GLOBAL LEGAL INSIGHTS

Cartels

Enforcement, Appeals & Damages Actions

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Romania

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Overview of the law and enforcement regime relating to cartels

The legal basis for the cartel regime in Romania is the Act No. 21/1996 (the **"Competition Act"**), supplemented by wide secondary legislation (the **"Competition Legislation"**). Over the past two years the Competition Legislation has undergone an intensive process of amendment, aimed mainly at shortening the duration of investigations. The Competition Legislation introduced several new institutions, such as the recognition procedure, or amended existing ones (e.g., in some cases, the hearing procedure is at the parties' choice, the parties can challenge the investigation order only jointly with the Competition Council's decision).

The Competition Legislation regulates both public enforcement and private enforcement of competition rules related to cartels.

Public enforcement is based, mainly, on contraventional liability of the companies or associations of companies involved in cartels. The Romanian legislation qualifies fines imposed according to Competition Legislation as administrative by nature, even though European Court of Human Rights case law considers antitrust sanctions similar to criminal sanctions (given their repressive, preventive and punitive character).

The Competition Act regulates criminal liability also, but only for natural persons taking part in a cartel (except for bid rigging) with fraudulent intent and with the precise purpose of committing the illegal deed.

The New Criminal Code[1] provides a special criminal offence regarding bid rigging. It incriminates both natural and legal persons for removing, by coercion or corruption, a participant from a public tender, and for agreements between participants to distort the bidding price. It is unclear at this stage how the New Criminal Code will be reconciled with the Competition Act, which also contains provisions on public tenders.

The only administrative authority competent in public enforcement of Competition Legislation is the Romanian Competition Council (the **"Council"**), an autonomous body. Decisions issued by the Council are subject to court revision first by the Bucharest Court of Appeal and, second, by the High Court of Cassation and Justice.

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

Should the manager, director or other employee of the involved undertaking initiate a cartel, the Council is not competent to apply fines or other sanctions to them. The natural person can be sanctioned under (i) internal procedures of the undertaking, (ii) tort law[2] (the legal person can hold liable the natural person who caused the punished behaviour for any damages that the legal person may have suffered from the behaviour), or (iii) criminal law.

The Competition Legislation also provides tools for private enforcement. Article 61 of the Competition Act regulates the general framework for the private enforcement of competition provisions, explicitly stating that the persons (both legal and natural persons) harmed as a result of anticompetitive practices (including cartels) are entitled to seek relief in court. The Competition Act also expressly regulates the rights of specified bodies to bring representative damages actions on behalf of consumers (as we will detail in the section *"Developments in private enforcement of antitrust laws"*).

Overview of cartel enforcement activity during the last 12 months

The Council's activity has increased significantly over the past few years and is, currently, a force to be taken into consideration when acting on the market. The preventive character of the fine means that more and more companies become aware of the risk of anticompetitive behaviour and carry out specific training sessions with their employees[3].

The number of new investigations, on-going investigations, dawn raids and the value of the fines imposed reflect the increased activity of the Council[4]. As can be inferred from the figures below, approximately half of all investigations carried out by the Council concern alleged cartels in various market sectors such as taxi services, drugs, network communication services, etc.

During the first half of 2012, the Council: (i) had 77 ongoing investigations, out of which 63 aim at anticompetitive agreements[5]; (ii) opened 14 new investigations, out of which 9 related to alleged cartels; and (iii) finalised 10 investigations, out of which 4 related to cartels.

Taking into account numbers per year, in 2011, the Council: (i) had 66 ongoing investigations out of which 23 targeted cartels (no new investigations were opened in the second semester of 2011); (ii) opened 24 new investigations, out of which 9 related to alleged cartels; and (iii) finalised 20 investigations out of which 6 related to cartels.

And in 2010, the Council: (i) had 60 ongoing investigations, out of which 45 aimed at anticompetitive agreements[6]; (ii) opened 21 new investigations, out of which 8 related to alleged cartels; and (iii) finalised 20 investigations, out of which 9 aimed at cartels.

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

The Council's activity regarding dawn raids had minor variations in the analysed period of time (2010-June 2012). In the first semester of 2012, the Council carried out 95 dawn raids and in the same period in 2011 it carried out 105 dawn raids. Similarly, throughout the year 2011 the Council carried out 136 dawn raids and throughout the year 2010, 187 dawn raids.

The fines imposed by the Council in 2011 in cartel cases represent 72% of the total fines, approx €212m compared to the total amount of fines imposed, which in 2011 was approx €295m. In 2011 the Council imposed the highest fine in its activity, of approx €210m on six oil companies for a cartel to withdraw from the market the Eco Premium gasoline blend.

Key issues in relation to enforcement policy

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

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

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

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

In fact, the majority of the latter investigations are opened on the Council's own initiative.

In the first half of 2012, 86% out of the total new investigations were opened *ex officio* by the Council, in 2011 – 60%, and in 2010 – 80%.

In its 2011 Annual Report, the Council stated that its focus for 2012 would be on investigations in the energy sector, the construction of national roads and highways, the food retail sector and public tender procedures regarding regional development projects.

The Council's plan for 2012, also laid down in the 2011 Annual Report, is to finalise the sector enquiry regarding the electric energy market, opened in 2010, the investigations on possible agreements between traders and suppliers regarding the resale price, and the investigations on public tenders regarding road markings, weapons purchasing and construction related to gas distribution. We are expecting new sanctioning decisions by the end of the year, as this is the period when the Council usually finalises more investigations.

As regards the main types of infringements, it is interesting that in 2011, the enforcement policy was focused on infringements regarding bid rigging, which represented 71% of the investigations on cartels, as opposed to previous years when this type of infringement was not so "popular" in the Council's activity. The Council anticipated this situation and in 2010 established a special direction targeting bid rigging, namely Auctions and Petitions Direction.

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

Key issues in relation to investigation and decision-making procedures

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

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

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

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

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

Where the public interest prevails over the private interest of the concerned parties, the Competition Legislation gives extensive rights to the Council and its competition inspectors in order for them to achieve their purpose and correlative duties to the parties. For example, the competition inspectors can request from undertakings or public authorities the information and documents they deem necessary for the investigation's purpose, while the competition inspectors are entitled to undertake dawn raids at the concerned undertakings' premises based on an inspection order issued by the President of the Council. Dawn-raid rights are correlated with the private interest of the parties and the right to a

private life of natural persons. Therefore, the inspectors are able to search the private premises of managers, directors or employees of the investigated party only if there is a prior authorisation issued by one of the court judges (the so-called "search warrant").

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

In practice, the period of investigation varies from year to year. The average duration of the investigations finalised in 2011 was of approx 3 years; those finalised in 2010 of approx four-and-a-half years and in 2009 of approx one-and-a-half years.

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

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

Leniency/amnesty regime

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

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

The leniency regime in Romania, regulated by the Competition Act, is detailed in the Council's Guidelines establishing conditions and criteria for the application of the leniency policy (**"Leniency Guidelines"**).

The involved parties in both vertical and horizontal agreements may apply for leniency, unlike the European Union provisions that apply the leniency policy only to cartels (horizontal agreements).

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

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

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

Administrative settlement of cases

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

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

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

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

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

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

The initiative of submitting the commitments must belong to the party/parties being investigated, and they may make use of this right from the commencement of the investigation until the Council sends the investigation report to the party. Also, the Competition Legislation provides that the commitments must not be withdrawn, but does not provide any sanctions for withdrawal.

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

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

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

Third party complaints

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

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

Even though the Council has the possibility to reject complaints, in fact in the majority of cases, this does not happen. For example, in 2011 the Council has opened investigations in approx 90% of the cases in which it received a complaint.

Regarding the right of access to documents contained in the investigation files, the Competition Legislation has granted this right to certain third parties in limited situations. For example, before the commencement of the investigation, the author of a complaint, which was informed by the Council that it would reject its complaint, is entitled to demand access to the non-confidential version of the documents on which the Council based its preliminary analysis. In cases where, further to a complaint made by a private person, the Council starts an investigation, the President of the Council may approve the hearing of the complainant and/or provide a non-confidential version of the investigation report, if the latter demands so.

Civil penalties and sanctions

The Council's procedure for imposing sanctions is, overall, transparent. In the majority of procedures, the Council makes known to parties involved in investigation the (civil) penalties and sanctions that they risk, and their right to appeal an act of the Council.

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

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

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

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

Another issue related to sanctions worth mentioning is the liability of the parent company for involvement in a cartel of its subsidiary. As can be inferred from its case law, the Council assesses that where a subsidiary is wholly owned, there is a rebuttable presumption that the parent company was in a position to exert a decisive influence over the conduct of the subsidiary and thus the fine shall be imposed on the former. In the Council's investigation regarding private pension funds[7], the investigation team wanted to hold liable the parent company (a holding) of one of the funds that participated in the cartel, but based on the parties' observations to the investigation report, the fine was finally imposed on the fund itself.

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

Nevertheless, in third party complaints, the co-infringers in a cartel case are jointly liable before third parties. This rule is applicable in light of the general legal provisions, even though the Competition

Legislation does not expressly settle this matter. There is one exception: the undertakings enjoying immunity from fines cannot be held jointly liable for their participation in cartels.

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

Right of appeal against civil liability and penalties

As mentioned at other sections of the article, the sanctioned parties may appeal the Council's decision before the Bucharest Court of Appeal. In line with the recent European case law[8], when reviewing fining decisions of the Council the Bucharest Court of Appeal can review the decision on both the findings of fact and law.

An important aspect is that some of the procedural omissions or errors in the investigation or the decision-making process of the Council can be appealed only in a specific term. Therefore, at the time the party appeals the Council's sanctioning decision, it may have lost the right to appeal certain procedural acts. For example, the inspection order can be appealed only in a 15-day term from its communication to the party.

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

Regarding expert evidence, an aspect worth mentioning is that there are no certified experts officially acknowledged in the field of competition that may be used in order to establish in the courts the existence of cartels. However, there is a general principle in the Romanian Civil Procedural Code that allows a judge to request the opinion of one or more experts in the relevant field. Also, all the parties may produce experts' reports or opinions in order to support their allegations in court. *As per* the general rules, the court may also order an appraisal of the damages, in which experts appointed by the parties may also participate. The opinions of the experts or specialists do not bind the court, which will consider them together with all other available evidence.

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

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

For example, in March 2012, the Bucharest Court of Appeal partially annulled the Council's decision regarding an alleged cartel formed in 2007 on the market of managing private pension funds (Pillar II of Romania) stating that, in fact, there was no cartel. Through its decision, the Council fined 14 management funds of private pension funds with a total fine of approx €1.2m for agreeing to breach the Competition Law regarding the distribution of natural persons who registered with two or more management funds.

Similarly, the Bucharest Court of Appeal annulled the Council decision with respect to several undertakings, out of the 32 sanctioned, for fixing tariffs in the market of automotive training courses in Bucharest.

In another case, the Bucharest Court of Appeal reduced the fine imposed on one of the distributors sanctioned by the Council for participating in a cartel having as its object partitioning the insulin market.

Criminal sanctions

In theory, the legislation provides the possibility for both the Council and the criminal investigation

bodies to investigate the same action based on different grounds. One aspect worth mentioning is that, on one hand, the legal provisions state that the evidence gathered in a Council's investigation cannot be used in other proceedings and, on the other hand, the criminal law gives extensive rights to the criminal investigation bodies with respect to gathering evidence. Given the lack of case law in sanctioning criminal anticompetitive deeds, the line between the two provisions is still blurry.

In practice, even if the criminal investigation bodies are informed about the existence of several alleged criminal anticompetitive infringements, we are not aware of any criminal files reaching court.

To the best of our knowledge, there has only been one case in which a natural person has been prosecuted by the criminal investigation bodies as a consequence of its involvement in a cartel. Currently, the case is still open.

There is room for more anticompetitive criminal case law related to bid rigging in light of the New Criminal Code[9]. According to the new provisions, the persons involved in bid-rigging cartels shall be held liable and the respective persons may be condemned to serve time in prison for a period of 1 to 5 years.

Cross-border issues

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

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

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

Thus, a close collaboration exists between the European Commission and the Council. In 2011 the Council offered information to the Commission regarding 18 cases in areas including the pharmaceutical industry, the telecommunications sector, the financial services sector and the car fuels sector.

Developments in private enforcement of antitrust laws

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

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

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

Regarding the latter, to the extent that the Council's decisions under which the fines are applied are final and irrevocable, the Competition Act imposes an absolute legal assumption regarding the

existence of the illegal anticompetitive deed causing prejudice. In addition, in the follow-on damages actions filed by legal or natural persons harmed by the cartel, the courts are entitled to ask the Council to grant access to the documents that the final decision was based on, provided that the former shall ensure the confidentiality of those documents.

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

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

The amendments of the Competition Legislation in the past two years have led to harmonisation with the material aspects of EU competition law and encouraged private competition enforcement.

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

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

Reform proposals

In the current year, the Council published an action plan for the period 2012-2015. It seems that the Council intends to promote lobby actions before the Romanian Government in order to further regulate and amend the legislation on public tenders. The purpose would be to involve the Council more in public tenders proceeding in order to avoid bid rigging. So far, the officials have not made public any proposal for amending the relevant legal framework.

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Endnotes

1. The New Criminal Code is scheduled to enter into force on July 24, 2013.
2. The Romanian Companies Law no. 31/1990 and the Civil Code entered into force on October 1, 2011.
3. Another reason for organising such training session is that the Competition Legislation provides as a mitigating circumstance the situation in which the undertaking has develop an awareness programme.
4. We will consider the period since 2010 until the end of the first semester of 2012.
5. The public information published by the Council on its official website refers to general anticompetitive agreements without detailing on actual type of infringement.
6. The public information published by the Council on its official website refers to general anticompetitive agreements without detailing on actual type of infringement.
7. Council Decision no. 39 from 2010.
8. Cases *Menarini* and *Bouygues*.
9. The New Criminal Code is scheduled to enter into force on July 24, 2013.

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