GLOBAL LEGAL INSIGHTS

Cartels

Enforcement, Appeals & Damages Actions

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Romania

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Overview of the law and enforcement regime relating to cartels

The legal basis for the cartel regime in Romania is Act No. 21/1996 as recently republished (the "**Competition Act**")[1], supplemented by wide secondary legislation (the "**Competition Legislation**"). After undergoing an intensive process of amendment in the past few years, in the last 12 months, the Competition Act underwent only very limited changes that were essentially aimed at: (a) aligning the competition rules to the amendments brought mainly by the New Romanian Criminal Code[2] and the New Criminal Procedure Code[3]; (b) introducing a prioritisation principle for the activity undertaken by the Romanian Competition Council (the "**Council**"); and (c) introducing some procedural rules aimed at speeding up the investigations.

With respect to the Competition Legislation, even if the Council's legislative regulatory activity has not been so intensive, it has taken important steps by amending the legislation concerning the procedure of accepting commitments, and by issuing the first set of recommendations for best practices (*i.e.*, "Good practices in petition activities"[4]). However, as detailed below in the section "*Reform proposals*", changes to the secondary legislation are expected in 2015, as the Council has already launched several public consultations in this respect.

Amendments brought by the Romanian Criminal Code and Criminal Procedure Code

As detailed below, following the enactment of the New Romanian Criminal Procedure Code, which entered into force in February 2014, the former regime of dawn raids conducted was subject to material changes, mainly with respect to the substantial conditions linked to the initiation of such procedure.

At the same time, the New Criminal Code that entered into force on 1 February 2014 led to the amendment of the Competition Act provisions regarding the criminal liability of persons involved in anti-competitive practices. Before this amendment, there was a general provision in the Competition Act saying that individuals (without distinguishing between the positions held) who intentionally or substantially participate in the planning, organisation or implementation phases of a practice prohibited by Article 5(1) of the Competition Act risk imprisonment from six months to three years, or a fine and a prohibition to exercise certain rights.

In light of the new amendment brought by the New Criminal Code, the category of individuals that may be subject to criminal liability is limited to individuals acting as director or legal representative, or holding any other management position in a company that intentionally takes part in an anti-competitive practice.

According to the new competition provisions, the risk consists in a prison sentence from

six months to five years, or in a fine and the prohibition of certain rights. With respect to the criminal liability, the Competition Act now includes also: (a) a non-punishment cause (in case that, *before the criminal prosecution is launched*, the offender denounces and facilitates the identification of other perpetrators of the crime and the initiation of the criminal proceeding against them); and (b) a sanction-reduction clause (for cases where − *during the criminal prosecution* − the offender denounces and facilitates the identification of other perpetrators of this crime and the initiation of the criminal proceedings against them).

It must be noted, however, that the aforementioned provisions do not apply to the bid rigging punished under Article 5 (1) f) of the Competition Act, if it is the result of an understanding between the participants in a public procedure, *aiming at distorting the adjudication price*. In such cases, as per the New Criminal Code (i.e. Article 246), the applicable sanction is imprisonment from one to five years.

Prioritisation principle

The recent amendments to the Competition Act allow the Council to prioritise cases based on the potential impact on effective competition, the general interest of consumers, or the strategic importance of the economic sector concerned.

New rules aimed at speeding up the Council's investigation

In the light of previous rules, the documents, data and information from the investigation files that were classified as confidential could not be accessed unless there was an order of the President of the Council. Such order was subject to a separate appeal made within 15 days from its communication. Moreover, the appeal suspended the proceedings before the Council until a definitive settlement of the case was delivered by the Bucharest Court of Appeal. Due to this suspension effect, several investigations of the Council were prolonged by approximately one additional year, which also negatively impacted the undertakings involved in the investigations (mainly those for which the turnover increased during this last year).

In order to overcome this issue, the order of the President of the Council, refusing access of the interested undertakings to the confidential data included in the investigation file, may now be appealed only in conjunction with the final decision regarding the investigation.

Enforcement of Competition Act

The administrative authority competent in public enforcement of Competition Legislation is the Council, an autonomous body, which analyses what are known in Romania as 'contraventional offences' regulated by the Competition Act.

According to the 2012 Regulation regarding the organisation and functioning of the Council[5], a special Cartel Office is organised within the Council which amongst other attributions, determines the general strategy of the Council's Plenum (the "**Plenum**"), undertakes actions to understand different markets, examines complaints, and proposes the initiation of investigations *ex officio*.

At the same time, for the cartels formed in bidding markets, the Council established a special direction, i.e. the Direction on Bids and Petition. Moreover, in order to ensure a proper functioning of the public procurement area[6], under the umbrella of the so-called "Module on Bid Rigging"[7], the Council closely cooperates with other public institutions (e.g. the National Council for Solving Complaints (CNSC), the National Authority for Regulating and Monitoring Public Procurement (ANRMAP), Unit for Coordination and Verification of Public Procurement within the Ministry of Public Finance, the Prime Minister Control Body and the Court of Auditors, etc.).

When making a comparison between the means for the initiation of the investigations in the field of public procurements and the ones concerning other fields, one may notice that most investigations initiated by the Council focusing on bid rigging have been initiated pursuant to: (a) the review of the control reports issued by other authorities holding supervisory duties in the field of public procurements (e.g. ANRMAP, control reports sent to the Prime Minister's Control Body, CNSC, Romanian Court of Accounts and UCVAP) and communicated to the Council under the umbrella of the Module of Bid Rigging; and (b) the notification submitted by other public institutions (e.g. Directorate for the Prevention and Investigation of Corruption and Fraud, which is part of the Ministry of National Defence, and Directorate for the Investigation of Organised Crime and Terrorism).

Decisions issued by the Council are subject to court revision first by the Bucharest Court of Appeal and, second, by the High Court of Cassation and Justice. In case an undertaking provides inaccurate or deceptive information, or refuses an inspection of the Council, the competition inspector may impose fines through an official report that may be challenged by the undertaking at District 1 Bucharest Court and appealed at the Bucharest Tribunal.

As a general note, public enforcement is based, mainly, on the 'contraventional liability' of the companies or associations of companies involved in cartels. The Romanian legislation qualifies fines imposed according to Competition Legislation as administrative by nature.

The Council may: (1) apply fines only to the parties involved in a cartel, ranging between 0.5% and 10% of the total turnover achieved by the party within the Romanian territory in the financial year prior to sanctioning; (2) require the parties to terminate the deed; (3) oblige the party involved in a cartel to pay comminatory fines in case the party does not fulfil its obligations imposed by the Council; and (4) inform the criminal investigation bodies of any act the Council considers that might be qualified as a criminal offence (as described above).

Should the manager, director or other employee of the involved undertaking initiate a cartel, the Council is not competent to apply fines or other sanctions to them. The natural person can be sanctioned under: (i) internal procedures of the undertaking, if the latter provides sanctions for such cases; (ii) tort law[8] (the legal person can hold liable the natural person who caused the anti-competitive behaviour for any damages that the legal person might have incurred as a result of the behaviour); or (iii) criminal law.

As already mentioned above, the Competition Act regulates criminal liability only for natural persons taking part in a cartel with fraudulent intent, and with the precise purpose of committing the illegal deed. However, the New Criminal Code, which regulates a special criminal offence regarding bid rigging, incriminates both natural and legal persons for removing, by coercion or corruption, a participant from a public tender, and for agreements between participants meant to distort the bidding price.

The Competition Legislation also provides tools for private enforcement. Article 64 of the Competition Act regulates the general framework for the private enforcement of competition provisions, explicitly stating that the persons (both legal and natural persons) harmed as a result of anti-competitive practices (including cartels) are entitled to seek relief in court. Moreover, according to the Council Regulation[9], claims for damages may be filed both by the persons directly affected by an anti-competitive behaviour and by the persons indirectly affected (for instance, persons who purchase goods and services from the directly affected persons). The Competition Act also expressly regulates the rights of specific bodies to bring representative damages actions on behalf of consumers (as will be further detailed in the section, "*Developments in private enforcement of antitrust laws*").

Even if public and private enforcement are seen as being complementary tools to enforce competition law, there is not in practice much private antitrust litigation activity in Romania, the public enforcement activities performed by the Council having the main role.

Overview of investigative powers in Romania

The Council enjoys wide investigative powers, and in the last year it made intensive use of these investigation tools. Most of the investigations were launched by the Council *ex officio* (*i.e.*, around 67% of the investigations regarding anti-competitive practices launched in 2013)[10].

Its extensive legal powers, through its inspectors, give the Council the possibility to investigate alleged anti-competitive practices using specific investigation tools such as: (1) information requests sent to undertakings that might possess relevant data; (2) unannounced inspections (dawn raids) conducted at the headquarters of the concerned undertakings; and (3) questioning any natural person or representative of the legal person about the alleged practices, if such persons consent to it.

Conducting dawn raids at the premises of the investigated undertakings represents one of the most important sources of information for the investigation team. The inspectors cannot undertake such inspections unless they possess an inspection order issued by the President of the Council, qualified as an administrative act, and a judiciary authorisation issued by the President of the Bucharest Court of Appeal or by a judge appointed by the latter.

In order to obtain the judiciary authorisation, the Council must produce sufficient evidence to the designated judge supporting the issuance of such authorisation. In addition, before initiating the dawn raid, the inspectors must provide the individuals/undertakings (in relation to which the dawn raid will be carried out) certified copies of the order issued by the chairman of the Council approving the dawn raid, as well as of the judicial decision approving the dawn raid.

Competition inspectors may then legally proceed to the dawn raid and inspect the locations indicated in Article 36 and 38 of the Competition Act (i.e. the premises, lands and means of transportation legally owned or used by the undertakings or the associations of undertakings) as well as any other premises, including the domicile, the lands or the means of transportation belonging to the administrators, directors, managers and to other employees of the undertaking or associations of undertakings that are subject to the Council's investigation, only based on the order issued by the chairman of the Council approving the dawn raid and on the judicial decision approving the dawn raid.

The new amendments also introduce a new form of judicial control, as the judiciary authorisation can be appealed (both by the Council, as well as by the person subject to the inspection) at the High Court of Cassation and Justice in 48 hours. This 48-hour term starts from the communication of the judiciary authorisation, but the appeal does not suspend the enforcement. The undertakings are obliged to yield to the inspection; otherwise, the Council, through its inspectors, is entitled to impose a fine amounting to a sum ranging between 0.1% and 1% of the total turnover generated by the envisaged company in the previous financial year.

According to the provisions of the Competition Act, the inspectors are allowed to: search any space or vehicle legally owned by the undertaking concerned; examine any financial or commercial documents (hardcopy or electronic format) and to take copies thereof, with

the exception of the correspondence with the lawyer exchanged for defence purposes; and seal any premises in order to prevent the concealment or destruction of certain documents/information.

Based on the Order of the Council's President and the judiciary authorisation, the inspector may also search electronic data storage devices. The verification of the electronic information is made either through accessing the equipment in question and previewing the documents at the company's headquarters, or through copying the data without previewing the documents. In the first case, the information shall be taken by the Council in hardcopy format; the investigated undertaking keeping its own copy, while in the second case, the copied data shall be processed at the Council's headquarters by the competition inspectors assisted by the company's representatives – the so-called *forensic procedure*.

The Competition Legislation provides that the forensic procedure should be used only in cases where one of the situations expressly provided within the applicable legislation arises: (a) high amount of electronic data and/or of equipment storing such data; (b) ascertaining the existence of tampered data or the risk that such data might be tampered with; (c) interrupting the functioning of the equipment storing the electronic data would seriously interfere with the activity of the undertaking in question; (d) lack of personnel to provide access to such equipment; and/or (e) contesting the ownership of a certain document by the undertaking being investigated. However, since this procedure was adopted, it seems that competition inspectors have made use of it on numerous occasions without arguing that one of the above situations has occurred.

Having processed the electronic data at the Council's headquarters in the presence of the investigated undertaking's representatives, and having printed all the documents relevant for the object of the investigation, inspectors should either give back to the undertaking all the electronic data in question, or entirely destroy or sanitise the device that holds the information. The Competition Legislation does not expressly provide such procedure, but we find no reason why the Council should still store the information that was not qualified as relevant to the investigation. In fact, such conclusion is also supported by a recent case where the Council decided (following the undertaking's specific request) to give back the electronic data accessed/processed at the Council's headquarters.

Besides the dawn raids, another investigative power is the Council's ability to send information requests. The competition inspectors are entitled to send requests for information to undertakings or to public bodies regarding the investigation in question. Both the private undertakings and the public bodies are obliged to comply with the request made by the Council, otherwise, as we mentioned above in brief, the Council, through its inspectors, may impose fines on them for not providing the requested information, or in case they provide incomplete or inaccurate data. The fines range between 0.1% and 1% of the turnover realised in the previous financial year in the case of undertakings, and between Lei 1,000 and Lei 20,000 in the case of public bodies.

Another investigative power held by the Council is its right to obtain statements from individuals who might possess information concerning the investigation in question. Thus, the Council may interview any natural person or the representative(s) of the legal person with regard to the investigation if they give their consent. Furthermore, in cases where the natural person who agrees to give a statement on behalf of an undertaking does not have representative powers, then the undertaking may supplement or amend the initial statement.

Overview of cartel enforcement activity during the last 12 months

The Council's activity has increased significantly over the past few years and is, currently, a force to be taken into account when acting on the market. The preventive character of the fine means that more and more companies become aware of the risk of anti-competitive behaviour and implement antitrust compliance programs; especially as such programs may be qualified by the Competition Legislation as a mitigating circumstance in case of sanctioning.

The number of new investigations, ongoing investigations, dawn raids and the value of the fines imposed reflects the increased activity of the Council[11].

As can be inferred from the figures below, the investigations opened by the Council in 2013 concern alleged cartels in various market sectors such as the cinema industry, dairy industry, cereal market, etc.

At the end of 2013, the Council: (i) had 74 ongoing investigations, out of which 63 aim at anti-competitive agreements[12]; (ii) opened 18 new investigations, out of which three concern alleged cartels; and (iii) finalised 23 investigations, out of which nine concerned cartels. As per the 2013 Annual Report, the Council imposed fines for alleged cartels in only three cases.

The number of ongoing investigations is considerably higher than for newly opened investigations. This is mainly because the period in which the Council finalises an investigation varies according to the necessary time to collect all the information and analyse the evidence in light of the characteristics of the targeted markets and the complexity of the cases.

The Council's activity regarding dawn raids had some variations in the analysed period of time (2012-2013). In 2012, the Council carried out 121 dawn raids, and in 2013 it carried out 80 dawn raids.

The fines imposed by the Council in 2013 in cartel cases represent 79.5% of the total fines, meaning approx. €15.6m compared to the total amount of fines imposed, which in 2013 amounted to approx. €19.6m. In 2013, the fines imposed by the Council increased considerably compared to 2012, when the total value of the fines amounted to €6.8m.

Towards the end of 2013, the Council focused its attention on agreements that had as their object or effect bid rigging in public procurement procedures organised by state companies or authorities, as the Council actually stated in its 2012 Annual Report.

Thus, in November and December 2013, the Council issued two decisions: through the first one, four undertakings were sanctioned for having rigged the bid to award the contract for infantry weapons and optical machinery organised by the National Ministry of Defence in 2005-2007, by exchanging confidential information that allowed them to establish beforehand the winner of the tender[13]; and through the second one, another eight member companies of ROREC and six other member companies of ECOTIC were fined for concluding anticompetitive agreements under buy-back campaigns[14].

Another two investigations in the sector of bid-ridding were closed in August and December 2013, because the Council could not prove beyond any doubt that the bid rigging had taken place[15].

Also, in 2013 the Council has concluded, without applying sanctions, by way of Orders of the Council's President, two investigations having as their subject matter alleged cartels: (1) an alleged resale price-fixing arrangement between Antibiotice (the national drug producer) and its distributors[16]; and (2) an alleged price-fixing of the reference rates

ROBID and ROBOR by several banks[17]. With respect to this last investigation, in May 2013, the Plenum decided to close it without any sanctioning decision, indicating that there were not sufficient elements to prove that the agreement had taken place and stating that the unprecedented rise of interest indicator was a result of the economic situation.

Moreover, the Council has also focused on the roads and highways construction industry. In July 2013, an investigation conducted in this sector, concerning 11 companies, was closed, as the Council could not prove that there were sufficient elements showing that the bid rigging had taken place[18].

Going further, in 2013, the Council also opened two new investigations targeting alleged cartels: (1) an investigation into a possible infringement of the Competition Act by the Romanian Employers' Association of Dairy Industry and its members; and (2) an investigation into an alleged price-fixing cartel by several grain traders.

Key issues in relation to enforcement policy

The Council is the only administrative authority entitled to apply the provisions of the Competition Act. Also, the Council is competent to apply the competition provisions of the Treaty on the Functioning of the European Union ("**TFEU**") directly when the trade within the EU single market is affected.

National courts are complementary authorities empowered to enforce the Competition Legislation. They are mainly competent to exercise the *ex-post* judicial review of the decisions issued by the Council, and also to hear the private enforcement actions.

The Council may launch an investigation in order to sanction potential infringements of the Competition Legislation either *ex officio* or on complaint received from a natural or legal person that can prove an interest, if there is enough legal or factual foundation (as we will detail in the section, "*Third party complaints*").

The Council also performs sector enquiries by which it analyses the market in general. In practice, in many of its sector enquiries, the Council has received leads on potential infringements of the Competition Legislation. In such cases, the Council opened *ex officio* investigations targeting the undertakings or associations of undertakings suspected of anti-competitive behaviour.

In 2014 the Council has initiated two sector inquiries: (a) on the catering and handling related to the catering services market for aircraft at "Henri Coanda" International Airport Bucharest-Otopeni; and (b) regarding the automobile insurance market.

The majority of the Council's investigations are opened on its own initiative. In 2013, 67% of the total new investigations were opened *ex officio* by the Council; in 2012 – 72%; and in 2011 – 60%. As a general remark, public sources reveal that the investigations opened based on complaints of third parties usually concern alleged abuse of dominant position.

In its 2013 Annual Report, the Council stated that its focus for 2014 would continue to be on investigations in the energy sector, pharma sector and the dairy sector, but it will also add a new focus on the drilling sector.

The Council's plan laid down in the 2013 Annual Report, is to continue to monitor markets and assess the competitive environment by conducting studies on sectors such as electric energy and irrigation.

The Council pays special attention to the activity of the associations of undertakings acting in different markets mainly because, in its case law, the Council uncovered many cartels developed under the umbrella of an association. In this context, as mentioned in

the section "*Overview of the law and enforcement regime relating to cartels*", in March 2013 the Council issued guidelines entitled "Good practices in petition activities" to help associations to carry out their activity legally.

Among the provisions of the guide, the Council indicates a series of criteria that are to be used in determining the true scope of a common approach among competitors, as follows: (1) the objective or interest pursued – to what extent is it justified, lawful and does not contravene the general public interest; (2) the nature of the approach – is it proportional or disproportionate; and (3) the extent of the cooperation and the consequences of the common approach (*e.g.,* coordinated behaviour of the parties based on information exchanged in the context of preparing the common approach; costs increasing for companies active in the market or their market power, with the consequence of illicit increase or coordination in setting the prices or reducing the diversity of the products; reducing competition between companies; and effect on other companies acting on the same market or related markets).

Additionally, the guide gives some examples of potentially anti-competitive actions that will most likely amount to an infringement of the competition rules laid down in Article 5 (1) of the Competition Act and Article 101 of the TFEU, such as: (i) any joint action of competitors that might lead to an increase of the costs of the undertakings active on the market or of their market power, having as an effect price increases or negatively impacting the variety of goods available to the consumers; (ii) the exchange of commercially sensitive information; (iii) the joint petitioning activity that might lead to the partial or total elimination of competition between the undertakings involved; or (iv) any joint petitioning activities that will restrict competition or harm the consumers because they are disproportionate when compared to the effects of the decisions of the public authorities against which the respective petitioning is made.

Key issues in relation to investigation and decision-making procedures

The Competition Legislation tries to balance the public interest, which is the main object of Competition Legislation, with the private interest of the parties involved in the alleged cartel by stipulating several rights and obligations for them.

The main category of recognised rights comprises the right of defence (the right to access the investigation file; the right to submit written observations to the investigation report concerning the findings of the investigation team; the right to defend their position during the hearings before the Plenum; and the right to a separate hearing). The competition inspectors cannot lift any client-attorney correspondence if it was exchanged for the purpose and in the interests of the client's rights of defence.

In addition, the Competition Legislation provides the presumption of innocence. Therefore, the Council has the legal obligation to prove the alleged infringement.

In order to protect the parties, the Competition Legislation includes strict rules in which the Council carries out investigations and, in some cases, provides the obligation for the Council to ask for the courts' authorisation.

The parties also have the right to appeal before the court certain acts of the Council: inspection orders; refusal to access the file; interim decisions; the qualification given to some information as non-confidential; and sanctioning decisions, etc.

Where the public interest prevails over the private interest of the concerned parties, the Competition Legislation gives extensive rights to the Council and its competition inspectors in order for them to achieve their purpose and correlative duties to the parties.

We detailed in the above section, "*Overview of investigative powers in Romania*", the main rights that the competition inspectors have. But it is worth remembering that competition inspectors can request from undertakings or public authorities the information and documents they deem necessary for the investigation's purpose, while competition inspectors are entitled to undertake dawn raids at the concerned undertakings' premises based on an inspection order issued by the President of the Council. Dawn-raid rights are correlated with the private interest of the parties and the right to a private life of natural persons. Therefore, the inspectors are able to search the headquarters, private premises of managers, directors or employees of the investigated party, etc. only if there is a prior authorisation issued by one of the court judges (the so-called "search warrant") and the President's order for approving the dawn raid.

As an additional protection, the Competition Legislation usually provides recommended terms to fulfil different steps of the Council's decision-making process, but not mandatory time limits. There are some exceptions: the Plenum must deliberate within 15 days of hearings, with the possibility of prolonging this term by another 15 days and, after deliberation, the meeting secretary must draft the decision in a 30-day term, with the possibility to prolong this term by 15 days if the complexity of the case requires it. Even if it provides some special terms, the Competition Legislation does not include a maximum term in which the investigation should be finished.

In practice, the period of investigation varies from year to year. The average duration of the investigations finalised in 2013 was approx. three years, showing an increase compared to 2012 when the average duration was of approx. two-and-a-half years, which was a continuous decrease compared to previous years: in 2011 the average duration was approx. three years; in 2010 approx. four-and-a-half years; and in 2009 approx. one-and-a-half years.

Considering all the rights and obligations provided by the Competition Legislation for the parties involved in an alleged cartel, it is safe to say that the legal framework sufficiently safeguards the procedural rights of the parties.

Nevertheless, in practice, the majority of the investigation reports that reach the Plenum's attention are concluded with a sanctioning decision. There are only limited cases in which the Plenum issued a rejection decision or returned the investigation report back to the competition inspectors for further analysis.

Leniency/amnesty regime

The leniency-related provisions were first introduced in our national legislation in 2003. Since 2009, when these provisions were last modified, the Council has intensively promoted the leniency policy and established a specific Leniency Module.

The leniency regime in Romania, regulated by the Competition Act, is detailed in the Council's Guidelines establishing conditions and criteria for the application of the leniency policy ("**Leniency Guidelines**"[19]). The involved parties in both vertical and horizontal agreements may apply for leniency.

According to the Leniency Guidelines, and similarly with the relevant European Union provisions, the company applying for leniency may be granted immunity from the fine in two cases: (1) in the case the Council does not have enough evidence to start an investigation or to undertake a dawn raid, and the company in question provides the necessary proofs; or (2) in the case where the Council is aware of the competition law infringement, but does not have enough evidence to substantiate it.

In order to be granted immunity, a concerned party must not have played the role of leader within the infringement practice, and must not have coerced the other undertakings to become parties to the anti-competitive agreement. Nevertheless, even the leader or the coercer may benefit from a fine reduction under the Leniency Guidelines. Only the first company will be granted full immunity, provided it was not a leader, nor a coercer. The other companies in line can be granted a reduction between 30% and 50% for the first one; between 20% and 30% for the second one; and up to a maximum 20% for the other participants bringing further evidence that helps to establish the infringement.

An important aspect to be noted is that the Competition Act expressly provides that the undertaking that benefits from immunity will not be jointly liable for damages caused by participation in the anti-competitive practice sanctioned by the Council[20].

A separate aspect that raises our concern is that the Competition Legislation does not include express, special provisions for protecting the confidentiality of the information provided by the leniency applicant. The Competition Act includes only a general provision according to which the Council will forward the documents supporting its decision to the court that rules on a request for damage compensation, and in this context the court must ensure the confidentiality of the documents, but without providing any procedure to achieve this specific objective.

In addition to the conditions laid down above, the undertaking seeking immunity or reduction shall have to: (1) fully cooperate with the Council on a continuous basis, providing all the evidence that is or comes into its possession relating to the alleged infringement; (2) remain at the Council's disposal to answer any request/demand that might help prove the infringement; (3) refrain from destroying/concealing any pertinent documents/information; (4) refrain from revealing its leniency application; and (5) end its involvement in the anti-competitive agreement if so requested by the Council.

Despite all of the above, so far, there has only been one case in which the companies in question successfully applied for leniency, in an investigation concerning cab companies that had fixed transportation tariffs.

The fact that the leniency procedure is not as popular is due probably to the fact that it is not clear whether admitting to having taken part in anti-competitive practices: (1) might trigger criminal responsibility for the directors of the companies under investigation; or (2) could entitle harmed consumers to file private actions using the documents submitted to the Council by the company that has applied for leniency. The amendments brought by the New Criminal Code with respect to non-punishment and reduction causes are expected to lead to a more effective coordination mechanism between criminal penalties and the leniency program, thus encouraging leniency applications.

Once the New Criminal Code entered into force, a successful immunity application in the leniency program might lead to immunity against criminal penalties. Notwithstanding, it seems that the immunity provided to natural persons will not be provided automatically as a consequence of the company's immunity. The uncertainty that a leniency application might expose natural persons to criminal investigation might continue to undermine the interest to request leniency.

Administrative settlement of cases

First of all, it is important to clarify that the Competition Legislation does not provide a settlement procedure similar to the one provided in the EU legislation. However, in light of the Romanian legislation, there are a few procedural options to fast-track the procedures in

front of the Council, options that cover either the merits or the procedures of a case.

From a procedural perspective, the Competition Legislation provides an option for the parties to speed up the process by giving up their right to debate the file in hearings before the Plenum, if the President of the Council decides that the hearings are not mandatory in the case at hand. In cartel cases, when there are more than one involved parties, if some of them give up their right to hearings and some do not, the Council organises hearings for all the involved parties.

As regards the merits of the case, there are two situations in which administrative resolution of cases is possible within our national legislation: undertaking behavioural and/or structural commitments; and recognition of the involvement in the alleged cartel.

During the investigation procedure initiated by the Council regarding an alleged anti-competitive deed, the undertakings in question may submit proposals for commitments aimed at eliminating the competition concerns that have triggered the investigation. As already stated above, the commitments can be behavioural, structural or both, but bearing in mind the specific case of a cartel infringement, one may easily reach the conclusion that it is rather difficult to eliminate the relevant competition concerns through a structural commitment.

The discussions regarding the commitments' proposals are carried out by the concerned party and the Council at the same time as the investigation in question, the latter being under the obligation to keep two distinct files and not to make use of any of the information or documents submitted under the commitments' application for its ongoing investigation.

Through the acceptance of the commitments submitted by the party, the Council aims at quickly re-establishing a normal competitive environment. Even in the case where the Council accepts the commitments' proposal, and in this way the finding of an infringement and the imposition of a fine are avoided, the main purpose of the commitments procedure remains the same.

Towards the end of last year, the Council substantially amended its guidelines regarding the procedure for accepting commitments[21]. Thus:

1. parties being investigated have a six-month consultation period to put forward commitment proposals;
2. the infringements for which commitments can be accepted were identified; the following type of practices have more chance of being solved through commitments:
   - abuse of dominant position practice,
   - infringements of lower gravity (of any type), and
   - vertical agreements of substantial gravity[22];
3. the parties cannot withdraw submitted commitment proposals before the issuance of the Council decision;
4. the monitoring trustee cannot provide assistance or consultancy services for the monitored undertakings, nor receive, directly or through its partners or attorneys in fact, any benefit during the monitoring period and for a 12-month period afterwards;
5. undertakings are expressly permitted to hold liable the monitoring trustee for overstepping its mandate or for revealing information encountered when monitoring an undertaking's activity; and
6. making use of any documents provided by the undertakings as part of the commitment procedure is permitted in the investigation process only after obtaining the express approval of the undertaking in question.

As briefly mentioned above, the Council focuses also on vertical infringements. These days in Romania, the vertical cases having the most exposure are the behavioural commitments

undertaken by SC CEZ Distribution SA, a Romanian electricity supplier[23]. Thus, the company submitted commitments in order to eliminate concerns regarding the electricity supply market. The competition concerns regarded clauses such as: (1) the distribution operator proceeds to sanction the consumers by disconnecting them without having previously addressed the court; (2) by disconnecting the consumers, the access to the network for suppliers and consumers is being restricted; (3) the parties do not have equal power of negotiation; and (4) the lack of clarity of the supporting documents, regarding especially the method used for calculating the prejudice, might affect the consumer's right of defence in front of the courts. The Council has not yet issued a final decision regarding the commitments issued by SC CEZ Distribution but is expected to do so in the near future.

The recognition procedure, provided by the Competition Legislation, admits the right of the addressee(s) of the investigation report, after its receipt and after exercising their right of access to the investigation file or during the hearings, to admit their involvement within the cartel. This procedure triggers the application of a mitigating circumstance. As a consequence, the level of the basic amount of the fine shall be reduced by 10 to 30%. If the Council considers necessary, the undertaking admitting its involvement in the cartel shall have to undertake remedies aimed at re-establishing a normal competitive environment.

In case the undertaking was able to apply for leniency and did not do so, then the reduction shall be of up to 20% of the basic amount. Also, there are some special provisions if another party benefits from leniency policy in the same case. As such, where, in the administrative procedure, one of the undertakings was granted immunity, the reduction granted to the party that recognises cannot exceed 20%, and if it was granted a fine reduction under the leniency policy, the party that recognises can receive a fine reduction of only 10%.

One aspect worth mentioning regarding the recognition procedure is that this specific reduction shall be applied to the basic amount of the fine before applying the other mitigating/aggravating circumstances.

Third party complaints

As mentioned at other sections of the article, a natural or legal person who can prove an interest can file a complaint with the Council, and the Council will analyse the complaint and decide if there is enough legal and factual foundation to open an investigation.

When receiving a complaint, the Council is not obliged to pursue the lead and open an investigation. After a preliminary analysis, carried out by the designated departments, the Council may: (1) open an investigation; (2) issue a rejection decision if the complaint is not justified; or (3) give the applicant a written notice that the facts described in the complaint are not subject to the Competition Act, or are already analysed by the European Commission or other competition authority from the member states. The complainant can challenge the rejection decision before court within 30 days of its communication.

Even though the Council has the possibility to reject complaints, in fact in the majority of its former cases, this has not happened. However, in 2013 it appears that the Council's practice has changed as, until the present time, the Council has already rejected six complaints (concerning alleged abuses of dominant position and alleged cartels).

Regarding the right of access to documents contained in the investigation files, the Competition Legislation has granted this right to certain third parties in limited situations. For example, before the commencement of the investigation, the author of a complaint, which was informed by the Council that it would reject its complaint, is entitled to demand access to the non-confidential version of the documents on which the Council based its preliminary

analysis. In cases where, further to a complaint made by a private person, the Council starts an investigation, 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 for imposing sanctions is, overall, transparent. In the majority of procedures, the Council makes known to parties involved in the investigation the (civil) penalties and sanctions that they risk, and their right to appeal an Act of the Council.

For example, the parties sanctioned for cartel may appeal the Council's decision before the Bucharest Court of Appeal within 30 days of its communication. The sanctioned party is informed of this right through the Council's decision.

There are also other cases in which the parties are informed of the sanction they risk if they do not comply with a particular Act issued by the Council, or of their right to appeal an Act. For example, inspection orders must contain a reference that the concerned party has the right to appeal the order before the Bucharest Court of Appeal in a 15-day legal term. Any information request from the Council discloses that if the concerned party provides inaccurate, incomplete or misleading data, or will not provide any data, it will be sanctioned with a fine of up to 1% of the total turnover achieved within the Romanian territory in the financial year prior to sanctioning.

An interesting aspect related to cartel fines is the process of determination. The investigation report contains the investigation team's assessment regarding the gravity and duration of the anti-competitive deed, and the aggravating and mitigating circumstances that apply to the case at hand. Based on this data, the Plenum decides the limits of the fine (in percentages) that it intends to impose on the parties.

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

Another issue related to sanctions worth mentioning is the liability of the parent company for involvement in a cartel of its subsidiary. As can be inferred from its case law, the Council assesses that where a subsidiary is wholly owned, there is a rebuttable presumption that the parent company was in a position to exert a decisive influence over the conduct of the subsidiary, and thus the fine shall be imposed on the parent company. In the Council's investigation regarding private pension funds[24], the investigation team wanted to hold liable the parent company (a holding) of one of the funds that participated in the cartel, but based on the parties' observations to the investigation report, the fine was finally imposed on the fund itself.

The general principle regarding responsibility for sanctions is that the offender is personally liable for paying the fine. In addition, the offender is also individually liable to pay the fine.

Nevertheless, in third party complaints, the co-infringers in a cartel case are jointly liable before third parties. This rule is applicable in light of the general legal provisions, even though the Competition Legislation does not expressly settle this matter. There is one exception: the undertakings enjoying immunity from fines cannot be held jointly liable for their participation in cartels.

Also, where an association of undertakings is concerned, the Council may apply sanctions taking into account the proportionality principle. In addition, the fine applied to associations of undertakings which are sanctioned may not exceed 10% of the total turnovers of each member active on the market affected by the association's infringement.

Right of appeal against civil liability and penalties

As mentioned at other sections of the article, the sanctioned parties may appeal the Council's decision before the Bucharest Court of Appeal. When reviewing a fining decision of the Council, the Bucharest Court of Appeal can review it on both the findings of fact and law.

An important aspect is that some of the procedural omissions or errors in the investigation, or the decision-making process of the Council, can be appealed only within a specific term. Therefore, at the time the party appeals the Council's sanctioning decision, it may have lost the right to appeal certain procedural acts. For example, as mentioned above, the judiciary authorisation approving the dawn raid can be appealed within 48 hours from its communication before the High Court of Cassation and Justice and the appeal does not suspend the proceedings.

A matter that continues to raise discussions is that if a Council decision is challenged in court separately by the sanctioned undertaking, the courts may rule differently in each case, even if the facts and the evidence are the same, mainly because our national courts are not bound by previous case law.

The court does not judge based only on the evidence provided by the Council file, but also on new evidence. The legislation allows the court to administer all kinds of new evidence while reviewing the Council's decision, including documents, witnesses and expert evidence. In fact, the court usually allows the parties to submit new evidence. However, the parties must submit evidence in court under strict judicial control and observing the general procedural rules.

Regarding expert evidence, an aspect worth mentioning is that there are no certified experts officially acknowledged in the field of competition that may be used in order to establish in court the existence of cartels.

In strictly specialised areas such as competition, where there are no acknowledged experts, the judge may ask the opinion of one or more figures or specialists in this field. All the parties may produce experts' reports or opinions in order to support their allegations in court. As per the general rules, the court may also order an appraisal of the damages, in which experts appointed by the parties may also participate. The opinions of the experts or specialists do not bind the court, which will consider them together with all other available evidence.

Worth mentioning is that the complainant does not access the confidential data from the Council's case file, but these documents are kept separately from the court file accessible to the complainant.

Even though the Council's decisions are usually challenged in court and the court has a "full merits" right to review them, in practice there are only a few cases in which the court has overturned the Council's decisions.

In March 2012, the Bucharest Court of Appeal partially annulled the Council's decision[25] regarding 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. Through its decision, the Council fined 14 management funds of private pension funds with a total fine of approx. €1.2m for agreeing to breach the Competition Act regarding the distribution of natural persons who were registered with two or more management funds. Similarly, the Bucharest Court of Appeal annulled the Council decision[26] with respect to several undertakings, out of the 32 sanctioned, for fixing tariffs in the market of automotive training courses in Bucharest.

In April 2013 the High Court of Cassation and Justice ruled in favour of the contesting undertakings, against the Council's decision regarding an alleged cartel on the bread market

in Vrancea County, arguing that: (1) there was no agreement between the parties; (2) the undertakings had independently established their sale prices; and (3) the evidence did not meet the standard of proof.

In July 2013, the Bucharest Court of Appeal partially annulled the Council's decision regarding an alleged cartel on the fuel market in favour of ENI, a participant in the alleged cartel sanctioned by the Council in 2011[27]. The decision was appealed by both the Council and ENI in 2014.

Criminal sanctions

As mentioned in the section "*Overview of the law and enforcement regime relating to cartels*", once the Application Act of the New Criminal Code entered into force, the subjects of the criminal liability provided by the Competition Act, the manner in which the infringement is committed and the upper limit of the punishment are amended. Furthermore, the Application Act provides that the persons who reveal their participation in the prohibited practice before the initiation of criminal proceedings shall not be held liable for such deed. If such disclosure takes place after the initiation of criminal proceedings, the limits of the punishment shall be reduced by half.

To the best of our knowledge, there has only been one case in which a natural person has been prosecuted by the criminal investigation bodies as a consequence of their involvement in a cartel. However, there is room for more anti-competitive criminal case-law related to bid rigging in light of the New Criminal Code. According to the provisions of the New Criminal Code (Article 246), persons involved in bid rigging cartels shall be held liable, and the respective persons may be convicted to serve time in prison for a period of one to five years.

As the legislation provides the possibility for both the Council and criminal investigation bodies to investigate the same action based on different grounds at the same time, some questions arise − mainly with respect to the cooperation between the Council and such authorities.

As per Article 34 (5) of the Competition Act, the information collected during the investigation could be used not only for the purpose obtained, but also for the extensive purpose of applying the law in force in the competition area. The same Article expressly provides the Council's right to inform other public authorities, in case issues under their charge are discovered.

These provisions will be of special interest for the undertakings under investigation and their representatives, further clarifications being required: will the Council limit itself only to informing other authorities, or will it provide these authorities with all confidential documents/information obtained by means of procedural instruments recognised by the Competition Act? Does the Council also provide them with the documents/requests received within the leniency or the acknowledgment procedure?

If the Council is not to limit itself in informing other authorities and is to provide these authorities with confidential documents collected during its own procedures, without an express exception under the Competition Act, the interest of representatives of the undertaking in relation to the acknowledgment of the deeds and/or the submission of leniency applications (especially in bid rigging cases) may decrease, for these representatives will likely balance the general interest of the company under investigation in acknowledging the deed and benefiting from a decrease/exception of the fine with their personal interest in not being exposed to an individual sanction in case the information/statements provided to Council are sent to the criminal authorities.

Even if there are no express legal boundaries against the exchange of information between the Council and the prosecutor of the case, for example, the proofs obtained by a prosecutor through criminal law methods, which exceed the Council's powers of investigation, cannot be used as proofs in the Council's decision[28].

As the number of investigations launched based on the 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 in order to: (a) introduce some specific boundaries to this exchange of information with prosecutors; (b) increase the transparency of the way such institutions cooperate; and (c) ensure the protection of the rights recognised to the parties under the Council's investigation.

Cross-border issues

Our national competition rules apply to all facts and deeds whose effects can be perceived within Romanian territory; it has no relevance whether these actions took place in Romania or in any other country, nor if the parties are Romanian or foreign. Thus, undertakings involved in a cartel that took place in another country can be sanctioned according to the Romanian provisions, if that cartel produces anti-competitive effects on the Romanian market. Furthermore, the Council, in its previous cases, has imposed sanctions on national and foreign undertakings involved in anti-competitive agreements whose effects were detected on the territory of another country.

In addition, since Romania joined the European Union (*i.e.,* January 1, 2007), the Council performs its functions according to its rights and obligations arising from its statute of ECN members. According to this status, the Council applies Articles 101 and 102 of the Treaty on the Functioning of the European Union, according to the Council Regulation (EC) no.1/2003, in cases where trade between member states might be affected by the acts or deeds of undertakings or associations of undertakings.

According to the practice established among the members of the European Competition Network, the European Commission and the national competition authorities inform each other of new cases, coordinate investigations, exchange evidence and other information relevant to their activity.

Thus, a close collaboration exists between the European Commission and the Council. For example, in 2013[29] there were 10 antitrust cases where consultations between the Council and the European Commission were organised. Also in 2012, for the first time, the European Commission submitted *ex officio* written observations with a Romanian court in a case with national and European antitrust impact.

Another argument in favour of the close collaboration between the Council and its foreign counterparts is that the Competition Legislation expressly provides that, amongst its other attributions, the Cartels Office acting within the Council performs inspections at undertakings at the request of the European Commission or other national competition authorities.

However, in two recent cases, the Council tried to cooperate in its turn with the competition authorities in Switzerland and Turkey, but it was informed that the conditions for cooperation were not fulfilled, as the investigated behaviour only applied to Romania. Eventually, the Council tried to obtain its information through diplomatic channels, sending an information request through the Ministry of Foreign Affairs[30].

Developments in private enforcement of antitrust laws

Since coming into force, the Competition Act expressly provides the general possibility for third parties who suffer damages as a result of a cartel to file a complaint in court that will trigger the civil liability of the party/parties to the cartel. In 2010, in the general context of amendments made to the Competition Legislation, the private enforcement procedure was further detailed in the law.

According to the Competition Legislation, third parties may file claims both before (the so-called *stand-alone* actions) and after the issuance of a sanctioning decision by the Council (the so-called *follow-on* actions).

The Competition Act also expressly regulates the rights of specified bodies (*i.e.,* registered consumer protection associations and professional or employers' associations having these powers within their statutes or being mandated in this respect by their members) to bring representative damages actions on behalf of consumers. These class actions will follow the same general rules as other third party claims.

Regarding the latter, to the extent that the Council's decisions under which the fines are applied are final and irrevocable, the Competition Act imposes an absolute legal assumption regarding the existence of the illegal anti-competitive deed causing prejudice. In addition, in the *follow-on* damages actions filed by legal or natural persons harmed by the cartel, the courts are entitled to ask the Council to grant access to the documents that the final decision was based on, provided that the courts ensure the confidentiality of those documents.

In *stand-alone* actions, our national provisions do not settle if the Council must grant access to third parties or to the court, to the documents and information collected by the Council. By general rules, we consider that the court should assess the necessity of the documents and information collected by the Council in the case at hand and, if required, ask the Council for them.

Furthermore, another notable difference between the two actions is the term in which third parties must file complaints. At present, the *stand-alone* actions must be brought within three years since the plaintiff knew, or should have known, of both the damage and the person responsible for it, while the *follow-on* actions must be brought within two years as of the date when the Council sanctioning decision becomes final and irrevocable.

The Act no. 192/2006 (the "**ADR**" Act) has introduced mediation as an alternative dispute resolution method. Based on this Act, the parties can voluntarily agree to settle the dispute through mediation, including after filing a lawsuit in court. The amendments to the Competition Legislation in the past few years have led to harmonisation with the material aspects of EU competition law and encouraged private competition enforcement. Furthermore, the new partially approved Directive[31] 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 is expected to further amend our national legal framework.

As already mentioned, notwithstanding the improvement of the legal framework and the Council's sustained efforts to increase awareness among consumers, consumers are still reluctant to file such actions and, in practice, there were neither *stand-alone*, nor *follow-on* actions. So far, the courts have only been called to review decisions issued by the Council or to suspend the enforcement of the Council's decision.

However, as the Council's activity increases, there may also be room for aggrieved parties to follow up on the Council's sanctioning decisions and file claims for damages in court.

Reform proposals

In 2012, the Council published an action plan for the period 2012-2015. It seems that the Council intends to promote lobby actions before the Romanian Government in order to further regulate and amend the legislation on public tenders. The purpose would be to involve the Council more in public tender proceedings in order to avoid bid rigging.

Furthermore, bearing in mind the proposal of a Directive 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, we envisage that once this Directive is approved and enters into force, our national legal framework will be further amended.

In addition to the above, in 2014, the Council launched several public debates with respect to the amendment of several pieces of secondary legislation:

(a) *Amendment proposal with respect to leniency policy regime*. The Council's main proposal is to exclude the vertical agreements from the leniency policy. A new proposal is meant to extend the category of the leniency beneficiaries by including undertakings which were the initiators of the cartels. Another important proposal is the Council's obligation to maintain the confidentiality of the identity of the economic operator that applied for leniency, but only until the report of investigation is provided.

(b) *Amendment proposal regarding the conditions, terms and procedure for accepting and evaluating commitments*. One important proposal is the right of the complainant to be informed by the Council regarding the test market and its right to make remarks, when the investigation was launched as a consequence of its complaint.

(c) *Amendment proposal regarding the guidelines on the content of mandate agreements concluded under the framework of commitments provided under the Competition Act.*

Until this specific point, no official positions or regulations have been adopted with regard to the above-mentioned proposals.

* * *

Endnotes

1. Act no. 21/1996 republished in the Official Gazette of Romania, no. 240 on 3 April 2014.
2. Act no. 187/2012 for implementation of Act no. 286/2009 regarding the Criminal Code published in the Official Gazette no. 757 on 12 November 2012 which entered into force on 1 February 2014.
3. Act no. 255/2013 for the implementation of Act no. 135/2010 regarding the Criminal Procedure Code published in the Official Gazette no. 515 on 14 August 2013 which entered into force on 1 February 2014.
4. Published on 14 March 2013.
5. The Regulation regarding the organisation, functioning and procedure of the Council implemented by Order no. 101/2012 and published in the Official Gazette of Romania no. 113 on 14 February 2012.
6. In 2013, the Competition Council has initiated the measures meant to co-opt the National Management Centre for the Information Society (CNMSI) as collaborating partner. CNMSI has the role of managing and operating the Electronic Public Procurement System in Romania.
7. As per the Council Annual Report (2010) a notable result of the activity of the Module on Bid Rigging is that ANRMAP introduced a mandatory certificate of participation with an independent offer in order to participate in a public procurement, in which

companies are required to submit a sworn statement certifying that they are behaving in accordance with the competition rules.

8. Act no. 71/2011 for implementation of Act no. 287/2009 regarding the Civil Code published in the Official Gazette no. 409 on 10 June 2011 which entered into force on 1 October 2011.
9. The Council Regulation on the analysis and solving complaints regarding the breach of Articles 5, 6 and 9 of the Competition Act and Articles 101 and 102 of the TFEU, approved by the Council's President Order no. 499/2010 and published in the Official Gazette of Romania no. 687 on 12 October 2010.
10. According to the 2013 Annual Report of the Council.
11. We will consider the period from 2011 until the end of 2013.
12. The public information published by the Council in its 2013 Annual Report refers to anti-competitive practices in general without detailing the actual type of infringement.
13. Decision no. 44 of 29 November 2013. In this decision, the Council stipulated that: "*The participation in the same public procurement procedure of two companies belonging to the same group represents the manifestation of a competition constraint exerted by each of the two companies against the other. Hence, in such a situation, the two affiliates cannot be regarded as representing one and the same company and, by way of consequence, competition rules may apply to the two companies. According to the practices in other EU member states, if several companies belonging to an economic group attend the same procedure as distinct economic entities, the companies express their will to independently behave as competitors on the market and, by way of consequence, the coordination of tenders between companies belonging to the same group may fall under the scope of competition rules*."
14. Decision no. 52 as of 2013.
15. Order no. 730 as of 23 December 2013.
16. Order no. 91 as of 1 March 2013.
17. Order no. 260 as of 23 May 2013.
18. Order no. 391 as of 11 July 2013.
19. Guidelines establishing conditions and criteria for the application of the leniency policy implemented by Order no. 300/2009 and published in the Official Gazette of Romania no. 610 on 7 September 2009.
20. Article 64 (3) of the Competition Act.
21. Guidelines on the conditions, terms and procedure for accepting and evaluating commitments for anti-competitive practices implemented by Order no. 724/2010.
22. The commitments procedure is not applicable to horizontal restrictions (i.e. cartels) that are prohibited under Article 5 (1) of the Competition Act and are not exempted under Article 8 (4) of the same Act.
23. Commitments proposed by CEZ Distribution SA on 14 April 2014.
24. Council Decision no. 39 as of 2010.
25. Competition Council's decision no. 39 as of 7 September 2010.
26. Competition Council's decision no. 35 as of 16 June 2009.
27. Competition Council's decision no. 97 as of 2011.
28. According to the 2014 OECD report regarding the "Analysis of politics and competition law in Romania", p.27.
29. According to the 2013 Annual Report of the Council.
30. According to the 2014 OECD report regarding the "Analysis of politics and competition law in Romania", p.73.
31. According to the information published on http://ec.europa.eu/competition/antitrust/actionsdamages/documents.html, "On 17 April 2014, the European Parliament adopted a text of the Directive on antitrust damages actions which was agreed between the European Parliament and the Council during the ordinary legislative procedure. The agreed text of the Directive has been sent to the EU Council of Ministers for approval".

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