

## INTENSIFIED INVESTIGATION ACTIONS OF THE ROMANIAN COMPETITION COUNCIL FOLLOWED BY FINES WITHOUT PRECEDENT



### Enhanced Activity of the Romanian Competition Council

The control activities performed by the Romanian Competition Council ("RCC") and the fines applied in this context to economic operators have registered a tremendous intensification during the last months. On one hand, this is a consequence of the fact that the Romanian market has developed significantly, reaching a higher level of complexity and competitiveness. On the other hand, the RCC seems to aim to live up to the current trends on the European market and to the monitoring strategies of the European Commission. Special attention is paid to cartels, price fixing and allocation of clients

and territories amongst competitors, but also to abuse of dominant position and limitation of access of competitors on certain markets.

### Legal Sanctions for Anti-Competitive Practices

Under the Romanian antitrust law, in case of infringement of the provisions of article 5 and 6 of the Competition Law (the equivalent in the national legislation of article 101 and 102 of the Treaty on the Functioning of the European Union), the RCC may apply fines **up to 10% of the aggregate turnover** achieved by the respective undertaking(s) in the financial year prior to sanctioning. Furthermore, the fines ap-

Dear Readers,

In this issue of our Newsletter we address a topic which has become of utmost importance for the Romanian economic environment. If the understanding and the compliance with competition regulations was, until lately, a rather exclusive topic, which only multinational corporations seemed to pay attention to, competition issues are now a topic for all economic operators.



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plied by the RCC for non-submission of requested information or submission of incomplete/misleading information may go **up to 1% of the aggregate turnover** achieved by the respective undertaking(s) in the financial year prior to sanctioning.

## Historical Fines applied in 2010 and Expected Increase thereof in 2011

Only in 2010, 23 investigations were initiated *ex officio* and 4 others at the complaint of affected economic operators, thus reaching a total number of 93 pending procedures currently handled by the RCC. An increased attention was paid by the RCC not only to sensitive markets, such as electricity, pharma, banking and insurance, retail or communication network, but also to smaller relevant markets, such as distribution of fresh fruits and vegetables or transportation networks. The aggregated fines applied by the RCC in 2010 reached **EUR 31.5 Mio.**, representing sanctions for 49 undertakings and 1 professional body, which carried out anti-competitive practices and for 1 undertaking which has provided the RCC with inaccurate information. It is to be noted that **the value of the fined increased 14 times in 2010**, as compared to 2009 (aggregate value of fines of EUR 2.3 Mio.). In 2010, the following historical thresholds were achieved by the RCC in its sanctions: **the highest fine in terms of percentage** applied to the turnover of the sanctioned body (9,2% of the turnover of the Body of Experts and Licensed Accountants of Romania, meaning approximately EUR 1 Mio., for establishment of tariffs for accounting services) and the **highest fine in terms of its value** (National Company Romanian Post – EUR 24 Mio. for abuse of dominant position).

The beginning of 2011 proved to be even more spectacular, as the RCC sanctioned Orange and Vodafone with a cumulated fine of **EUR 63 Mio.** for abuse of dominant position. A fine of EUR 4 Mio. was also applied by the RCC to Interfruct, Albinuta Shops and Profi Rom Food for the settlement of retail prices for fresh fruits and vegetables.

## Leniency Program

On the other hand, the RCC also granted in 2010 the first immunity to fine based on the leniency program to a taxi company, during an investigation initiated on the taxi services market.

This first case of immunity to fine represents a great victory for the RCC, which struggled to implement the leniency program for several years and now it launched a clear message of encouragement to other companies in order to make use of this program and denounce existing cartels. In this regard, the President of the RCC, Mr. Bogdan Chirițoiu, declared that the participants to a cartel "*are, sooner or later, caught*". Therefore, the express recommendation of the Romanian officials to economic operators is to play by the rule.

## What Is to Be Done?

If economic operators do not wish to become unintentionally involved in anti-competitive practices through members of their staff, they can reduce this risk by offering intensive staff training in competition law matters.

Such trainings are, on one hand, aimed to familiarize the staff with relevant competition provisions and their effect on the daily business, this way preventing the engagement of the respective economic operator in potentially risky agreements or practices. On the other hand, such trainings are meant to instruct the staff on how to react when the economic operator is confronted with a down-raid or another investigation procedure performed by the RCC.

Furthermore, competition compliance audits are also essential in preventing infringements of relevant legal provisions and reducing fine risks.

In our opinion, it falls with the responsibility of each economic operator to perform an evaluation of its business policies, as to comply with regulations in force, but also to refer to specialized consultants for

competition compliance audits and trainings.

With a team of 4 qualified competition law experts, Noerr has become one of the most reputed addresses for advice and representation in competition matters. Competition compliance audits and staff trainings are part of our team's daily work, successfully assisting our clients and minimizing their risks arising out of competition issues.

We would be glad to have your company as a participant to our trainings and audits!

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