GLOBAL LEGAL INSIGHTS

Cartels

Enforcement, Appeals & Damages Actions

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CONTENTS

Romania

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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 undergone intensive changes also in respect of cartels, leniency and enforcement, namely: (a) one of the central rules in domestic antitrust policy (i.e., article 5(1) of the Competition Act) dealing with anticompetitive agreements, mirrors now the wording of its counterpart at European level (i.e., article 101(1) of the Treaty on the Functioning of the European Union ("**TFEU**")); (b) some procedural rules on leniency application have been passed; and (c) several timeframes have been extended.

As detailed in section "*Reform proposals*", we still expect changes to the Secondary Legislation in 2015, as the Competition Council ("**Council**") has already launched several public consultations.

Amendment of Article 5(1) of the Competition Act

The last substantial change to the Competition Act was in June 2015 through the Government Emergency Ordinance no. 31/2015.[2]

Article 5(1) of the Competition Act has been re-written and is now identical to Article 101(1) of the TFEU. This was done by deleting two examples of infringements: (a) participation in bid rigging; and (b) elimination of certain competitors from the market through boycott-type agreements.

The Council already had the power to directly apply article 101 of the TFEU, so the change is welcomed. Some may see this change as a "ground" for asking the court to invalidate a sanctioning decision issued by the Council before the change by invoking the "more favourable law" principle. However, this argument is subject to criticism because article 5(1) merely lists some examples of infringements. The European Commission itself issued decisions on refusal, boycott and bid rigging, lacking express provisions on these practices.

Admittance of infringement

The main novelty here is that companies may now acknowledge the infringement before the investigation report[3] has been issued. Previously, admittance of the infringement could be made only after issuance of the report and in any case not after the hearings. The benefit is a 10% to 30% reduction of the fine determined based on the Guidelines on fine individualisation,[4] even for fines set at minimum legal level. For this, the company must submit an express request that includes: (a) the unbiased and express acknowledgment of liability for infringement; and (b) a statement on acceptance of the maximum fine the

company will pay. If the company challenges the Council's decision in court, it will no longer benefit from the fine reduction and the Council may use the admittance and other proofs provided by the company. If the company also benefited from leniency, the fine reduction after considering the admittance cannot exceed 60% of the fine determined according to the Guidelines on fine individualisation. The Council's draft guidelines for this procedure are currently in public consultation.

Whistle-blowers' platform

The Project "Instruments for detecting cartels – the whistle-blowers' platform" is a newly[5] created electronic platform available on the Council's webpage, guaranteeing users' anonymity. Through this platform, the Council receives information about alleged cartels voluntarily offered by individuals (e.g., current or former employees of undertakings involved, any person who has access to such information, etc.). According to the Council's Chairman, it received more than 50 referrals in a two-month period since the platform was launched.

Monitor of consumer goods prices

Initiated by the Council in cooperation with the Romanian Association for Consumer Protection (APC), the pilot project "Monitor of consumer goods prices" seeks to help consumers to compare prices for basic food products, find stores with the lowest prices and inform them on price decreases following increased competition between stores. The implementation period is March 1, 2015 to December 31, 2015.

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,[6] under the umbrella of the "Module on Bid Rigging",[7] 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.). In 2014, following cooperation with the Directorate for Investigating Organized Crime and Terrorism, the Council launched an investigation on a potential bid rigging in 2011 involving S.N.T.G.N. Transgaz S.A. Medias.

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[8] or criminal law.

As stated, 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 64 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[9] 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 56% of investigations on anti-competitive practices).[10]

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 certain locations (i.e., premises, lands and means of transportation legally owned or used) 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 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 2014 concerned alleged cartels in various market sectors: audio-visual and radio; financial audit; bid-rigging in the natural gas transport market, etc.

At 2014 end, the Council had 56 ongoing investigations on alleged anti-competitive agreements,[11] opened three new investigations on alleged cartels[12] and finalised nine

investigations on cartels[13] with only three cases where fines were imposed for alleged cartels. Statistically, there are far more many ongoing investigations than newly opened: from 56 investigations ongoing in 2014, 30 of them are older than three years.

The Council's activity regarding dawn raids decreased in 2014 compared to 2013; down from 80 dawn raids to only 62 dawn raids.

Fines imposed in 2014 in cartel cases represented 16.2% of the total fines imposed by the Council (approximately €6.7m in value).

Towards 2014 end, the Council focused on anticompetitive bid rigging in public procurement organised by state companies or authorities, anticompetitive agreements in the food sector and cartels in the media sector.

In December 2014 and March 2015, the Council issued two decisions, the first leading to 11 undertakings being sanctioned for elimination of competitors from the media communication services market.[14]

Another investigation on a price-fixing cartel in the ballast market was closed in January[15] 2014 because the Council could not prove the infringement beyond any reasonable doubt.

In 2014, the Council opened three new investigations on alleged cartels: (1) on the market for broadcasting football matches from the Premier Football League competition; (2) on infrastructure works for natural gas transport and related works assigned through public tender; and (3) on the financial audit market.

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 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 "*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 2014, the Council initiated two sector inquiries: (a) on the catering and handling services market at "Henri Coanda" International Airport Bucharest – Otopeni (finalised in April 2015); and (b) in the energy and agricultural irrigation sector (still ongoing).

In 2014, 56% of the new investigations were *ex officio*, while in 2013 only 67%.[16] As a general remark, investigations opened following third parties' complaints appeared to usually concern alleged abuse of dominance.

In line with the Council's "focus" stated in 2013 Annual Report, in 2014 the Council initiated an investigation on potential public administration anticompetitive practices in the electricity production and trade market, finalised a sector inquiry on the electricity market, and sanctioned four companies for bid-rigging in domestic oil and gas drilling works following an investigation opened following a leniency application.

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 manifested in 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 presumption of innocence means the Council has a legal obligation to prove the alleged infringement.

For parties' protection, the competition legislation provides strict rules for carrying out investigations and, in some cases, stipulates the Council's obligation to have a court's authorisation.

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 recommended time limits for various phases of the Council's decision-making process, but not mandatory ones. For example, deliberations must take place on the same day as 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, investigations' duration varies yearly. The average duration in 2014 was of approximately three-and-a-half years, showing an increase from 2013 (when the average duration was of approximately three years). In its 2014 Annual Report, the Council states that the average duration of an investigation in cartel cases is about two-and-a-half years for the period 2010-2014.

In practice, most investigation reports reaching the Plenum are concluded 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**"[17]) 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.[18]

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.[19]

The leniency procedure is not very appealing, probably because of the possibility 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 we referred to in the "*Overview of law*" section. Suffice to add here the acknowledgment works in fact 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.

As per 2014 Annual Report, the Council opened four new investigations based on complaints (two for alleged cartels), finalised six investigations (also initiated following complaints), of which three were closed for lacking evidence.

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,[20] 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 complainant does not have access to confidential data from the Council's case file, as these documents are kept separately from the court file accessible to the complainant. Moreover, audio-visual recordings made by the Council are made available only in court-related proceedings and only upon court's request.

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

In March 2012, Bucharest Court of Appeal partially annulled Council's decision[21] 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,[22] 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.[23] 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).

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.[24]

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 2014,[25] 13 antitrust cases consultations between the Council and the European Commission took place, compared to 10 antitrust cases in 2013.[26] 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.

In two recent cases, the Council has unsuccessfully tried to cooperate with competition authorities from Switzerland and Turkey in obtaining some information on alleged anticompetitive behaviour. Eventually, the Council tried to obtain this information by diplomatic channels (Ministry of Foreign Affairs[27]).

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 newly approved Directive[28] 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. So far, no actions have been taken in this regard. However, the Council has stated the Directive will be implemented via distinct law dedicated to private competition enforcement.[29]

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. Until now,[30] national courts had only two private litigation cases on antitrust matters. Currently, these cases are pending before the appeal courts. However, in both cases the first instance court stated that the claimants failed to prove the existence of an anti-competitive practice and the actions were dismissed as ungrounded.

Reform proposals

In 2012, the Council published an action plan for 2012-2015. Apparently, the Council intends to promote lobby actions before the Government to further regulate and amend public tenders legislation. The purpose is to involve the Council more in public tender proceedings to avoid bid rigging.

In 2014, the Council launched several public debates that actually led to Secondary Legislation amendment.

One of the most important proposed amendments targets the Competition Act. Currently, the Competition Act regulates the preliminary examination procedure. The Council's proposal is to add inspectors' ability to perform preliminary examinations in order to carry out investigations. Undertakings that submit incorrect or inaccurate information or refuse

to provide information during preliminary examinations may be fined (i.e., from 0.1 to 1% of the undertaking's turnover in the preceding financial year).

Another discussed amendment is to limit the criminal liability of individuals acting as directors or legal representatives, or holding any other management position in a company that intentionally participates in an anti-competitive practice, only to "hard-core" infringements (i.e. cartels: price fixing; limitation of production or sales; market or customer allocation).

And an interesting proposal in line with the Council's case-law, as detailed above, is to set a legal assumption that if a mother-company holds 100% of a subsidiary that has breached competition rules, it is considered that the mother-company exercises a decisive influence upon the subsidiary until the contrary is proved.

Until now, there have been no official drafts or regulations on these proposals.

* * *

Endnotes

1. Competition Act no. 21/1996 republished in Official Gazette no. 240 on April 3, 2014.
2. Published in Official Gazette no. 474 on June 30, 2015.
3. Issuance of the investigation report by the Council is similar to issuance of the Statement of Objections by the European Commission.
4. Guidelines dated September 2, 2010 on the individualisation of sanctions for the contraventions stipulated in Article 51 of the Competition Act approved by Order of the Chairman of the Council no. 420/2010 and published in the Official Gazette no. 638 of September 10, 2010, as subsequently amended and republished.
5. Functional since January 2015.
6. 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.
7. 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).
8. Act no. 71/2011 for implementation of Act no. 287/2009 regarding the Civil Code published in the Official Gazette no. 409 on June 10, 2011 in force since October 1, 2011.
9. Council Regulation on the analysis and solving 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 Gazette no. 687 on October 12, 2010.
10. According to 2014 Council's Annual Report.
11. The information published in Council Annual Report refers to anti-competitive practices in general without detailing the type of infringement.
12. Out of a total of 12.
13. Out of a total of 21.
14. Council's decision no. 14 dated December 3, 2014.
15. Council's order no. 12 dated January 9, 2014.
16. In 2012 – 72% and in 2011 – 60%.

17. Guidelines on the conditions and criteria for the application of the leniency policy implemented by Order no. 300/2009 and published in the Official Gazette no. 610 of September 7, 2009.
18. Article 64(3) of the Competition Act.
19. 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.
20. Council's Decision no. 39 as of 2010.
21. Council's decision no. 39 as of September 7, 2010.
22. 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.*
23. Competition Council's decision no. 97 as of 2011.
24. According to 2014 OECD report, "Analysis of politics and competition law in Romania", p.27.
25. According to Council 2014 Annual Report.
26. According to Council 2013 Annual Report.
27. According to 2014 OECD report, "Analysis of politics and competition law in Romania", p.73.
28. 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").
29. According to OECD's Working Party no. 3 on Co-operation and Enforcement – "Relationship between public and private antitrust enforcement" – Romania, 15 June 2015.
30. *Ibid*.

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Mr Stoica has been commended in Chambers Europe as a "strategic and realistic" competition lawyer who is "business-friendly and very easy to communicate with". Established clients of Silviu Stoica include Philip Morris, Cargill, ArcelorMittal, Innova Capital and Oresa Ventures, whom he has advised on a whole array of competition matters and investment issues.

Mr Stoica has been with the firm since its inception, pursuing all career stages from associate to senior associate and head of practice group. Silviu Stoica holds a degree in law from the University of Bucharest Faculty of Law and is a member of the Bucharest Bar Association. Mr Stoica attended US Legal Methods – Introduction to US Law, Institute for US Law in Washington, DC and the International Development Law Organization Development Lawyers Course (DLC-20E) in Rome.

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Mihaela Ion is a managing associate within the competition practice group of Popovici Nițu Stoica & Asociații. Her area of expertise covers in particular antitrust litigation, unfair trade practices, consumer law, merger control proceedings and state aid. She also assists clients in structuring and implementing compliance programmes, providing regular training as external legal counsel on all relevant aspects of competition law.

Chambers Europe reported Ms Ion as having "great expertise in antitrust investigations and wider competition law".

Ms Ion holds a degree from 'Lucian Blaga' University of Sibiu and is a member of the Romanian Bar Association. She also holds a Master's degree in European and International Business, Competition and Regulatory Law from Freie Universität Berlin, a Master's degree in competition from the Bucharest Academy for Economic Studies and a Master's degree in international relations and European integration from the Romanian Diplomatic Institute. She is a Ph.D. candidate in international trade law at Bucharest Academy for Economic Studies' Institute for Doctoral Studies.

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