
16 May 2018**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Cancels & replaces the same document of 2 May 2018****Annual Report on Competition Policy Developments in Romania****-- 2017 --****6-8 June 2018**

This report is submitted by Romania to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 6-8 June 2018.

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1. Executive Summary

1. For the Competition Council, 2017 was a special year, marked, on the one hand, by an intense activity, and, on the other hand, by the 20th anniversary of the application of the Competition Law in our country.
2. In 2017 we initiated investigations on important areas such as energy - potential abuses of a dominant position in the field of network connections - or financial services. For the first time, our investigations have crossed the country's borders and benefited from the support of our colleagues from the UK to obtain information including from the London headquarters of the investigated companies.
3. In 2017, we initiated the most investigations in the institution's history concerning possible cartels and abuses of dominant position, accounting for 89% of all the new procedures.
4. Within the ongoing investigations at the end of 2017, we analyse, in various forms, almost all sectors of the economy. In fact, this is the year when we started the most cases of cartels and abuses of a dominant position.
5. In 2017, the total fines imposed by the Competition Council amounted to 123.1 million lei (approximately EUR 27 million). By comparison, the budget we received from public funds in 2017 was of 47.1 million lei (about EUR 10.3 million).
6. Moreover, the most important interventions of the Competition Council finalised in 2017 lead to economies for consumers ranging between Lei 284 and 509 million lei (approximately between EUR 63 and 113 million) generated by the activity concerning the control of economic concentrations and anticompetitive agreements. This result was obtained using a methodology developed by the European Commission.
7. The largest fine in 2017, of about EUR 15.8 million, was applied to the cartel on the electricity meter market. In this case, one of the companies involved applied to the leniency policy and provided evidence of the existence of anticompetitive agreements, thus obtaining immunity from fines. Also, in this case, for the first time, a public tender organiser - SE Electrica SA - was sanctioned because its employees facilitated the cartel. These agreements have led to additional costs for end-users who paid higher electricity bills, and we will work with the National Regulatory Authority in the Energy field (ANRE) to recover the damages.
8. The sector inquiries, finalised or under public consultation in 2017, concerned areas of direct impact on consumers such as: medical services, drug distribution, timber, surface water management, electronic communications provided as multiplay package services. It is very important that most of the recommendations we have made to improve the competition in these markets have already been adopted by the authorities.
9. In respect to the results in court, it is noteworthy that, for the third consecutive year, the High Court of Cassation and Justice has irrevocably decided in favour of the Competition Council in all the cases involving fines.
10. Another important aspect was the transposition into the Romanian legislation of the European Directive on damages actions, which allows those affected by the anticompetitive practices to recover their damages.
11. The Competition Council adopted also in 2017 the **Strategy of the institution for 2018-2020**, having five strategic objectives:

- Increasing the impact of competition policy on the economy;
 - Capitalisation of the State aid expertise in supporting Romania's public economic growth policies and good use of public money;
 - Expanding the borders of competition and competition advocacy;
 - Increasing the transparency and predictability of internal processes;
 - Improving institutional performance.
12. Throughout the 20 years of its activity, the Competition Council has undergone a series of administrative and legislative reforms that have contributed to improving the work carried out and, in particular, the results achieved, becoming a strong institution, recognised at the national and the European level.
13. Over EUR 1 billion represent the savings made by the Romanian citizens as a result of the Competition Council's interventions during the 20 years of activity, according to a study by the Academy of Economic Studies, which assessed the impact of Romanian competition policy on 10 key industries in the national economy.
14. The 20th anniversary was marked by a series of events organised at the European Parliament, at the headquarters in Paris of the Organisation for Economic Co-operation and Development (OECD) and in Bucharest.
15. The fact that we are an efficient and powerful institution that acts similarly to the other competition authorities for the EU Member States was highlighted by Mrs. Margrethe Vestager, the European Commissioner for Competition, which was present at the Bucharest conference on this occasion.
16. The Romanian President decorated the institution with the order of "**Industrial and Commercial Merit**" in rank of **Officer**, which is a proof of our appreciation of our work and an encouragement to continue to be a guardian of consumer interests and, in general, a advocator of the markets governed by the principles of free competition.
17. In addition, Romania has move up in the rankings of the Global Competition Review and won 3 stars, along with seven other EU countries (Austria, Finland, Latvia, Lithuania, Poland, Portugal, and Sweden).
18. According to **Global Trend Monitor 2018** (published on PaRR-global.com), Romania is one of the most competitive jurisdictions between countries in Europe, the Middle East and Africa, ranked 10th in this top (after moving up 4 positions compared to the previous year).
19. In respect to the priorities, in 2018, RCC intends to complete cases on competition law infringement in important areas - insurance, retail of food, natural gas transportation - and the sector inquiries on the banking sector, fuel retail and natural gas. In the pharmaceutical field, RCC will initiate a sector inquiry on over-the-counter medicines.
20. In 2018, RCC will launch two new projects: the Fuel Monitor and Big Data.
21. Similar to the Food Price Monitor, launched in 2016 and following to be extended in 2018, the Fuel Monitor will make possible the creation of a platform for monitoring and comparing the prices of auto fuels. This will increase the competition between the companies on this market, which will have beneficial effects on fuel prices, but also on their quality, services offered at fuel stations, etc.

22. The Big Data project will facilitate the identification of cartels in the field of public procurement and will facilitate the finalisation of the internal computerisation of the Competition Council.

23. Starting with 2018, the Naval Supervision Council, a body set up at the end of 2017 following the OECD recommendations in the Report on the Analysis of the Legislation in force in three key sectors of the economy and its impact on the competitive environment, will be operating within the Competition Council. This body will ensure non-discriminatory access conditions in ports for the economic operators and will combat possible abuses in this area, revitalising the shipping industry.

24. In 2018, RCC will continue to intensify our efforts to intervene where anticompetitive practices with harmful effects on the economy have visible tendencies to manifest, as well as to support the business environment in order to satisfy the interests of consumers.

2. Enforcement of competition laws and policies

2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1. Summary of activities

25. The Competition Council had an intense activity in 2017, with investigations in almost all sectors of the economy.

26. For the first time in 2017, most of the cases under the attention of the Competition Council concern cartels and abuses of dominant position, and not vertical agreements (among producers and distributors, for example) as in previous years.

27. Out of the **19 new investigations**, most of them were initiated ex-officio, as has been the case in recent years, which shows that the institution is closely monitoring the markets. Most investigations were initiated in sectors of priority: energy, financial services and medicines. Using the information received through the “Platform of Competition Alerts”, an investigation has been opened on the market for specialised agricultural machinery, machinery and equipment involving European funds.

28. In **89%** of the 18 completed cases, the Competition Council identified and sanctioned the infringement of the competition law or the companies involved adopted commitments so as to restore quickly the competition on the market. The completed investigations focused on markets that have a direct impact on consumers: **electrical energy meters, information systems, public utilities and notary services**.

29. Following the finalisation of two bid rigging cases (electricity meters and IT services), the Competition Council sanctioned 8 companies with total fines of 81.1 million Lei (around EUR 18 million). One of the companies involved applied to the leniency policy and provided evidence of the existence of anticompetitive agreements, thus obtaining immunity from fines.

30. In this case, for the first time, the **public tender organiser was sanctioned** because its employees facilitated the agreement leading to the bid rigging.

31. Almost a quarter of the total number of companies have admitted their participation within the anticompetitive practices, meaning that the companies are starting to realise the risks of infringing the law, following to think twice before relapsing.

32. The number of **authorised economic concentrations** maintained at a high level (60) in 2017 too. In certain situations, where the transactions raised concerns on the possible impairment of competition on certain markets, the Competition Council imposed conditions for ensuring the maintaining of a normal competitive environment. Certain examples are the takeover of Covalact by BSA International SA, the takeover of Payzone by Paypoint or the takeover of Hiperdia SA by Affidea Diagnostics BV.

33. The Competition Council has finalised 4 sector inquiries and has made recommendations (some have already been taken over) to improve the competition in the areas under review. For example, following the sector inquiry on pharmaceuticals, the competition authority has recommended the removal from the clearing lists of the drugs that are placed on the market in insufficient quantities — they must be taken into account only in respect to the reference price, but also a differentiated application of the claw-back clause for generic and patent-expired drugs compared to new drugs that are more expensive and involve a larger budget effort, which would generate a lower claw-back fee for generic and patent-expired drugs.

34. At the same time, 4 sector inquiries were initiated, so that the competition authority is currently conducting 11 such procedures.

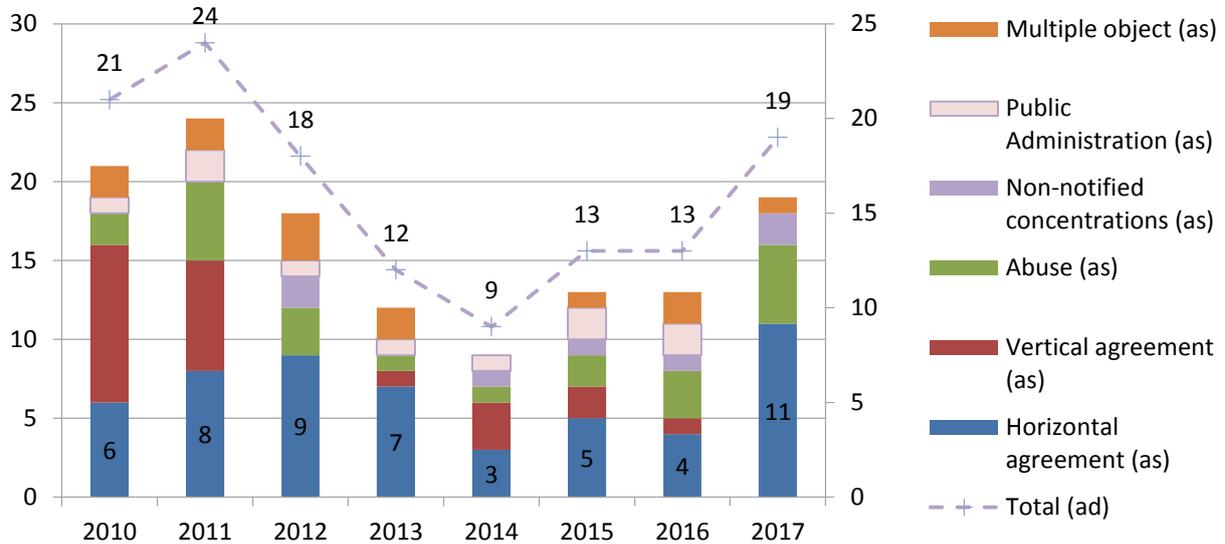
35. The Report on competition in key sectors included the analysis of the telecom and media sector, online trade, digital economy. Within the report, the Competition Council continued to use the Competition Pressure Aggregate Index, whose purpose is to measure the inclination towards competition of markets or industries in the national economy. In 2017, the evaluation included 44 industries.

36. In 2017, the Competition Council successfully faced the challenges met by increasing its efforts to ensure a normal competitive environment, by using new tools to detect and sanction violations of the Competition Law, as well as through other pro-active actions such as: correlating the legislative framework with the competition provisions or the information and advisory campaign to prevent the infringement of the competition rules.

Opened investigations

37. In 2017, **19 investigations** on alleged breaches of competition law have been opened (right axis on the graph – legend “Total”).

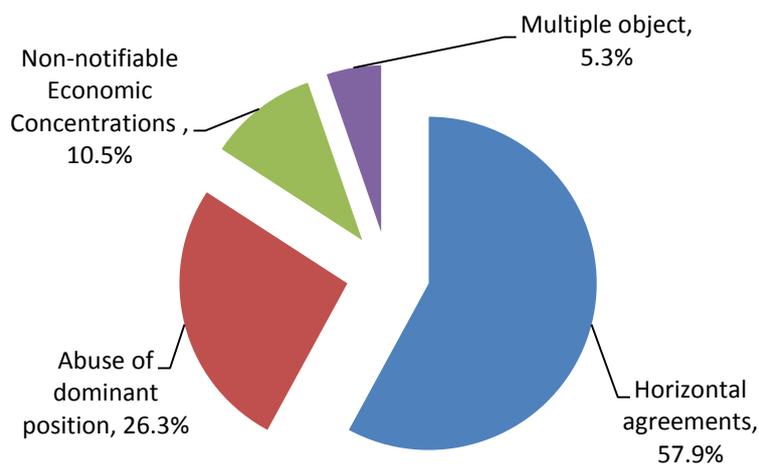
Figure 1. Number of opened investigations, 2010-2017



Note: as – left axis, ad – right axis, abuse – abuse of dominant position, public administration – Anticompetitive actions of public administrations, Non-notifiable economic concentrations – Non-notifiable economic concentrations, Vert. Agreement – Vertical Agreement, Horiz. Agreement – Horizontal Agreement.

38. The most part of the investigations on alleged breach of competition law opened in 2017 envisages horizontal anticompetitive agreements (11 investigations – the left axis on the graph), meaning more than half of total opened investigations.

Figure 2. Structure of investigations on alleged breaches of competition law opened in 2017, in terms of the investigated practice

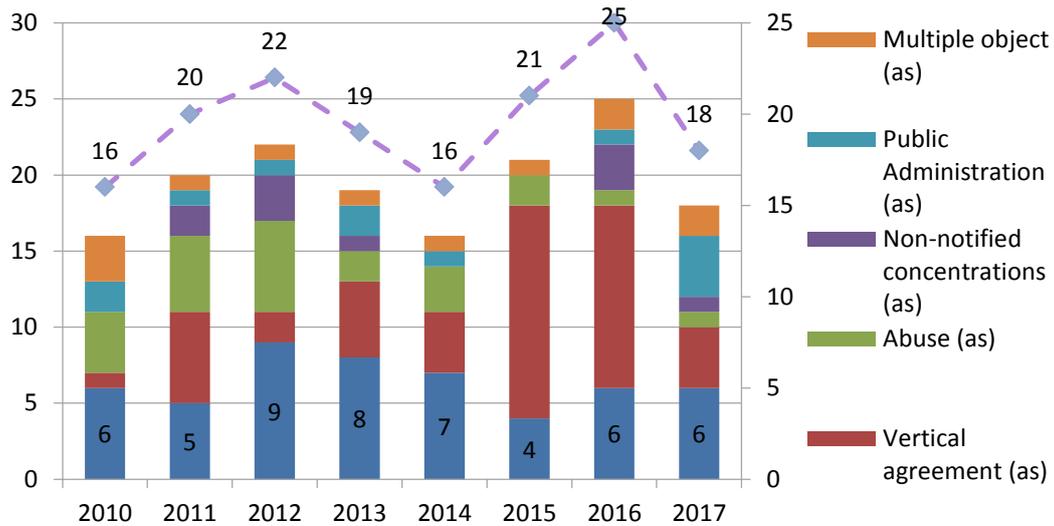


39. 8 of the investigations opened in 2017 envisaged the breach of both national and community legislation.

Concluded investigations

40. In 2017, competition authority **finalised 18 investigations on alleged breach of competition law** (right axis on the graph, legend „Total”).

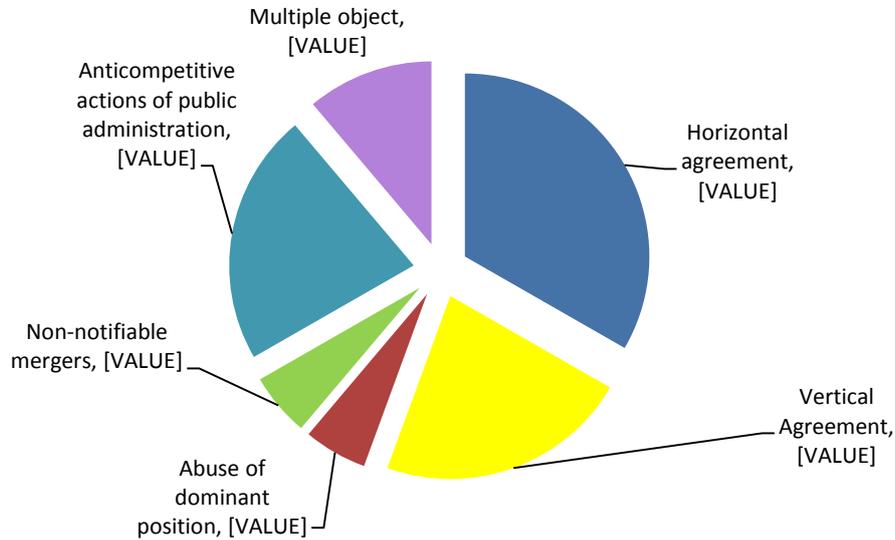
Figure 3. Number of closed investigations, 2010-2017



Note: as – left axis, ad – right axis, Abuse – abuse of dominant position, public administration – Anticompetitive actions of public administration, Non-notified concentrations – Non-notifiable economic concentrations, Vert. Agreements. – Vertical agreements, Horiz. Agreements – Horizontal Agreements.

41. The most part of the investigations on alleged breach of competition law finalised in 2017 represented horizontal anticompetitive agreements, as in the case of opened investigations.

Figure 4. Structure of the investigations on alleged breaches of competition law finalised in 2017, in terms of the investigated practice



42. 7 of the total investigations closed in 2017 envisaged a breach of both national and community legislation.

43. The average duration of the investigations on alleged breach of competition law finalised in 2017 was 2.8 years.

Investigation in progress at the end of 2017

44. At the end of 2017, Competition Council recorded 36 ongoing investigations on alleged breach of competition law and 11 sector inquiries.

Dawn raids

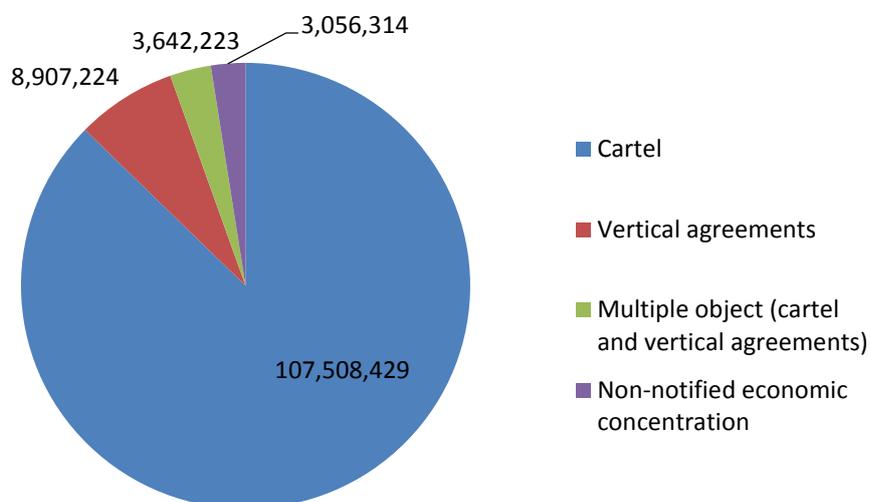
45. 135 headquarters/working locations belonging to 113 undertakings were inspected within 22 investigations in 2017.

Fines

46. In 2017, Competition Council sanctioned 156 entities, the total value of fines imposed amounting to **123,114,190 lei (26,950,853 euro)**, which is an increase by 60% relative to the previous year.

47. From the point of view of type of competition law breach, 87.3% of the total sanctions applied envisaged cartels, 7.2% for vertical agreements, 3.0% for a cartel case and a vertical agreement and 2.5% for implementation of a merger prior to notification and decision making of the Competition Council.

Figure 5. Value of the sanctions applied, 2017 (lei)



2.1.2. Description of significant cases, including those with international implications

Cartel, abuse of dominance and anticompetitive actions of public administrations

Bid rigging cartel - Meters and related equipment for the measurement of electricity¹

48. Following an investigation initiated ex officio in 2015, the Competition Council found market sharing practices in relation to the production and marketing of meters and related equipment for the measurement of electricity in Romania. The anticompetitive practices were carried out within the public procurement procedures carried out by the electricity distribution network operators Electric Power Company SA and its electricity distribution subsidiaries, Delgaz Grid SA (formerly named E.O.N Moldova Distribuție SA) and E-Distribution Muntenia SA (formerly named ENEL Distribuție Muntenia SA).

49. The first infringement concerned the participation of AEM SA, Energobit SA, Elster Rometrics Ltd, Landis + Gyr AG and Ecro SRL in sharing the market of commercialising meters and related equipment for electricity metering within the public tenders organised by the Romanian operators of electricity distribution networks organised between 27th November 2008 and 30th September 2015. The involved parties have determined how to participate in tenders so that there were no overlaps in tenders or in the different lots tendered so as each of the participants to win contracts with minimal effort. This anticompetitive behaviour affected numerous public procurement procedures that have taken place over that time.

¹ The decision will be available in Romanian at: www.consiliulconcurentei.ro/documente/oficiale/concurentă/decizii/serviciul_carteluri

50. Electrica Energetica SA, which organised public tenders for the award of supply contracts of meters and related equipment on the behalf of its subsidiaries, contributed to the infringement by consulting with the parties involved in the preparation of tender documentation, thus exchanging commercially sensitive information between them in order to share the market and restrict market competition.

51. Within the same investigation, the Competition Council found the existence of a second agreement between AEM SA and Electromagnetica SA, consisting in sharing the Romanian market for commercialising of electricity meters and related equipment between 22nd October 2010 and 27th July 2012. This agreement affected many public procurement procedures organised by FDEE Electrica Muntenia Nord SA and FDEE Electrica Transilvania Sud SA.

52. From the perspective of the benefits generated by a normal competitive environment, it is important to get the best offer for the consumer in terms of quality and price. In the presence of a distortion of competition caused by unlawful behaviour, the product concerned is no longer at the best value for money. Thus, the undertakings concerned are seeking to obtain profits at higher prices than those which would result from the exercise of competitive pressure, while at the same time offering minimal risk of auctioning, which are allocated according to anti-competitive practice.

53. These anticompetitive agreements have led to an increase of the purchase prices of the respective products by the operators of the electricity distribution networks in Romania and ultimately to the increase of the electricity distribution tariffs for the consumer.

54. Consequently, the Competition Council found **violations of the national and Community competition law** and imposed a total fine of **73.1 million lei (about 16 million euro)** for 5 companies supplying counters and related equipment for measuring electricity (Energobit SA, Elster Rometrics SRL, Landis + Gyr AG, Ecro SRL, Electromagnetica SA), as well as for a public tender organiser (Electrica Energetica SA), which acted as facilitator of one of the anticompetitive agreements.

55. AEM SA, which participated in the respective anticompetitive practices but co-operated with the competition authority under the leniency policy, received **immunity from fines** for both violations in which it participated.

Security Services Cartel

56. Following an investigation initiated ex officio in 2015, the Competition Council found an infringement of the national competition law in relation to security services market.

57. Consequently, the Competition Council imposed a total fine of **23.4 million lei (about 5 million euro)** for 33 companies and 4 associations of undertakings to fix the minimum price, i.e. to facilitate the fixing of the minimum price.

58. During the investigation the recognition procedure was applied by 5 of the undertakings participating in the infringement found. At the same time, one of the companies benefited from the reduction of the fine on the grounds of its inability to pay.

59. The Competition Council took into account the characteristics of the market on which the cartel took place when applying the sanctions, a market characterised by a strong tendency towards tax evasion and underground economy, as well as the fact that

steps have been taken to signal the authorities with attributions in this field about the possibly illicit behaviour of some companies.

60. However, the argument of breaching a law cannot be accepted (in this case of the Competition Law) as an answer for an infringement of other legal provisions. In this regard, even if the parties to an agreement acted without any subjective intent to restrict competition but in order to remedy the effects of a sectoral crisis, such considerations are not relevant for the purposes of applying that provision.

61. Furthermore, participation in a barred agreement without being aware of its content and its consequences is excluded, always presuming that the undertaking is consciously aware of such unlawful conduct as an expression of its duty of diligence in the exercise of its economic activity.

62. At the same time, the Competition Authority made a series of recommendations addressed to the General Inspectorate of the Romanian Police, the Territorial Labor Inspectorate (ITM) and the National Agency for Tax Administration (ANAF), depending on their competencies and attributions:

- The inclusion of an additional affidavit for bidders in the field of human security services meaning that the staff and resources relevant to the services offered meet all the legal requirements of labour law;
- The inclusion in the tender documentation of a copy of the general employee register (Revisal) regarding the bidders;
- The inclusion of an additional affidavit for bidders, meaning that they comply with tax regulations and have paid all taxes and contributions on the services offered;
- The inclusion of an additional affidavit for bidders that they have not been sanctioned in the past (either directly or as members of the governing bodies of another legal person) for significant infringements of labour law on the services offered;
- Issuing instructions or recommendations by major players on the market such as: (i) The General Inspectorate of the Romanian Police - which may issue recommendations on the minimum requirements to be met by any security service provider (a guide to good practice on requirements and strictly necessary equipment for the provision of appropriate services) or (ii) ITM may issue recommendations on recording and payment of overtime during security services, in compliance with the legal rules;
- Performing joint inspections ITM, the Police Inspectorate and the ANAF to verify if the staff from certain locations (the staff actually providing security services) fulfils all legal and fiscal forms and the minimum standards required by the specific nature of the activity performed.

Bid-rigging Cartel – Extension of the information system ²

63. In 2013, the Competition Council initiated an ex officio investigation on the possible infringement of national and Community law in the public procurement

² The decision can be found at: www.consiliulconcurentei.ro/documenteoficiale/concurentă/decizii/licitații_și_petitii.

procedure organised by Agricultural Payments and Intervention Agency (APIA), with the offers opening date on the 23.09.2008, in order to grant the framework agreement "Extension and Development of the Information System of the Agricultural Payments and Intervention Agency (APIA)".

64. During the investigation the Competition Council obtained evidence of the anti-competitive practice accomplished by Siveco România SA and Intrarom SA, namely Intrarom SA participated only formally to ensure the minimum number of bidders without actually competing with Siveco Romania SA.

65. The Competition Council has sanctioned two companies operating on the IT market with fines totalling 8,009,696 lei (about 1.75 million euro) for the infringement of public procurement procedure organised by APIA (Decision no.33/2017).

66. Regarding the other two companies participating at the tender, IBM România SRL and Teamnet International SA, the investigation has not led to the discovery of sufficient evidence of an infringement of competition law that would justify imposing measures or sanctions by the Competition Council.

Anticompetitive practices on notary services market in Romania finalized by fines and commitments

67. The Competition Council sanctioned the Chamber of Public Notaries from Suceava and 72 public notaries from Suceava and Botosani counties, members of this organization with fine amounting lei 2,810,243 (about Euro 600,000 euro). The sanctions were applied following the investigation opened in May 2015 regarding the violation of the competition rules by the Chamber of Public Notaries from Suceava and its members by fixing minimum fees having values higher than the minimum fees approved by Order of the Minister of Justice. Thus, the public notaries from Suceava and Botosani counties established minimum fees for the most important notarial and procedure acts, differentiated for each county of Suceava and Botosani. The implementation of the minimum fees was facilitated by the Chamber of Public Notaries from Suceava, which distributed the lists with minimum fees to active notaries, especially by email, but also directly during special meetings. The minimum fees were also displayed on the website of the Chamber of Public Notaries from Suceava and translated into a computer application. As a result, in Suceava and Botosani counties, the minimal fees were put into practice by all public notaries exercising the profession before the start of the investigation, except for one that publicly delineated from this illegal practice (after implementation). Also, a public notary admitted his participation in the agreement and benefited from a reduction in fine of 15% from the basic level.

68. At the end of 2017, the Competition Council finalized another investigation on possible anticompetitive practices of the National Union of Public Notaries from Romania (UNNPR), by accepting the commitments assumed by this organization.

69. UNNPR has committed itself to remove the competitive constraints provided by the Code of Ethics regarding prohibition of individual advertising, restrictions on the collection of fees, on the attracting of clients, and the recruitment of the staff within the notaries' offices and to modify certain unclear provisions related to minimum fees provided by the Order of the Minister of Justice. In addition, UNNPR committed as well to send to the Ministry of Justice proposals to remove the minimum limits of the fees for certain notarial acts and services and to include them alongside the categories of notarial

services for which minimum limits are not set, by implementing the provisions of the primary law on public notaries and notarial activity.

70. The RCC approved the implementation of a combined monitoring mechanism of the assumed commitments. This mechanism consists on one hand, of the institutional cooperation between the Competition Council and the Ministry of Justice in order to implement the liberalization of the fees for certain notarial acts and services and the monitoring of the amendments to the Code of Ethics by Decision of the Council of National Union of Public Notaries from Romania, on the other hand.

71. The investigation concerning possible anticompetitive practices of the National Union of Public Notaries from Romania finalized following commitments accepted by RCC represents one big step in the direction of liberalization of fees for certain notarial services.

Economic concentration authorised with commitments - Production and marketing of dairy products³

72. The economic concentration operation was achieved by acquiring direct sole control by **BSA International SA** (BSA) over **Covalact SA** (Covalact) and the sole indirect control of Lactate Harghita SA and Covalact-Prodserv SRL. BSA owns the Lactalis Group of undertakings.

73. The parties involved in the analysed economic concentration are active in the production and marketing of dairy products. The economic concentration operation leads to horizontal overlaps with regard to the collection of raw milk and the production and marketing of fresh milk for consumption, butter, cream, acidophilic products and cheeses.

74. The proposed concentration does not raise competition concerns as regards the relevant markets for the collection of raw milk, the production and marketing of fresh milk and the relevant sub-markets for the production and marketing of simple yoghurts, shed, kefir, beaten milk, fresh cheese and bellows cheese.

75. On the domestic market of butter production and marketing, the economic concentration **has raised competition concerns because:**

- The new entity will be in a position that would enable it to act on the market independently of its competitors and customers.
- There are potential competition issues on this market.
- The consumer choice between butter suppliers is limited to the brands owned by Lactalis/Covalact, Lidl and Friesland Campina, the other competitors being too small. The Lactalis/Covalact entity would hold more than half of the producers' brands, i.e. 6 brands under which they sell butter, out of the 11 available at this time, without the distributor brands (which are sold only in those stores). In addition, the Lactalis group is present on all categories of dairy products and, through the acquisition of Covalact, this presence is greatly enhanced, buyers being motivated to purchase the products from the same supplier - the portfolio effect.

³ Decision no. 29/2017 is available in Romanian at: www.consiliulconcurentei.ro/documente/oficiale/concurentă/decizii/bunuri_de_consum.

- Most retailers believe that Lactalis will become one of the largest dairy suppliers on the Romanian market with a negotiating power that could allow it to behave independently of other competitors, retailers and farmers, with negative effects for the final customer.

76. Consequently, the main competitive concerns on the domestic market of butter production and marketing, generated by the takeover of the Covalact Group, are:

- The economic concentration has a particular effect on the domestic market of butter production and marketing, as the acquirer, Lactalis, which is the market leader, will take over the Covalact Group, number two on the market of butter production in terms of sales, thus increasing the difference between the market shares held by the leader and by the next competitor.
- Following the implementation of the operation, the Lactalis Group will strengthen its position by integrating a new processor, the Covalact Group. Through this consolidation, potential negative effects on the marketing level could be recorded due to the increased negotiating power held by the Lactalis Group. These effects can be passed on to the consumer: an increased price of butter for the traditional retailers/shops would raise indirectly the price for the final consumer.

77. Regarding the national market for butter production and marketing, BSA has assumed structural commitments, consisting in granting an exclusive 5-year period license to a third-party for the *La Dorna* butter. This will be correlated with the third party's obligation to begin the re-branding process for the *La Dorna* butter with its own brand after the expiration of a 30 months period from the starting date of the license period so as to have the possibility to transfer the *La Dorna* butter to its own brand until the expiration of the license period. The license period will be followed by a four-year period during which the Lactalis Group will not be entitled to use this mark for the butter product. These commitments eliminate the competition concerns of the notified operation.

78. Regarding the co-ordination phenomenon, the analysis has revealed elements that can facilitate the co-ordination phenomenon (elements that characterise the market structure) as well as elements that reduce the magnitude of the co-ordination effects obtained from the functional market typology (such as the demand and supply specific elements). It was therefore considered that an analysis based on market concentration (IHH, delta IHH, concentration ratio) is the decisive criterion in assessing the effects of the Lactalis/Covalact economic concentration.

79. As a result of the commitments proposed by the parties involved, the implementation of the economic concentration **no longer significantly impedes effective competition**, in particular as a result of creating or strengthening a dominant position on the relevant markets.

Sector inquiry – Pharmaceuticals

80. Launched in 2013, the sector inquiry reached the following main findings:

- Generic drugs have low market shares, although they are 35% cheaper than innovative drugs and they are on the market for many years;
- There are markets where, with the emergence of generic variants of an innovative drug, the market share of other innovative drugs, for which there is no generic equivalent yet, is growing;

- There is a high degree of concentration of some markets, mainly because of the marketing of innovative drugs;
- Although the prescription of drugs is made based on their active substance, and only in exceptional justified cases based on their trade name, 57% of the patients require a certain trade name drug following a doctor's recommendation (the main cause: the intense promotion of innovative drug manufacturers: professional congresses, promotional meetings, advertising materials and objects, sponsorships);
- 9% of the turnover of innovative drug manufacturers is dedicated to promoting activities, compared to 5% in the case of generic drug producers;
- The cheapest generic drug is missing from the market or is sold in small quantities;
- Patients are being oriented to certain pharmacies for the purchase of medicines, so a very small number of pharmacies concentrate much of the amounts settled at the county level;
- The majority of distributors deliver the highly demanded and well sold drugs to the pharmacy under the condition for pharmacies to purchase from them other unwanted drugs;
- The total sales in Romania increased and the over-spending of drugs was partly borne by the companies that updated the prices by paying the *claw-back fee* and by the patients through the co-payments, depending on the drugs' degree of compensation.
- Taking into account the above, the Competition Council identified the following possible solutions:
 - Physicians could be encouraged to prescribe generic drugs by providing financial incentives if they do not exceed the present monthly budget - the subsequent savings could be used by doctors for other purposes such as training sessions;
 - Removing from the lists of compensated drugs the ones placed on the market in insufficient quantities – they must be taken into account only in respect to the reference price;
 - Limiting the marketing costs of drug manufacturers to certain categories of activities, i.e. a better definition of the expenses that can be recorded for each type of marketing or promotion activity;
 - Performing an analysis of the possibility of regulating a maximum amount that can be assigned to a prescribing physician within one year;
 - Eliminating the benefits that pharmacies or distributors can offer to physicians in order to distribute promotional vouchers to patients only in certain pharmacies;
 - The sale of cheap drugs by distributors/pharmacies can become profitable by applying a fixed amount to a distribution service/ pharmacy;
 - In order to stop distributors or pharmacies to sell or promote a particular drug to the detriment of another, a possible solution would be to limit the discounts that can be offered;

- The introduction into the *Health Law* of a provision prohibiting tied sale (in the form of packages) in the case of drug distribution activities;
- A more efficient monitoring of the public service obligation by the National Medicines Agency and Medical Devices at each level of the drug supply chain, including at the pharmacy level;
- In order to improve the availability of drugs, the competition authority recommends distributors to supply all pharmacies, not just the integrated ones;
- Developing a methodology for a clearer definition of the concept of public service;
- The inclusion of drugs on the List of compensated drugs as soon as they have received marketing authorisation and a price decision;
- The price of a generic drug and the one of the respective innovative drug with expired patent should be the same;
- To maintain at a higher level the prices in the National Medicines Catalog, which is a reference for other states, while reimbursement to be made at a lower price;
- Differentiated application of the *claw-back* clause for generic and patent-expired drugs compared to new drugs that are more expensive and involve a larger budget effort.

As regards the impact of implementing the Direct to Pharmacy (DTP) distribution system, if the manufacturer has a dominant position, the benefits for the pharmacy/hospital and patient should be similar to those previously recorded and must be quantifiable. The Competition Council does not recommend the use of a distribution system to the detriment of another, but it reserves its right to intervene through an investigation in the event of possible distortion of competition.

3. Judicial review of RCC decisions in 2017

81. The number of cases in which the Competition Council had a procedural quality and which concerned the field of competition in 2017 was 185. These files accounted for 91% of the total number of files handled in court by the institution.

82. The percentage of favourable judgments handed down by the High Court of Cassation and Justice was 100%, the proportion of judgments favourable to the Competition Council given in appeal by the Supreme Court being 90%.

83. At the same time, the competition authority registered a percentage of the fines maintained in the appeal

84. We present below an irrevocably settled case in 2017 by the High Court of Cassation and Justice.

3.1. ECOTIC case – cartel of buy-back companies

85. The Competition Council has noted and sanctioned the violation of national competition law (Decision No. 8/2014) by the conclusion of an agreement to control the marketing of products in buy-back campaigns initiated by the ECOTIC Association in February 2009 by six enterprises, members of the ECOTIC Board of Directors, including

Maguay Impex SRL (hereinafter Maguay) and Panasonic Marketing Europe GmbH through Panasonic Marketing Europe GmbH Wiesbaden Germany - Bucharest Branch (hereinafter referred to as Panasonic).

86. For the violation found, the Competition Council sanctioned Maguay and Panasonic with a fine of 756,710 lei and 209,597 lei respectively.

87. The Competition Authority found that sanctioned enterprises that had run buy-backs between February and June 2009 set a firm conditioning between a producer's contribution to the ECOTIC budget as a result of green stamps revenues (which faithfully reflects the position of that company on the market) and the participation or the level of participation of that producer in 1: 1 exchange shares. The 6 enterprises had also access to detailed information on buy-back budgets allocated to competitors, the actual consumption achieved in the campaigns, and the remaining budget available for future campaigns. Based on this information, knowing the ECOTIC / product financial contribution, the 6 enterprises were able to determine the number of products that could be marketed by competitors in a future buy-back campaign. In this way, sanctioned companies have set up a mechanism to ensure the mutual control of marketing of their products in the buy-back campaigns.

88. Against the Competition Council Decision no. 8/2014, Maguay and Panasonic brought annulment actions at the Bucharest Court of Appeal - the Administrative and Fiscal Court.

89. In the Maguay case, the court of first instance rejected the plaintiff's demand, fully maintaining the challenged decision, both in terms of the existence of the anticompetitive deed and the individualisation of the sanction applied.

90. The Bucharest Court of Appeal held that Maguay's violation of competition rules had been proven to the requisite standard of proof, the documents in the file demonstrating the will of the sanctioned enterprises to conclude an agreement on controlling the marketing of products in buy-back campaigns conducted between February and June 2009, with a view to forecasting the number of products sold in buy-back campaigns by competing companies.

91. The Court found that the established and sanctioned conduct was likely to distort the competitive process through a mechanism that generated significant mutual expectations with regard to the strategic decisions of competitors on the buy-back component, the parties replacing the commercial risk by a joint decision with implications on the market for the marketing of electrical and electronic equipment, thereby exceeding the limits of co-operation on the market for the management of electrical and electronic equipment waste. The way in which the buy-back campaign was designed was based on the commercial interests of ECOTIC member producers, going beyond the principles of fair and legal co-operation to manage waste of electrical and electronic equipment. The linking of buy-backs actions to promotion of businesses sales cannot be an objective economic criterion on which the activity of the Association could rely.

92. As regards the individualisation of the sanction applied, the Court has held that the Competition Council correctly established that the anti-competitive agreement falls within the category of medium-term deeds, having a short duration.

93. Maguay appealed against the judgment of the Bucharest Court of Appeal. The High Court of Cassation and Justice - Administrative and Fiscal Litigation Division dismissed the appeal of the company, with the consequence of maintaining as legal and

well-reasoned the Competition Council's Decision no. 8/2014, in terms of both the deed and guilt of the company and the fine imposed.

94. The Court of Appeal held that the deed sanctioned by the Competition Council's decision was proved by the necessary standard of proof in the matter, demonstrating that there was an agreement between the 6 competing undertakings, by adopting a common behaviour, through the implementation of a mechanism pursuing the mutual control of the marketing of the products in the buy-back campaigns the companies participated in.

95. The High Court of Cassation and Justice noted that the agreement had a high potential to eliminate the risks of changing the competitive position of the participants in the cartel. The court's conclusions were in favour of the absence of any doubt as to the standard of proof in the field of competition law.

96. As regards the fine imposed on Maguay, the Supreme Court found that the competition authority correctly individualised the sanction, without reducing the amount of the fine imposed.

97. In the case of Panasonic, the court of first instance upheld the plaintiff's action by annulling the Competition Council's Decision (No 8/2014).

98. The Competition Council appealed against the decision of the Bucharest Court of Appeal. The High Court of Cassation and Justice - Administrative and Fiscal Administration admitted the appeal, dismissing Panasonic's action, with the consequence of maintaining as legal and well-reasoned the Competition Council Decision no. 8/2014 regarding the anti-competitive deed and the fine imposed on Panasonic.

4. Resources of competition authorities

4.1. Resources overall (current numbers and change over previous year):

4.1.1. Annual budget:

99. In 2017, the Romanian Competition Council's budget was 50,093 thousand lei, i.e. an increase by about 6% compared to the previous year.

100. The general budget execution for 2016 was 98.51%.

4.1.2. Human resources

101. In 2017, the staff of the Romanian competition authority represented 337 employees, divided in directions, services and compartments.

102. The staff of Romanian competition authority is divided in civil servants, public managers and contractual staff.

103. The competition inspectors represent 68 % of the total number of staff.

104. As regards the professional background of the competition inspectors, most of them are economists (58%), followed by legal experts (26%).

105. In 2017, the RCC recruited on an undetermined period 36 people as competition inspectors and recorded 24 departures from the institution.

106. Continuous training is a core concern of the Competition Council. In 2017, 152 employees participated in 29 training courses.

