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**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Romania**

-- 2018 --

5-7 June 2019

This report is submitted by Romania to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

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Table of contents

| | |
|---|-----------|
| 1. Executive Summary | 3 |
| 2. Enforcement of competition laws and policies..... | 5 |
| 2.1. Actions against anticompetitive practices, including agreements and abuses of dominant positions | 5 |
| 2.1.1. Summary of activities..... | 5 |
| 2.1.2. Description of significant cases, including those with international implications | 10 |
| 3. Judicial review of RCC decisions in 2018..... | 19 |
| 3.1. ECOTIC case – cartel of buy-back companies | 19 |
| 3.2. Cartel – competitors’ elimination - Media agencies case | 20 |
| 4. Resources of competition authorities..... | 22 |
| 4.1. Resources overall (current numbers and change over previous year): | 22 |
| 4.1.1. Annual budget: | 22 |
| 4.1.2. Human resources | 22 |

Figures

| | |
|---|---|
| Figure 1. Number of opened investigations 2010-2018 | 6 |
| Figure 2. Structure of investigations on alleged breaches of competition law opened in 2018, in terms of the investigated practice | 6 |
| Figure 3. Number of closed investigations, 2010-2018..... | 7 |
| Figure 4. Structure of the investigations on alleged breaches of competition law finalized in 2018, in terms of the investigated practice | 8 |
| Figure 5. Value of the sanctions applied, 2018 (lei)..... | 9 |

Romania

1. Executive Summary

1. For the Competition Council, 2018 was a year marked by intense challenges but finalised with good results.
2. We have succeeded in finalizing a series of complex cases in priority areas such as insurance, tourism, food retail or telecommunications.
3. 2018 was the year with the highest total of fines after 2011 (when the fuel cartel was sanctioned): 435.2 million lei (about € 93.5 million). By comparison, the budget of the institution, allocated from public funds, for the same year was of 53.1 million lei (about € 11.4 million).
4. The highest fine in 2018, of around € 53 million, was applied to the Motor Third Party Liability Insurance (MTPL) sector, for exchanging commercially sensitive information used to increase consumer prices.
5. Another large case, involving significant sanctions, refers to the food retail market. Thus, three supermarket chains and a few of their suppliers were sanctioned with approximately €19 million for fixing the shelf prices within the retailer's promotions.
6. It should be noted that 2018 was the year when we completed most of the cases through the leniency program, respectively 20%. The undertakings that have used this mechanism provided information on the existence of anticompetitive practices or additional evidence proving the infringement of the competition law.
7. At the same time, 80% of the finalised investigations ended with fines, and almost half of the sanctioned companies admitted the violation of the legislation. This demonstrates the maturity of the undertakings, as well as the fact that the national competition authority is becoming increasingly powerful.
8. In 2018, we launched a series of investigations in sensitive areas, with a direct impact on consumers: food, pharmaceuticals - immunoglobulins, infrastructure / road construction, cement, energy - public tenders organized by Transelectrica, and a possible abuse of a dominant position of Hidroelectrica.
9. For the second consecutive year, we have carried out unforeseen raids on the territory of other EU countries, namely in Belgium and Italy, within the investigation on the immunoglobulin market. This shows our ability to work effectively with the competition authorities of other countries, as well as the fact that we can handle cases of an international scale.
10. At the end of 2018, we had 37 ongoing investigations, a number which remained steadily over the past 3 years, showing our ability to handle cases simultaneously.
11. Moreover, the most important interventions of the Competition Council finalized in 2018 led to economies for consumers ranging between 217 and 514 million Lei (approximately between 46 and 110 million EUR) generated by the control of economic concentrations and by sanctioning anticompetitive practices. This result was obtained using a methodology developed by the European Commission.

12. In respect to the decisions of the courts, it is worth mentioning that over the last 7 years the Competition Council has obtained favourable judgments in over 90% of the cases. Also, in 2018, the High Court of Cassation and Justice confirmed the first fine imposed on Orange by the Competition Council in 2011.

13. Romania maintains its position in the ranking of the Global Competition Review, registering a constant performance (3 stars).

14. The priorities of 2019 include the conclusion of the investigations carried out in the following sectors: finances, banking, public tenders, pharmaceuticals, agricultural machinery.

15. Another challenge of 2019 is the launch of the price comparator, namely the expansion at the national level of the "Pricelist Monitor", the pilot platform launched in 2016. The contracting process was finalised at the end of 2018. The web platform and the mobile applications that will show the prices used by main retail chains and by the fuel stations are going to be developed in the next period.

16. The Big Data project, launched in 2018, aiming at facilitating the identification of cartels in the field of public procurement, and at completing the internal computerization of the Competition Council is another key objective: the procurement procedures were completed in 2018 and 2019 will be the year of implementation.

17. Starting with 2018, the Maritime Surveillance Council is operating within the Competition Council, which is a body set up following the OECD recommendations in the Report on the analysis of the legislation in force in three key economic sectors and its impact on the competitive environment. According to its attributions, this body will eliminate possible situations of abuse in the port services area.

18. Exercising the Romanian Presidency of the Council of the European Union is a responsibility as well as an opportunity for our country, and for our institution.

19. For this period, Romania has the responsibility to implement the ECN Plus Directive on the better functioning of national competition authorities. The Directive establishes a set of measures whereby competition authorities in the EU Member States would become even more effective in their work. This will harmonize procedures between Member States so that the competition mechanisms are clearer, as will the objectives of appointing and, above all, replacing the persons from the leading positions of national competition authorities.

20. The Competition Council is responsible for the organization of three key events during the 6 months - the European Competition and Consumer Day, the reunion of the European Competition Network focused on cartels and the reunion of the EU Member States with attributions in the State aid field within the State Aid Modernization (SAM) project, as well as providing the logistics and maintaining very good relations with all involved authorities.

21. In 2019, we 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. Actions against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1. Summary of activities

22. The Competition Council had an intense activity in 2018, carrying out investigations in almost all sectors of the economy.

23. For the second consecutive year, most of our cases concern cartels and abuses of dominant position and not vertical agreements (among producers and distributors, for example) as in previous years.

24. 16 investigations on the possible infringement of the competition legislation were opened in 2018 in priority sectors such as cement, electric energy, natural gas and health. 81% of the total number of the 16 initiated investigations envisaged alleged cartel and/or abuse of dominant position deeds.

25. 15 investigations on the possible infringement of the competition legislation were completed in 2018. In 87% of the 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.

26. The completed investigations focused on markets that have a direct impact on consumers: the motor third party liability insurance, hospital medical services, food retailing and tourism.

27. In 2018, 57 mergers were authorized, including cases when the authority accepted commitments for ensuring a normal competitive environment. Examples include the takeover of A & D Pharma Holdings by Glebi Holdings PLC and the acquiring of the sole control of Betty Ice SRL by Unilever South Central Europe SA.

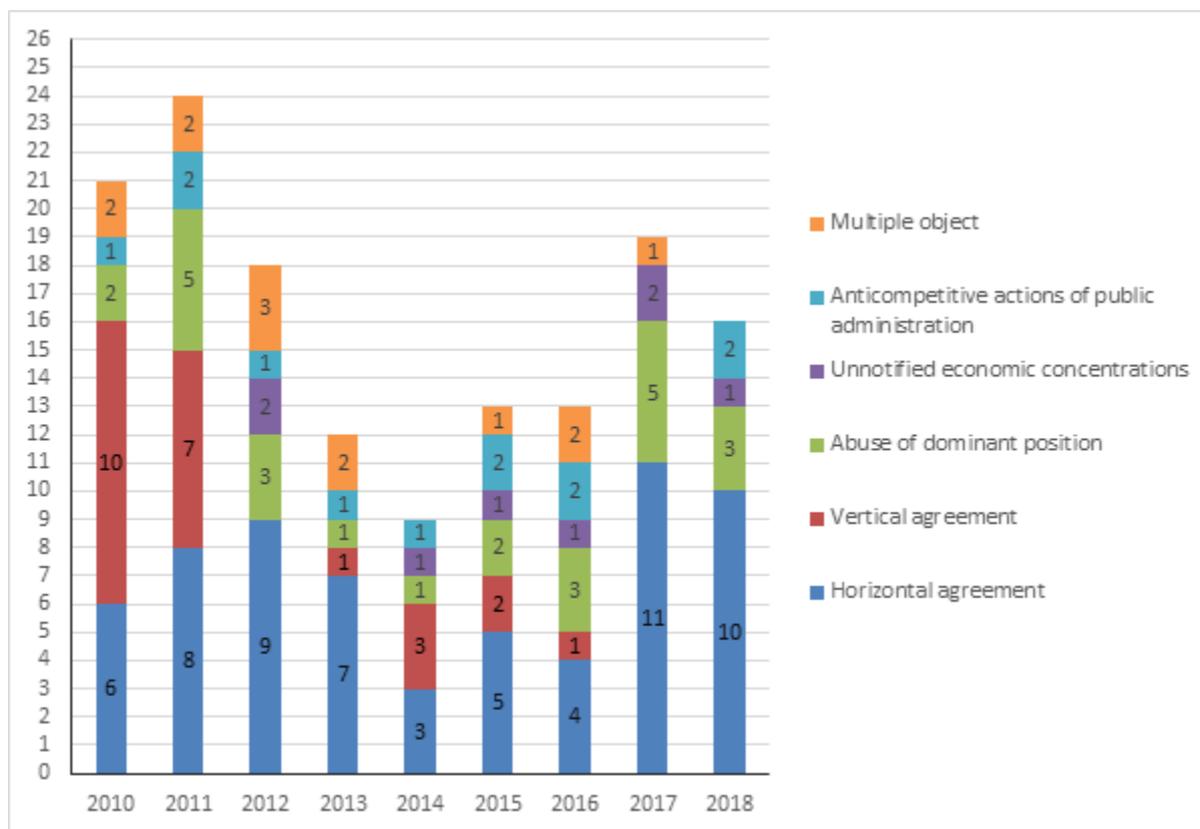
28. The Competition Council finalized 4 sector inquiries on the timber market, e-commerce - the marketing strategies, the natural gas sector and the exploitation of the mineral water resources, and made recommendations (out of which certain have already been implemented) to improve the competition in the analysed areas. In 2018, one sector inquiry was initiated. Currently, the competition authority is conducting 8 sector inquiries.

29. The Report on competition in key sectors included the analysis of the food retailing, energy and construction materials sectors. Within the report, the Competition Council continued to use the Competition Pressure Aggregate Index, which has as purpose to measure the inclination towards competition of certain markets or industries in the national economy. In 2018, the evaluation covered 43 industries.

Opened investigations

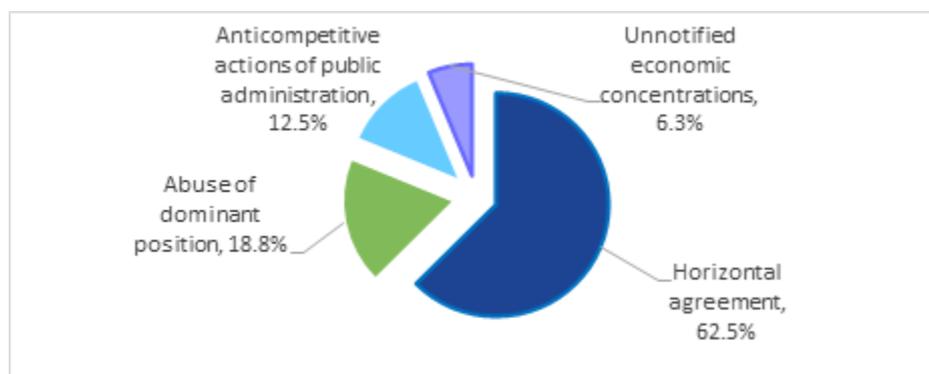
30. In 2018, **16 investigations** on alleged breaches of competition law have been opened, out of which 75% of them represented ex-officio investigations.

Figure 1. Number of opened investigations 2010-2018



31. The most part of the investigations on alleged breach of competition law opened in 2018 envisages horizontal anticompetitive agreements (10 cartel investigations), meaning over 60% of total opened investigations.

Figure 2. Structure of investigations on alleged breaches of competition law opened in 2018, in terms of the investigated practice

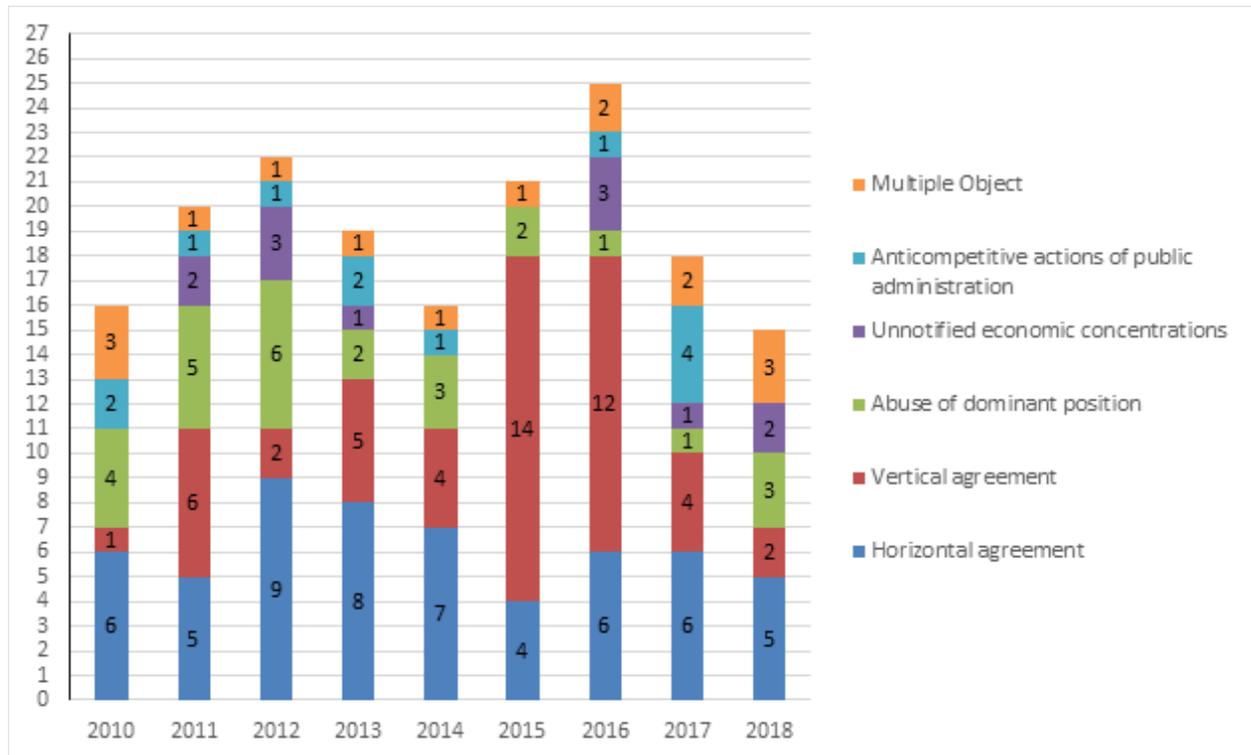


32. 5 out of the 16 investigations opened in 2018 envisaged the breach of both national and community legislation.

Concluded investigations

33. In 2018, competition authority finalized 15 investigations on alleged breach of competition law.

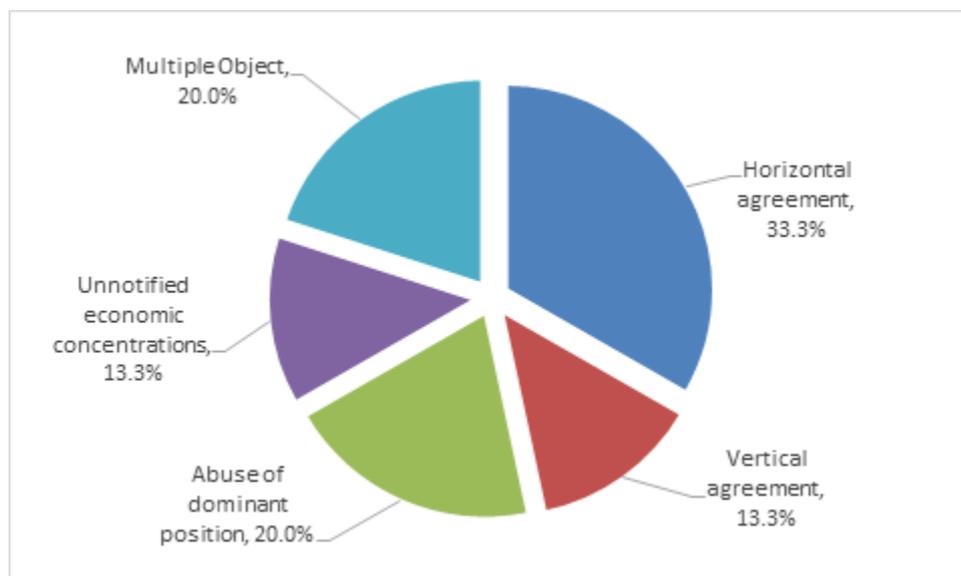
Figure 3. Number of closed investigations, 2010-2018



34. The most part of the investigations on alleged breach of competition law finalized in 2018 represented horizontal anticompetitive agreements.

35. 8 out of the 15 concluded investigations envisaged the breach of both national and community competition legislation.

Figure 4. Structure of the investigations on alleged breaches of competition law finalized in 2018, in terms of the investigated practice



36. The average duration of the investigations¹ on alleged breach of competition law finalized in 2018 was 2.84 years, at a small distance from the median time², of 2.74 ani, in this case.

37. Out of the total number of investigations finalized in 2018 on possible breaches of competition legislation:

- In 12 cases, the breach of law was noted;
- in 1 case, the proceedings were closed following the acceptance of commitments by companies;
- in 2 cases, the breach of law was not retained.

38. It should be noted that in the 12 cases finalized by noting the breach of law, 74 undertakings were sanctioned out of which 30 undertakings admitted breaching the law, benefiting from the leniency programme. Percentage of companies that made use of this mechanism almost doubled in 2018, representing about 41% from 21%, in 2017. The undertakings that have used this mechanism provided information on the existence of anticompetitive practices or additional evidence proving the infringement of the competition law.

¹ The average duration of the investigations was calculated by reference to the date of the decision, in order to ensure the comparability of the data. Information from previous years had been processed using the same model.

² The Median is an indicator of the central trend that is not affected by extreme cases.

Investigations in progress at the end of 2018

39. At the end of 2018, Competition Council recorded 37 ongoing investigations on alleged breach of competition law and 8 sector inquiries. To these, we add other 3 studies initiated in 2018.

Dawn raids

40. 62 headquarters/working locations belonging to 55 undertakings were inspected within 15 investigations in 2018.

Fines

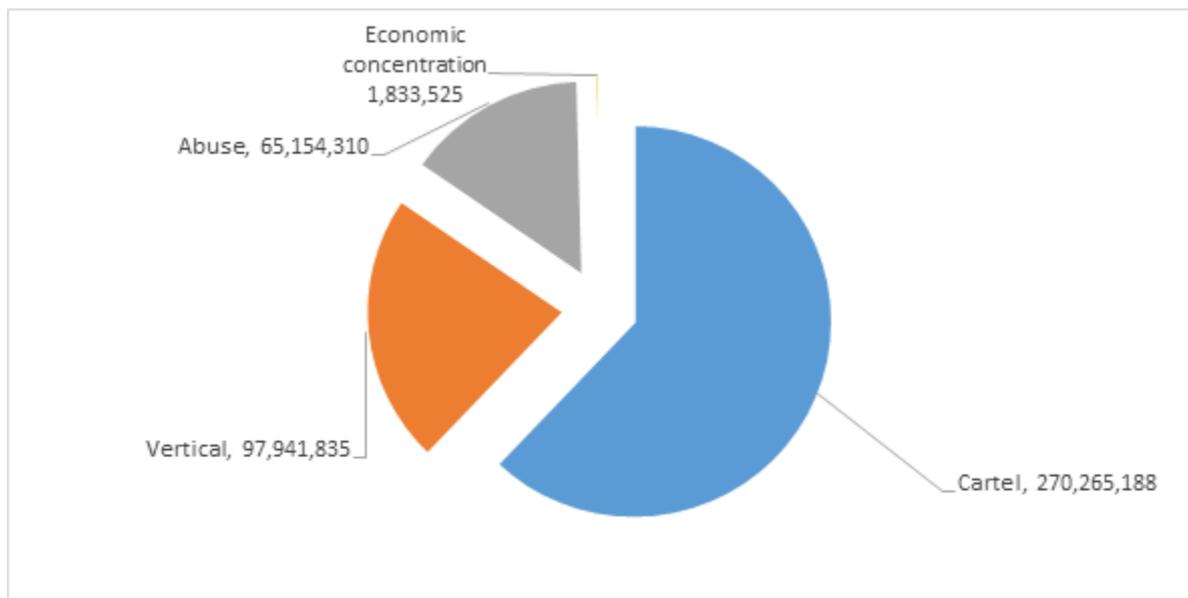
41. In 87% of the 15 cases finalized in 2018 the Competition Council sanctioned the violation of the competition law or the companies involved committed to rapidly restore the competition on the market.

42. The total amount of the fines was of 435,194,858 LEI, about 93.5 million EUR, more than 3.5 times more than in the previous year. For comparison, the budget of the institution financed by public funds in 2018 was of 53,110,000 LEI (about 11 million EUR).

43. Compared to 2017, in 2018, the percentage of the companies that have admitted the involvement in anticompetitive practices - and thus benefited from reductions of fines - was double, up to 40.5%.

44. From the point of view of type of competition law breach, 62.1% of the total sanctions applied envisaged cartels, 22.2% for vertical agreements, 0.3% for a multiplied-object agreement (abuse of dominant position and vertical agreement), 15% for abuse of dominant position and 0.4% for implementation of a merger prior to notification and decision making of the Competition Council.

Figure 5. Value of the sanctions applied, 2018 (lei)



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

Cartel, abuse of dominance and anticompetitive actions of public administrations

Cartel – Exchange of commercially sensitive information - The Motor Third Party Liability Insurance (MTPL) case ³

45. The ex officio investigation concerned the possible infringement of the national and Community competition law by the National Union of Insurance and Reinsurance Companies of Romania (NUIRCR), Media Xprimm SRL, the insurance companies members of NUIRCR and other insurance undertakings participating in the exchange of commercially sensitive information.

46. The exchange of information envisaged:

- (i) Approximately 80 indicators structured in three broad categories: technical indicators, financial indicators and indicators on the value of the reserves of insurance companies;
- (ii) future intentions to increase MTPL rates expressed within the meetings of NUIRCR Motor Insurance Section and through press releases.

47. (i) The exchange of information within NUIRCR regarding the indicators related to the insurance activity took place during 2007 – sem. I 2014. The information was accessed by the members (insurance companies) through individual user-name and password. The information was available quarterly, in an individualized form (by insurance companies and by insurance classes).

48. In the case of Media Xprimm, the information was published during 2003 - sem. I 2015 and aimed at providing an overview of the insurance industry. Media Xprimm, through the Insurance Profile magazine and Interactive Insurance Profile, published a limited number of technical indicators⁴ and a set of financial indicators⁵. The information was available to the general public for a fee, in a personalized form and with a quarterly frequency.

49. (ii) In the context of the extensive exchange of information on the insurance market, nine companies licensed to issue MTPL insurances, members of NUIRCR, engaged in an anticompetitive concerted practice, facilitated by the professional association, which had the purpose of increasing the insurance premiums. The concerted practice took the form of an *exchange of future intentions to increase the rates of the MTPL insurances*. This exchange took place within the meetings of NUIRCR Motor Insurance Section and through press releases. The practice was implemented between 18 October 2012 and 18 November 2016 and substantially reduced the competition between insurers authorized to issue MTPL insurances.

³ After publication, the decision will be available in Romanian at:

www.consiliulconcurentei.ro/documente_oficiale/concurentă/decizii/servicii.

⁴ Compared to those available within NUIRCR.

⁵ Which were not available within NUIRCR.

50. The parties involved were: Allianz, Asiom, Astra, Carpatica, Euroins, Generali, Groupama, Omnisig and Uniqa. Two of the companies participating in the concerted practice went bankrupt: Astra in 2016 and Carpatica in 2017.

51. The segment of the market affected by the concerted practice was that of MTPL insurance. This market segment has the following characteristics: inelastic demand in terms of price (insurance premium), restricted number of competitors, high entry barriers, often interaction between competitors, high market transparency, growing demand, not an innovative market segment, homogeneous insurance products, no negotiation power for consumers.

52. The investigative team also used the *Panzar-Rosse* test to determine the correlation between the degree of competition in the non-life insurance and MTPL insurance segments and the behavior of the insurance companies. The results reinforced the hypothesis that the collusive behavior of the companies (NUIRCR members authorized to issue MTPL insurances) could not be excluded from their conduct on the market.

53. In the course of the investigation, Euroins fully admitted the anticompetitive practice and provided the Competition Council with a series of documents and information within the leniency procedure, which made a significant contribution to the investigation process. Therefore, the company benefited from a reduction of the fine.

54. Following this investigation, the Competition Council found violations of the national and European competition rules by NUIRCR, Allianz - Tiriac Asigurari SA, Romanian Insurance - Asiom Vienna Insurance Group SA, Insurance Company Reinsurance Astra Asigurari SA, Carpatica Asig SA, Euroins Romania Asigurări-Reasigurare SA, Generali Romania Reinsurance SA, Groupama Asigurări SA, Omnisig Vienna Insurance Group SA and Uniqa Asigurări SA and decided to sanction them. The total amount of the fines was 246,739,197 LEI (approximately €53 million).

55. As regards Media Xprim and other investigated insurance companies that either were not members of NUIRCR or were not authorized to issue MTPL insurances, the Competition Council decided to close the investigation.

56. Following this investigation, the competition authority made the following recommendations:

- the Financial Supervisory Authority should eliminate the specific provisions imposing the obligation to practice the same price for the MTPL insurances irrespective of the distribution channel.
- the black box mechanism for exchanging of information on the insurance market should be maintained.

Cartel – Tourist Services

57. The investigation was initiated following the information received in 2016 by the Competition Council through the Whistleblower Platform.

58. During the investigation, the competition authority identified two distinct infringements of national and Community competition law.

59. The first infringement, committed by 14 travel agencies, consisted of a concerted understanding and / or practice on the coordination of commercial pricing policies in order to impose a minimum level of sales price to customers on the market for the

marketing of tourism products and / or packages of travel services through travel agencies in Romania. The duration of the infringement was between June 3, 2013 and September 24, 2016.

60. The coordination of trade policies in terms of price and discount for tourism products and / or tourist packages was made in order to stop the fall in prices and, respectively, price increases, including through the exchange of competitively sensitive information of a kind to facilitate the coordination of market behavior.

61. The Agreement was put into practice by:

- directly imposing a minimum sale price on customers;
- limiting or eliminating the promotional campaigns of some competing companies, whereby the airport charges for flight tickets for charter flights were reduced or even offered free of charge to the consumer / tourist;
- limiting and / or dividing the number of seats in contracted charter flights in order to impose and subsequently maintain a minimum sales price to customers.

62. CHRISTIAN'76 TOUR S.R.L. applied to the leniency program, providing evidence of anti-competitive facts, and received immunity from the fine.

63. Also, AEROTRAVEL S.R.L., EXIMTUR S.R.L., FIBULA AIR TRAVEL S.R.L., NOVA TRAVEL S.R.L., PARALELA 45 TOURISM S.R.L., PROMPT SERVICE TRAVEL COMPANY S.R.L., WORLD TRAVEL S.R.L., TEZ TOUR S.R.L., TOURING EUROPABUS ROMANIA S.R.L. have fully acknowledged their anticompetitive action, benefiting from the reduction of the fine.

64. For this, the Competition Council imposed a total fine of 12.8 million lei (about 2.7 million euros) for the 14 travel agencies.

65. The analysis will continue on the possible anti-competitive behavior of TAROM S.A. to commit the anti-competitive act.

66. The second infringement of national and Community competition law committed by the National Tourism Agencies Patronate (ANAT) costing the imposition of a minimum price on the members of the association. In other words, ANAT banned its members operating as resellers for tourist products and / or package travel services, to grant discounts to customers in the form of the transfer of part of their commissions from the tour operators who offered those products / tourist packages. The total duration of the infringement was between 13 September 2012 and 13 April 2016.

67. All the discussions and attempts at the association's aimed to ban the cession of commissions mainly pursued:

- stopping trade strategies that provide discounts to end-users;
- Stopping the offers of some tour operators that promote competitive offers in favor of the final consumer.

68. There were other measures that could directly penalize possible deviations (eg warning / exclusion from the association, with the effect of banning the access to tourism fairs). Thus, the Member States have imposed a certain degree of market behavior without their own commercial policy being established and without participating in the decision-making process of the association as a whole.

69. ANAT fully acknowledged its anticompetitive action, benefiting from the reduction of the fine. For this, the Competition Council imposed ANAT a fine of about 53,000 lei (about 11,400 euros).

Bid rigging cartel – Natural gas transport works

70. The investigation envisaged a possible violation of national and Community competition legislation by a number of companies who have made an agreement by which they divided the works for construction of pipelines for the transport of natural gas and related work purchased by S.N.T.G.N TRANSGAZ S.A. in 2011 through public procurement procedures.

71. The investigation was initiated following the intimation by the Prosecutor's Office attached to the High Court of Cassation and Justice - Directorate for Investigating Organized Crime and Terrorism.

72. During its procurement procedures, the undertakings concerned (INSPET SA, CONDMAG SA, TMUCBSA, ROMINSTA SRL, MOLDOCOR SA, CIS GAZ SA, ARMAX SRL, Pegamont SA, ECPROD SA, AMARAD SA POSADA MED SRL, STAZA INVEST SRL and INSTCOMP SA) communicated both directly and indirectly information on how to coordinate behavior in auctions so that contracts are awarded by the designated undertaking, according to the principle of rotation.

73. As concerns direct communication between undertakings, this occurred both before the deadline for submission of tenders, to determine how to be prepared, and before the electronic auction to determine the behavior that would be adopted by the undertakings, consciously substituting thus competition risks with practical cooperation.

74. The indirect communication among undertakings was achieved through representatives of the contracting authority, members of the evaluation committee who communicated to bidders either the name of company designated to be a winner of the auction or how they had to offer during the electronic auction or the behavior that they would adopt after its completion, so that the winner undertaking would be the undertaking established in advance by the cartel members.

75. De existența acestui plan, aveau cunoștință și unii reprezentanți ai S.N.T.G.N. TRANSGAZ S.A., membri în comisiile de evaluare, care, prin acțiunile întreprinse, au sprijinit funcționarea cartelului.

76. Therefore, cartel members adhered to a common plan under which they have established lines of action coordinated during the auctions organized by TRANSGAZ SA in 2011, in order to award public procurement contracts by rotation. Some representatives of S.N.T.G.N. TRANSGAZ S.A, members in the evaluation committees took note of the existence of this plan and supported by their actions the functioning of the cartel.

77. STAZA INVEST S.R.L. fully acknowledged the anticompetitive deed and benefited from the reduction of the amount of fine.

78. In this case, the Competition Council imposed sanctions totalling 10.4 million lei (approx. 2.2 million euros).

Anticompetitive vertical agreements - Retail of food products⁶

79. The ex-officio investigation initiated in 2014 concerned a possible vertical agreement between retailers and a number of their suppliers of current consumer goods by fixing resale prices.

80. Following the investigation, it was concluded that during 2010-2016, Auchan Romania SA, Carrefour Romania SA and Romania Hypermarche (Cora) SA, retailers of current consumer goods, mainly alimentary, and 4 suppliers, respectively Star Foods EM SRL, Quadrant-Amroq Beverages SRL (Pepsi), Strauss Romania SRL and Nelson Prod SRL concluded anticompetitive agreements / concerted practices restricting their behavior on the market and fixing minimum or fixed levels of the sale prices for end-users.

81. The sale price restriction was made in the context of promotional campaigns carried by retailers and through contractual documents concluded between retailers and suppliers or through correspondence documents concluded on the basis of contractual provisions. Promotional forms were sent by retailers to suppliers in order for them to confirm the promotional activities concerning the sale of their products in stores.

82. Specifically, the supplier informed the retailer that, during the promotion made in the retailer's shops, the products supplied would not be sold at a price lower than a certain level or sold at a certain fixed price. Thus, there were cases when the supplier included in the form the sale price for a certain the product sold by the retailer to its customers.

83. Maintaining prices at an artificial level damages competition and, implicitly, the final consumer.

84. The investigation has revealed the breach of national rules and European competition rules by fixing the shelf prices within retailers' promotions.

85. The Competition Council sanctioned the seven companies active on the Romanian food market (3 retailers and 4 suppliers) with fines totalling Lei 87,713,336 (about € 18.8 million).

86. Carrefour Romania SA admitted the anticompetitive practice and thus benefited from a reduction of the fine.

Multiple subject anticompetitive vertical agreements & abuse of dominant position - Stem cells

87. The investigation was initiated in 2015, following a complaint from a supplier of stem cell services (prelevation, processing and storage) against providers of maternity hospital services care and providers of stem cell services (prelevation, processing and storage), cells originating from the umbilical cord blood and from umbilical cord tissue.

88. The complaint concerned a possible abuse of a dominant position of the maternities and / or a vertical agreement between maternities and their suppliers aiming at eliminating direct or potential competitors of their suppliers.

89. Following the investigation, it was found that the competition between the stem cell banks was affected by restricting the possibilities for other competing banks to work with the maternities.

⁶ After publication, the decision will be available in Romanian at:

www.consiliulconcurentei.ro/documente_oficiale/concurentă/decizii/bunuri_de_consum.

90. Each maternity hospital had a contractual relationship of exclusivity with a stem cell bank to which the patients were directed. If the patients opted for the agreed bank, the stem cell sampling services were free of charge. If they opted for another bank, they had to pay a tariff set between the maternity and the agreed bank.

91. Under these conditions, patients had reduced access to another alternative supply of stem services based on their quality and price, and the final cost paid by the patients was much higher if they did not choose the bank approved by the maternity.

92. The high level of the blood / umbilical cord prelevation tax applied to the patients who opted for non-partner banks was reflected in the very small number of patients who chose these banks.

93. The Competition Council sanctioned 5 medical centers (Medicover Hospitals, Med Life, Arcadia Hospital, Genesys Medical Clinic and Rur Medical) and 2 stem cell banks (Stem Sure Solutions and CBC Laboratories) (for concluding vertical anticompetitive ob the market of medical services provided by private maternities. The total amount of the fines was of 1,225,877 LEI (€263,431). All the companies involved into the anticompetitive practice admitted the breach of the competition law and benefited from reductions of the fines.

94. Also, following the investigation, the Competition Council made a number of recommendations to private maternities and to stem cell banks. Thus:

- the maternity must establish relationships with the patient - in terms of blood / tissue prelevation, without any influence from a stem cell bank. The new relationships should lead to a review of how maternity prices are set for the service of blood / tissue prelevation service and to real competition between stem cell banks, based on the quality of the services provided and on the prices charged, and not on interventions made over the maternity.

95. The prices charged by the maternity should be known by its patients as fees for their own services provided to their clients, as in the case of the other prices for maternity medical services.

- the stem cell banks must have a relationship with the patient in respect to the stem cells service(prelevation, processing and storage) of. The choosing of the stem cell bank to store the biological material should be left to the patient and not determined / influenced by the maternity as a result of interventions made by stem cell banks over to the maternity.

Abuse of dominant position – Orange case⁷

96. The ex officio investigation was initiated in 2016 and envisaged the possible infringement of the national and community competition rules by Orange Romania SA through discriminatory treatment and by refusing to supply on the market of mobile phone payments through short-messages, respectively on the market of advertising short messages sent by mobile phones.

97. All mobile operators have, in parallel, the numbering resources of short numbers. In order for a beneficiary of short messaging services to be able to send commercial

⁷ After publication, the decision will be available in Romanian at::

www.consiliulconcurentei.ro/documente_oficiale/concurentă/decizii/servicii

messages, for making payments, as well as for sending advertisements within mobile networks, it must conclude a contract with an integrator / aggregator.

98. Integrators are undertakings that mediate the transmission of commercial messages between certain beneficiary companies and the customers of mobile telephony operators through short numbers. Therefore, they conclude access contracts with all mobile operators and further provide the access to the beneficiaries to packets of integrated short numbers in all these mobile networks.

99. Commercial messages include the transmission of advertising messages (for example, providing information on products or services to customers or facilitating promotional campaigns), as well as payments (e.g. for downloading games, televoting, parking payments, donations etc.).

100. The access to the Orange network is indispensable for integrators to market their own products, as Orange has the largest number of users on the mobile market, and the beneficiaries want to have access to all of these users.

101. The anticompetitive practice consisted in an abuse of Orange's dominant position during the period 08.02.2011-28.10.2015, by limiting the access of Simplus Invest SRL to its mobile network, blocking its commercial message transmission to / by Orange customers.

102. Following the analysis, the Competition Council decided to sanction Orange with a fine of about 65 million lei (about €14 million).

103. The Competition Council will inform the National Authority for Management and Regulation in Communications on the malfunctions identified within the market investigation in order to analyse the possibility of imposing ex-ante measures in this field of activity.

Investigation into the analysis of an economic concentration - Production and marketing of bricks and ceramic blocks

104. The economic concentration operation was notified to the competition authority in October 2017 and was planned to be achieved by acquiring direct sole control by Wienerberger Bricks Systems SRL (hereinafter Wienerberger Romania), a member of the Wienerberger Group, over Brikston Construction Solutions SA (hereinafter Brikston).

105. At the time of analyzing the notified economic concentration, seven major producers were active in the Romanian market for the production and marketing of bricks and ceramic blocks: Wienerberger Romania, Brikston, Cemacon SA, Soceram SA, Siceram SA, Macofil SA and Euro Poroton SA. In Romania, Wienerberger Romania had four production units, Cemacon SA had two production units and the other producers had one production unit. A reduced number of small producers were active on this market and imports and intra-Community acquisitions were also present.

106. Following the analysis carried out in the first phase of the procedure, the Competition Council concluded that the notified operation led to the creation of a dominant position on the Romanian market for the production and marketing of bricks and ceramic blocks, a market where both Wienerberger Romania and Brikston were present.

107. Given that the proposed economic concentration raised serious doubts on the compatibility with a normal competitive environment and that these could not be

remedied by the commitments proposed by Wienerberger Romania, in May 2018, the Competition Council decided to open an investigation and thus to starting he second phase of the procedure. In July 2018, the proceedings before the Competition Council ceased following the withdrawal of the parties from the proposed transaction, which was notified to the competition authority.

108. At the end of 2018, the control over Brikston was taken by Leier Rom SRL, a member of the Leier Group. Leier Rom SRL manufactures concrete products in Romania and sells prefabricated building materials and elements in the Group's production facilities outside the country.

Sector inquiry - Online marketing, the marketing strategies⁸

109. The competition authority analyzed by means of a sector inquiry launched in 2016 the impact of the development of online commerce over the competitive environment, from the marketing strategies (especially pricing) perspective.

110. During the investigation, information requests were sent to the most important online retailers active on the electro-IT market segment.

111. Three case studies⁹ were carried out regarding the price formation mechanism. The methodologies used in the studies were different, but the analyses conducted led to the same conclusions.

112. A number of conclusions were drawn, in particular, on:

- The structure, characteristics and dynamics of the e-commerce sector

113. E-commerce is an economic segment characterized by high growth rates and specific structural, technical and behavioral conditions that call for new approaches in enforcing the competition policy.

114. The analysis focused in particular on the electro-IT segment, on the main market players, on this specific type of sales and on the business models developed by them.

115. The e-commerce sector, especially the electro-IT segment, has oligopolistic features, including a core of relevant players (where the leader holds a significant position on certain segments, different from the next competitors); and a category of retailers with insignificant market shares and experiencing significant specific barriers to development.

116. The sector has the tendency to concentrate, counterbalanced by the opening-up trend (medium / long term) generated by the intensification of the competitive pressure exerted by some important players outside the country. Under these circumstances, it is likely that development barriers and the gaps between major players and small players will increase, especially due to the investment and strategic requirements imposed by technological developments (e.g. the implementation of omnichannel business models, the development of the channel mobile for sale etc.).

⁸ The Report is available in Romanian at: www.consiliulconcurentei.ro/publicatii/rapoarte_diverse.

⁹ The name of each study contains the year when the most important discount campaign (Black Friday) was organised and for which data was processed.

- The functioning of discount campaigns and the legal provisions in the field

117. The analysis focused on the source of price reductions, the level of discounts, the synergy effect of the main discount campaign (Black Friday), the marketing budgets allocated by the participating retailers, the characteristics of the Black Friday campaign and the profitability of the discount campaigns.

118. Without expressing its views on issues related to the law-making process, the interpretation of the Community law, the approximation of laws and the application of the law, the Competition Council came to the following findings in the context of its concern regarding the distortion of the competitive mechanisms through potential misleading commercial practices of the online retailers, in terms of price reduction campaigns:

- The Competition Council identified the non-observance of the legal provisions on price reductions and the negative effects that this behavior generates in the sense of distorting customers' perception and the competitive mechanisms;
- As a result of the public consultation process, market opinions were received on the non-compliance of the internal legal provisions with the European norms (specifically Directive 2005/29 / EC, transposed into the national legislation by Law no. 363/2007), suggesting the legality of retailers' online practices regarding the pricing policy of discount campaigns.

119. In respect to this last opinion, the following should be underlined:

- In Annex I, Directive 2005/29 / EC sets out an exhaustive list of 31 commercial practices which, in accordance with Article 5 (5) of that directive, are considered to be unfair in all circumstances'
- EU Member States can't adopt, as expressly provided for in Article 4 of the Directive, more restrictive measures than those defined by that Directive, even to ensure a higher level of consumer protection,
- However, in accordance with the provisions of Articles 5 to 9 of the Directive, other unfair commercial practices than those listed in Annex I (eg misleading business practices under Article 6) may be sanctioned by a case-by-case assessment.

120. It is precisely in this context that the Competition Council has considered it important for the authorities with competence in this area, in particular the National Consumer Protection Authority, to verify the compliance of the specific legal provisions (including the reference prices used in price reductions), to make proposals, where appropriate, to modify, strengthen and harmonize the national legal framework in line with European regulations and to discourage this behavior by assessing the behaviour on a case-by-case basis.

121. Competent authorities should also consider the possibility that unfair behavior regarding price strategies may have taken several forms of discounting (e.g loyalty campaigns to customer categories).

3. Judicial review of RCC decisions in 2018

122. The number of cases in which the Competition Council had a procedural quality and which concerned the field of competition in 2017 was 237. These files accounted for 94% of the total number of files handled in court by the institution.

123. The percentage of favorable judgments handed down by the High Court of Cassation and Justice was 92%, the proportion of judgments favorable to the Competition Council given in appeal by the Supreme Court being 94%.

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

125. We present below two irrevocably settled cases in 2018 by the High Court of Cassation and Justice.

3.1. ECOTIC case – cartel of buy-back companies

126. The Competition Council has noted and sanctioned the infringement 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 Gemini SP SRL (hereinafter referred to as Gemini).

127. For the infringement found, the Competition Council sanctioned Gemini with a fine of 1.437.556 lei.

128. The Competition Authority found that the 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 during 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, the sanctioned companies have set up a mechanism to ensure the mutual control of marketing of their products in the buy-back campaigns.

129. Against the Competition Council Decision no. 8/2014, including Gemini brought annulment actions at the Bucharest Court of Appeal - the Administrative and Fiscal Court.

130. In the Gemini 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 individualization of the sanction applied.

131. The Bucharest Court of Appeal held that Gemini 's infringement of competition rules had been proven to the requisite standard of proof.

132. 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. Thus, the parties replaced 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 cooperation 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 can not be an objective economic criterion on which the activity of the Association could rely.

133. As regards the individualization 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.

134. Gemini 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 the Competition Council's Decision, in terms of both the deed and guilt of the company and the fine imposed.

135. The Court of Appeal held that the deed sanctioned by the Competition Council's decision was proved to have an anticompetitive character, representing an understanding of the subject matter and proved to the required standard of proof in the matter.

136. As regards the fine imposed on Gemini, the supreme court found that the competition authority correctly individualized the sanction, without reducing the amount of the fine imposed.

137. The solution given by the High Court of Cassation and Justice follows its previous jurisprudence, the Supreme Court maintaining the Competition Council's decision as legal and thorough and in two other cases, namely Maguay Impex SRL and Panasonic Marketing Europe GmbH through Panasonic Marketing Europe GmbH Wiesbaden Germany - Bucharest Branch.

3.2. Cartel – competitors' elimination - Media agencies case

138. By Decision no. 49/2014, the competition authority found and sanctioned the infringement of national law and Community competition law by Brand Programming Network S.A., B.V. MCCann-Erickson S.R.L., GroupM Media Operations S.R.L., Media Media Initiative S.A., Mediacom Romania S.R.L., Mediaedgencia Romania S.R.L., Mindshare Media S.R.L., Opti Media S.R.L., Starcom Mediavest Group S.R.L., United Media Services S.R.L. and Zenith Media Communications S.R.L., by participating in an anticompetitive agreement that aimed at eliminating from the market of media communication services in Romania the media agencies belonging to or affiliated with The Group.

139. By the Competition Council's decision it was noted that a series of meetings and discussions took place between the investigated and competing media companies during March-October 2012, which outlined the anticompetitive agreement designed to build and implement a strategy that would help eliminate the main competitor, The Group.

140. During the meetings and discussions that took place between the involved companies, four directions of action emerged, confirmed by the subsequent market behavior of the parties involved.

141. Practically, the sanctioned companies decided, in a coordinated manner, not to participate in the auctions and media events to which The Group was invited, to send letters to all The Group's customers, through which "the business practices" used by it were denounced and the transmission of letters to major media vendors asking for the detailed business verification of the relationships with The Group.

142. All 11 sanctioned companies filed appeals at the Bucharest Court of Appeal, mainly requesting the annulment of the Competition Council's decision and, in the alternative, the reduction of the contravention penalties applied.

143. In the case of United Media Services SRL, the trial court rejected the applicant's request, maintaining the contested decision in its entirety, both in terms of the anticompetitive act and the individualization of the applied sanction.

144. As regards the merits of the case, the Bucharest Court of Appeal held that United Media Services' infringement of competition rules was proven to the required probative standard. In this regard, it was noted that all the actions of the sanctioned companies, including United Media, demonstrate that their representatives have proposed solutions for the elimination of their competitive The Group, have agreed to coordinate the behavior on the media market in order to achieve their goal and behaved in accordance with the established ones, putting into practice the understanding. At the same time, the trial court held that all the directions of action jointly set by the sanctioned companies were part of a general plan by which competing companies knowingly substituted the risks of competition with practical cooperation.

145. The Court of Law held that the contested decision was correct to conclude that the most damaging measure from a competitive point of view was the condition of participation in the auctions organized by clients for the exclusion or non-invitations of the competitor The Group, the coordinated refusal to participate in the auctions to which The Group was invited if the client had decided not to comply with the request of the investigated companies and consequently invited The Group. This action, combined with the other measures considered to be complementary, was a complex plan capable of limiting or impeding market access and, ultimately, even eliminating the competitor concerned by those actions.

146. Regarding the individualization of the sanction, namely the request of United Media Services to reduce the fine, in the amount of 498,748 lei, the court of law did not accept the applicant's claims that the fine should be applied not by reference to the turnover as it was reflected in the balance sheet, but solely by reference to the value of the commission received by the media agency acting as intermediary in the relationship between the customer and the media provider.

147. As regards the way in which the sanction applied to United Media Services was individualized, the court considered that the competition authority had properly implemented both the main legislation and the secondary legislation in the contested decision.

148. United Media Services appealed. The High Court of Cassation and Justice rejected the appeal, with the consequence of maintaining the Competition Council's decision, both regarding the deed and the guilt of the company, as well as the imposed fine.

149. A similar decision was pronounced by the High Court of Justice and Cassation in the case of Mediacom Romania SRL, a company which was subject to a fine of 1,328,727 lei.

150. Initially, the Bucharest Court of Appeal dismissed as unfounded the action brought by the applicant, from the point of view of the request for annulment of the Competition Council's decision, as well as the reduction of the fine. Mediacom Romania has filed an appeal, which was dismissed as inappropriate by the High Court of Cassation and Justice, including the company's request for evidence management with accounting expertise.

151. The case of United Media Services and Mediacom Romania represents the first two cases settled by the High Court of Cassation and Justice regarding the contestation of the Competition Council Decision no. 49/2014.

4. Resources of competition authorities

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

4.1.1. Annual budget:

152. In 2018, the Romanian Competition Council's budget was de **57, 989** thousand lei, i.e. an increase by about 16% compared to the previous year.

153. The general budget execution for 2018 was 98.86%.

4.1.2. Human resources

154. In 2018, the staff of the Romanian competition authority represented 339 employees, divided in directions, services and compartments.

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

156. The competition inspectors represent 69 % of the total number of staff.

157. As regards the professional background of the competition inspectors, most of them are economists (52%), followed by legal experts (24%).

158. In 2018, the RCC recruited on an undetermined period 25 people as competition inspectors and recorded 17 departures from the institution.

159. Continuous training is a core concern of the Competition Council. In 2018, 204 employees participated in 28 training courses.