for paying the fine. Nevertheless, in case of third party complaints, co-infringers in a cartel case are jointly liable before third parties. This rule is based on the general civil law provisions − with one exception, though, for undertakings that benefit from immunity from fines.

Also, in case of associations of undertakings, the Council may apply sanctions considering the proportionality principle. The fine applied to associations of undertakings may not exceed 10% of the total turnover of each member active on the market affected by the association's infringement.

Right of appeal against civil liability and penalties

Sanctioned parties may appeal the Council's decision before Bucharest Court of Appeal. The court has the prerogative to review it under all aspects of fact and law.

Some procedural omissions or errors made during the investigation or in the Council's decision-making process, can be challenged only within a specific term (e.g., 72 hours from communication for judiciary authorisation of dawn raids).

It is debatable whether courts may rule differently when the Council's decision is challenged separately by the sanctioned undertakings, even if the facts and evidence are identical for all sanctioned undertakings, mainly because precedents do not have the force of law in our legal system.

Courts may also consider new evidence, not only those from the Council's file, such as: documents; witnesses; and expert evidence. In practice, the court usually allows new evidence.

Romania has no officially acknowledged and certified competition experts that may be used to establish the existence of cartels in court. The judge may ask opinions from "specialists" in competition that are, however, not binding for the court, which will consider them with all other available evidence.

The new regulation provides that the documents, data and confidential information from the Council file may be required, usually once the investigation report has been communicated.

Despite court's right to a "full merits" review of Council's decisions, we have limited cases where the court has overturned the Council's decisions.

In March 2012, Bucharest Court of Appeal partially cancelled Council's decision on an alleged cartel formed in 2007 in the market for managing private pension funds (Pillar II of Romania) stating that, in fact, there was no cartel. The decision of Bucharest Court of Appeal was challenged before the High Court of Cassation and Justice, which sent a preliminary question to the Court of Justice of the European Union and thus suspended all similar cases until the preliminary question was answered. On July 16, 2015,[12] the Court stated that the practice found by the Council was an infringement by object. We expect all similar cases pending before the High Court of Cassation and Justice to be reinstated.

In April 2013, the High Court of Cassation and Justice ruled in favour of undertakings that challenged the Council's decision on an alleged cartel in the bread market in Vrancea County, arguing that: (1) there was no agreement between the parties; (2) the undertakings had independently established their selling prices; and (3) the evidence did not meet the standard of proof.

In July 2013, Bucharest Court of Appeal partially annulled the Council's decision on an alleged cartel in the fuel market in favour of ENI, a member of the alleged cartel sanctioned by the Council in 2011.[13] The decision was appealed by both the Council and ENI in 2014. The second appeal at the High Court of Cassation and Justice was rejected and the Bucharest Court of Appeal decision, by which it had reduced the fine to ENI from Lei 11.1m (approx. €2.5m) to Lei 8.6m (approx. €1.9m) was maintained. Likewise, in the Rompetrol case, the High Court of Cassation and Justice maintained the decision of Bucharest Court of Appeal in which it reduced the amount of the fine imposed on Rompetrol from Lei 159.5m (approx. €36m) to Lei 122.7m (approx. €27.8m).

In 2015, the percentage of final judgments (pronounced by the High Court of Cassation and Justice) in favour of the Council was 100%, and by 2016 the Council won irrevocably all six trials with the oil companies sanctioned in 2011, with the highest fine ever imposed for participating in a cartel-type agreement. The High Court of Cassation and Justice confirmed the existence of the anticompetitive practice and slightly diminished the fines imposed by the Council.

Criminal sanctions in cartel infringements

Further to our comments in "*Overview of the law and enforcement regime relating to cartels*" section, the implementation act of the New Criminal Code provides that persons who reveal their participation in the prohibited practice before the initiation of criminal proceedings will not be liable for the deed. A disclosure after the initiation of criminal proceedings leads to a reduction by half in the punishment limits.

To our knowledge, there has been only one case in which an individual has been criminally prosecuted for participation in a cartel. However, we expect anti-competitive criminal case-law on bid rigging banned by article 246 of the New Criminal Code, to be punished by imprisonment from one to five years.

The Council and criminal investigation bodies have the legal possibility to simultaneously investigate the same deed based on different grounds, which raises some questions in terms of cooperation between these authorities.

Article 34 (5) of the Competition Act allows for information collected during investigations to be used also for the more extensive purpose of applying the law in the area of competition,

and states the Council's right to inform other public authorities if aspects under their jurisdiction are found. The generality of these provisions raises questions as to what type of information the Council will provide to other authorities: all confidential information obtained by competition law-specific procedural instruments, including information received in the context of leniency or acknowledgment.

The absence of express limitations in this respect would, in fact, render leniency or acknowledgment policies less appealing, especially in bid rigging cases, as it brings exposure to individual sanctions if the information provided to the Council is disclosed to the criminal authorities.

Even with no express legal boundaries on the information exchange between the Council and the case prosecutor, any proofs obtained by a prosecutor which exceed the Council's investigative powers, cannot be used as proofs in the Council's decision.

As the number of investigations launched based on information received within the Module of Bid-Rigging and from authorities investigating criminal cases (e.g. Directorate for the Investigation of Organised Crime and Terrorism) has increased, new and clear rules should be enacted to: (a) introduce specific boundaries to information exchanges with prosecutors; (b) increase cooperation transparency; and (c) ensure the protection of the rights of the parties under the Council's investigation.

Cross-border issues

Domestic competition rules apply to all practices with anticompetitive effects on the Romanian market, irrespective of the nationality of offenders or the actual place where the harmful behaviour has occurred.

Since Romania joined the European Union (*i.e.,* January 1, 2007), the Council as a member of the European Competition Network ("**ECN**") applies article 101 of the TFEU according to the Council Regulation (EC) no.1/2003, when trade between Member States may be affected.

Settled practice between ECN members shows that the European Commission and national competition authorities inform each other of new cases, coordinate investigations, exchange evidence and other information relevant to their activity.

In 2015,[14] only five antitrust case consultations between the Council and the European Commission took place, compared to 13 antitrust cases in 2014.[15] Also showing close cooperation between the Council and other national competition authorities is the Cartels Office's legal possibility to proceed to dawn raids at the European Commission's or other national competition authorities' request.

Moreover, in line with the recommendation of the European Commission in the European Competition Network (ECN), the law now provides the possibility for appointed representatives of competition authorities from EU Member States to participate in the dawn raids requested by them and effectively carried out by the Council.

Regarding the cooperation between the Council and the European Commission, for the first time, in June 2016, European Commission officials carried out dawn raids at companies in the gas market from Romania, case investigated exclusively by the European Commission, with the support of the Romanian authorities.

Developments in private enforcement of antitrust laws

The domestic competition framework acknowledges third parties' right to file claims both before (so-called *stand-alone* actions) and after the issuance of a sanctioning decision by

the Council (so-called *follow-on* actions). Representative actions for damages on behalf of consumers brought by certain bodies (*i.e.,* registered consumer protection associations and professional or employers' associations based on their statutes or empowered by their members) or "class actions" are also included. Important for class actions is that the Council's final decisions establish an absolute legal assumption of the existence of the illegal anti-competitive deed causing damages.

In *follow-on* damages actions, courts may ask the Council to grant access to the documents supporting the final decision, provided confidentiality is observed.

In *stand-alone* actions, our domestic competition rules are silent as regards third parties' or court access to the information collected by the Council. Based on general law rules, we consider that the court should assess on a case-by-case basis if information collected by the Council is necessary and, if so, ask the Council to provide it.

The statute of limitation is longer for *stand-alone* actions (i.e., three years since the plaintiff knew, or should have known, of both the damage and the person responsible for it), than for *follow-on* actions (i.e., two years since the Council sanctioning decision is final).

In line with a continuous harmonisation of our domestic rules with the material provisions of EU competition law, the Directive[16] approved in 2014 is expected to further amend our national legal framework, especially with regard to: (a) documents that may be requested in court and the possibility of the person submitting the documents being examined prior to the documents' disclosure, as well as the impact and proportionality of such disclosure; (b) categories of documents exempted from disclosure in court; (c) the Council's final decisions are considered irrefutable for an action for damages brought before national courts; (d) limitation periods of at least five years and how they can be suspended; and (e) cartels are presumed to cause damages.

Romania must transpose the Directive by December 27, 2016. In July 2016, the Council submitted for public consultation the draft bill on private competition enforcement which focuses on the five main items outlined above. Notwithstanding improvements to the domestic legal framework and the Council's sustained efforts to increase awareness, consumers are still reluctant to file such actions and, in practice, there have been very few *stand-alone*, and no *follow-on* actions.

2015 was the year for the first ruling of a national court on private enforcement of competition. Up to this moment, the national courts have dealt with only two private litigations on antitrust matters (i.e., stand-alone actions). In both cases the first jurisdiction court held that the claimants have not proved the alleged infringements of the Competition Act and consequently their claims were dismissed as ungrounded. Currently, one of the cases is pending before the High Court of Cassation and Justice. In the other case, Bucharest Court of Appeal awarded the appeal and obliged the defendant to pay the plaintiff an indemnification of approximately €930,000, but this ruling was further challenged before the High Court of Cassation and Justice. This was the first time a national court admitted such action.

Reform proposals

In its action plan for the period starting 2016 to 2020, the Council intends to increase its capacity to detect and investigate cartels. To achieve this, the Council will consolidate its cooperation with the Public Prosecutor's Office attached to the High Court of Cassation and Justice and other relevant public authorities in order to have access to relevant information. This will allow the Council to initiate new investigations and, of course, continue the pending

ones. Also, the Council will further specialise its personnel by making available cooperation and training programmes with national authorities such as the Public Prosecutor's Office attached to the High Court of Cassation and Justice**,** the Ministry of Internal Affairs and external sources like the European Commission, the World Bank and the FBI.

* * *

Endnotes

1. Competition Act no. 21/1996 republished in the Official Journal of Romania no. 153 on February 29, 2016.
2. In 2013, the Competition Council initiated measures to co-opt the National Management Centre for the Information Society (CNMSI) as collaborating partner. CNMSI manages and operates the Electronic Public Procurement System in Romania.
3. As per Council Annual Report (2010), a notable result of Module on Bid Rigging activity is that ANRMAP introduced a mandatory condition for participating in a public procurement: a certificate of participation with an independent offer (sworn statement on observance of competition rules).
4. Act no. 71/2011 for implementation of Act no. 287/2009 regarding the Civil Code published in the Official Journal of Romania no. 409 on June 10, 2011 in force since October 1, 2011.
5. Council Regulation on the analysis and solving of complaints on the breach of Articles 5, 6 and 9 of the Competition Act and Articles 101 and 102 of the TFEU, approved by Council's President Order no. 499/2010 published in the Official Journal of Romania no. 687 on October 12, 2010.
6. According to 2015 Council's Annual Report.
7. The information published in Council Annual Report refers to anti-competitive practices in general without detailing the type of infringement.
8. Guidelines on the conditions and criteria for the application of the leniency policy implemented by Order no. 300/2009 and published in the Official Journal of Romania no. 610 of September 7, 2009.
9. Article 66 para. 3 of the Competition Act.
10. See Council's press release available at http://www.consiliulconcurentei.ro/uploads/docs/items/id9989/amenzi_foraje_ian_2015_english.pdf. The decision has not been published on Council's website so far.
11. Council's Decision no. 39 as of 2010.
12. Judgment of the Court on July 16, 2015, Case C-172/14, *ING Pensii – Societate de Administrare a unui Fond de Pensii Administrat Privat SA v. the Council.*
13. Competition Council's decision no. 97 as of 2011.
14. According to Council 2015 Annual Report.
15. According to Council 2014 Annual Report.
16. The Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, published in Official Journal no. L 349, of 5.12.2014 ("Directive").

Silviu Stoica
Tel: +40 21 317 79 19 / Email: silviu.stoica@pnsa.ro

Silviu Stoica is a partner at Popovici Nițu Stoica & Asociații and head of the competition practice group. His practice focuses on a broad range of contentious and non-contentious competition matters, with an emphasis on cartel investigations and industry inquiries, abuses of dominant position and antitrust disputes. Silviu Stoica also advises clients on restrictive agreements and works closely with in-house corporate counsel in sensitive internal compliance reviews.

Silviu Stoica has been commended in *Chambers Europe* as 'strategic and realistic' and 'business-friendly and very easy to communicate with'. He has advised a wide range of clients (including ArcelorMittal, Philip Morris, Cargill, Orange, Oresa Ventures and Innova Capital) on a whole array of competition matters and investment issues.

Silviu Stoica has been with the firm since its inception, pursuing all career stages from associate to senior associate to practice head. Silviu Stoica holds a degree in law from the University of Bucharest – Faculty of Law and is a member of the Bucharest Bar Association. He took a course on US legal methods (introduction to US law) at the Institute for US Law in Washington, DC, as well as a development course (DLC-20E) at the International Development Law Organization in Rome.

Ramona Iancu
Tel: +40 21 317 79 19 / Email: ramona.iancu@pnsa.ro

Ramona Iancu is a senior associate within the competition practice group of Popovici Nițu Stoica & Asociații. Her competition expertise covers, in particular, merger control proceedings and a wide range of antitrust matters from cartel investigations to abuse of dominance and related dawn raid procedures. Her practice also focuses on structuring and implementing competition law compliance programmes.

Ms. Iancu holds a law degree from the University of Bucharest Faculty of Law and is a member of the Bucharest Bar Association.

Popovici Nițu Stoica & Asociații

239 Calea Dorobanți, 6th floor, Bucharest, 1st District, Postal Code 010567, Romania
Tel: +40 21 317 79 19 / Fax: +40 21 31785 00 / URL: http://www.pnsa.ro

www.globallegalinsights.com

Other titles in the **Global Legal Insights** series include:

- **Banking Regulation**
- **Bribery & Corruption**
- **Commercial Real Estate**
- **Corporate Tax**
- **Employment & Labour Law**
- **Energy**
- **Fund Finance**
- **International Arbitration**
- **Litigation & Dispute Resolution**
- **Merger Control**
- **Mergers & Acquisitions**

Strategic partner