

## Competition and Antitrust Law

# Romania

As part of Lawyer Monthly's Europe Special Report, we turn our attention to the laws and issues surrounding competition and antitrust in Romania. To this end, we speak to Bruno Leroy and Eleonora Udrouiu from Leroy și Asociații, one of Romania's leading independent law firms. Originally set up as the local office of Gide Loyrette Nouel, the team at Leroy și Asociații has gained national and international recognition due to its contribution on some of the most significant investments and transactions in Romania

**P**artner and member of the Paris Bar Association, Bruno Leroy holds a Master's Degree in International Business Law from the Paris School of Management (ESCP) and a postgraduate degree from the University of Paris V. Bruno specializes in foreign investments, competition, mergers & acquisitions, real estate, projects and energy. He has advised on headline M&A and on sensitive European law and competition matters. Bruno has advised international groups on issues pertaining to restrictive agreements and abuses of dominant position as well as on the occasion of numerous notifications of concentrations between undertakings.

Eleonora Udrouiu is a managing associate and member of the Bucharest Bar Association. She holds a law degree from the University of Bucharest, a European law degree from the University of Paris I Panthéon-Sorbonne and a Master's degree from the French National School of Administration. Eleonora has more than ten years of experience in competition and commercial law as well as in energy law. She has been involved in the preparation of a significant number of merger notifications to the Romanian Competition Council.

**Merger control regimes are adopted to prevent anti-competitive consequences of concentrations; do you feel it is effective in doing so?**

The Romanian merger control regime largely mirrors the one applicable at EU level, with a few

minor exceptions related in general to the length of the procedural terms.

Merger control in itself is a useful tool, preventing negative effects on competition that may arise from mergers and acquisitions. Reduced competition may harm consumers through higher prices, reduced choice or less innovation.

Therefore, Romanian legislation imposes that notifiable concentrations not be implemented prior to obtaining clearance from the competition authority.

However, it is important that no unnecessary administrative burden is placed by the authority on companies and that transactions are not delayed excessively. Most of the concentrations do not raise serious competition concerns and therefore should be dealt with swiftly, so as not to unduly impede the commercial objectives of a proposed transaction.

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**How does antitrust compliancy affect local and foreign businesses? Did the global financial crisis impact this at all?**

The global financial crisis has not deterred the Competition Council from its growing interest in investigating possible anti-competitive practices of companies, continuing its enforcement efforts in the area of cartel investigations, which remained a top priority in 2015. This trend is reflected in the recent fine applied by the Competition Council to 11 media service companies for having participated to a collective boycott arrangement.

Given the increased scrutiny of the Competition Council, implementing an effective antitrust compliance program at all company's levels has become more important than ever both for local and foreign businesses. An effective compliance program should include (i) comprehensive training to all executives and managers and to the employees with pricing and sales responsibilities and (ii) regular monitoring of activities which may raise competition risks.

**Has the economic climate seen an increase in competition litigation?**

These past few years' trends in competition litigation were in general maintained in 2015. Private enforcement remains rare in Romania and the fines applied by the Competition Council are almost systematically challenged in courts by the companies.

In addition, we have noticed a growing practice of the Competition Council of accepting commitments proposed by companies in antitrust investigations.

Indeed, a company accused of anticompetitive practices has the possibility to propose commitments in order to address the competition concerns pointed out by the authority. Such commitments may consist, for instance, in amending commercial agreements or applying a certain pricing policy. In order to be accepted, it is paramount that the commitments are sufficient to protect competition and adequately address the concerns which triggered the opening of the investigation. In exchange, the company may escape sanctioning or receive a significant fine reduction. However, it is important to emphasize that accepting commitments is a faculty of the authority.

We welcome this recent tendency, since the commitments procedure benefits both the competition authority and in particular companies found to have breached the competition rules. Commitments effectively enable the investigated companies to redeem themselves, ensuring an effective and immediate restoration of a competitive environment, while the preventive role of competition rules is still achieved.

However, the companies who benefitted from accepted commitments need to be aware of the risk of being fined in case they fail to follow them through. This risk is illustrated by recent cases, when the authority applied fines to companies for failure to comply with the commitments undertaken during investigations. In one case, the fine was applied to distributors of mobile phone prepay products involved in anti-competitive agreements. In another case, the Professional Football League was sanctioned for failing to comply with the commitments related to the football matches broadcast rights in competitive seasons.

**What do you feel have been the top competition/antitrust stories for 2015 so far?**

In the past few months, we have seen the completion of a number of major investigations as well as the launching of equally important new ones.

First, we should mention the new investigation targeting an alleged exchange of commercially sensitive information on the insurance market.

This investigation was opened ex-officio in July 2015. Dawn raids took place at the headquarters of several insurance companies as well as of a professional association.

Should a breach of competition rules be proven, the fines may range between 0.5 to 10 percent of the premiums collected by each company in the year preceding the application of the fine.

Other important news was the completion of an investigation on bid rigging in the oil and gas drilling sector.

It is interesting to note that this was the first ever Romanian investigation which was opened following a leniency application filed by one of the investigated companies. This whistleblower received immunity from fine, as a reward for informing and cooperating with the competition authority.

This recent case illustrates the favorable approach of the Competition Council towards leniency policy, which is perceived as an effective tool in fighting cartels. Given this precedent, we may expect that more investigations will be opened based on leniency applications in the future.

Finally, there has been an intense time for the retail food sector, considering that an old major investigation has been completed and that a new one has been opened.

At the end of 2014, four retailers (two companies of the German group Metro, the Romanian subsidiary of the Belgian Delhaize and Selgros, part of the Swiss TransGourmet) and 21 of their suppliers were fined with an amount totaling approx. EUR 35 million.

These companies were accused of fixing reselling prices, directly and indirectly. The promotions policies were particularly under scrutiny. The authority claimed that suppliers were prevented from conducting simultaneous promotions in competing retail chains.

Upon completing that investigation, the Competition Council almost immediately opened a new one in this sector. Once again, the alleged anticompetitive behavior concerns price fixing between some retailers and their suppliers. **LM**



BRUNO LEROY  
bruno.leroy@leroylaw.ro



ELEONORA UDROIU  
eleonora.udrouiu@leroylaw.ro

LEROY SI ASOCIATII SCA  
Str. Maior Gh. Sontu nr.  
10-12, Sector 1  
Bucuresti, 011448 - Romania

Tel: +40 (21) 223 03 10  
Website: www.leroylaw.ro

**LEROY**  
ȘI ASOCIAȚII