Developments in cartel enforcement in Romania

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“CRO Compete Conference - New Competition Horizons for Croatia”, Zagreb, 29th of September 2010
Summary of main changes to current legislative framework

- Alignment of legislation to the provisions of EC Merger Regulation;
- Shift from dominance test to the SIEC test;
- Abolition of the individual exemption system;
- Express powers to accept commitments and to adopt interim measures;
- Express powers to carry out sector inquiries;
- Clarifications with regards to access to file;
- More coherence in the judicial review of various types of administrative acts;
- Introduction of supplementary financial penalties & incentives;
Ensuring a dissuasive anti-cartel policy in Romania

- Imposing pecuniary fines on undertakings of up to 10% of the turnover;

- Punishing individuals executive officers:
  - jail from 6 months to 4 years and disqualification from managerial duties or fines;
  - criminal action starts following the Competition Council's notification
Reward Cooperation

How?

- Mere cooperation of the offender in administrative proceedings beyond its legal obligations – mitigating circumstance;
- Cooperation within the leniency policy;
- Cooperation in the form of acknowledgment of the anticompetitive deed – mitigating circumstances with a special regime;
Cooperation of the offender in administrative proceedings

New Guidelines for setting fines for substantial infringements, including cartels:

- **Method of determining the amount of fine:**
  - Basic amount = gravity + duration (starting point: firm’s turnover) increased or decreased considering the aggravating and mitigating circumstances;

- Setting up a max. and min. level of the fine;

- Ensuring the dissuasive effect of fines;

- Considering the ability to pay of the offender when individualising the fines;
Cooperation within the Leniency policy

- Leniency program introduced in 2004, revised in 2009;
  - provides for a marker system for immunity applicants
- Set-up of a Leniency unit;
- Yet, several leniency applications in the pipeline;
- Protection of leniency participants during damage claims;
- Intensive leniency campaign in media;
Acknowledgment of the anticompetitive deed

- Applicable to offences for the violation of the provisions of Articles 5 and 6 of the national law and their equivalents, i.e. articles 101 and 102 of the TFEU;

- May occur only at the moment of individualization of sanction;

- Reduction of the fine of up to 25% from the basic level;

- After the communication of the investigation report or during the hearing;
Implementing pro-active methods of detecting cartels (1)

Cooperation and coordination with:

- Public Prosecutor
- Public Procurement authorities
  - A new Directorate in charge with the investigation of anticompetitive practices in the context of tender procedures
  - Memos of cooperation;
- Police
  - Possible support to competition inspectors during the inspections regulated by law
  - Memo of cooperation
- Other competition authorities, mainly via ECN
Implementing pro-active methods of detecting cartels (2)

Creating the necessary legal framework for the request of information:

- Request of information during the investigation;
- Request of information facilitated during the preliminary stage of antitrust proceedings;
- Power to interview any natural or legal person that gives its consent to be interviewed;
Implementing pro-active methods of detecting cartels (3)

DAWN-RAIDS

Without judicial authorization

Business premises

With judicial authorization

Private properties

The Authority may fine anyone who refuses or fails to provide the information, or exhibit the documents requested without justification or anyone who submits untruthful information or documents during an inspections up to 1% of the turnover.
Implementing pro-active methods of detecting cartels (4)

Appropriate resources for ex-officio investigations:

- Permanent monitoring of the markets with a high risk of cartelization;
  - Indicative points: fringe competitors, high entry barriers, market transparency;

- Intensive activity of monitoring the press and the trade journals of certain associations;

- Collateral investigations, studies and analyses of the relevant markets;
A selection of recent cartel cases

- Euro 1.6 million fines, 2008 - *bid-rigging* on the dialysis market of in the context of the electronic national tender;
- Euro 5,000, 2008 - *price-fixing* for dental prosthetic works;
- Euro 1.5 million fines, 2009 - *price-fixing* on two bread local markets;
- Euro 360,000 fines, 2009 – *price-fixing* on the Bucharest market of driving school services;
- Euro 252,000 fines - *prix-fixing* on the car repairing and servicing services market;
- Euro 1.23 million – *customer market sharing on* mandatory private pension funds market.
Current challenges

- Dedicate sufficient resources to make anti-cartel enforcement a top priority and dedicated cartel unit;

- Applying the leniency policy also for the criminal sanctions;

- Prioritize cases to high impact strategic interventions;

- Expediting the time-span of ongoing investigations;

- Establish a system for tracking cartel indicators in key sectors;
Lessons learnt

Improving the effectiveness of the fight against cartels by:

1. Introducing a deterrent sanctioning policy;

2. Introducing and advocating for Leniency programme and its benefits;

3. Making better use of the investigative tools: training, in-house guide on dawn raids;

4. Exchanging experiences with other competition authorities:
   - within the framework of bilateral protocols;
   - within the framework of international organizations;
Competition policy

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Thank you for your attention!