

**ICN Framework on Competition Agency Procedures  
Template pursuant to Section 3 (a) of the  
ICN Framework on Competition Agency Procedures  
Competition Council, Romania**



The following template is submitted by the Competition Council, Romania, pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

## **I. Introduction**

The Competition Council is an autonomous administrative authority, invested for this purpose, under the conditions, modalities and limits established by the provisions of the Competition law, namely no. 21/1996

The Competition Council applies the provisions of art. 101 and 102 of the Treaty on the Functioning of the European Union, according to the provisions of Regulation (EC) no. 1/2003 of the Council of 16 December 2002 on the implementation of the competition rules provided for in Articles 81 and 82 of the Treaty, in cases where acts or deeds of companies or associations of undertakings may affect trade between Member States of the European Union.

## **II. Laws, Regulations, and Policies relevant for the implementation of the CAP**

The Romanian competition authority started its activity on September 6, 1996 by elaborating the regulations necessary for the application of the Competition Law (no. 21/1996), which entered into force on February 1, 1997. In its capacity as national authority in the field of competition, the institution implements and ensures compliance with national, but also Community competition provisions.

At the same time, the Competition Council has the role of a national contact authority in the field of state aid between the European Commission, on the one hand, and public institutions, providers and beneficiaries of state aid, on the other.

The Competition Council also has the role of representing Romania in relations with international organizations and institutions of profile; it is also responsible for the relationship with the institutions of the European Union, in accordance with the relevant provisions of European law, and cooperates with other competition authorities.

The activity of the Competition Council is carried out on two main components: a preventive one, market monitoring and surveillance of the actors in these markets and a corrective one, aimed at restoring and ensuring the development of a normal competitive environment.

Thus, the mission of the Romanian competition authority can be defined synthetically as being to protect and stimulate competition on the Romanian market in order to develop a normal competitive environment, so that, finally, the best interests of consumers can be promoted.

## **b) Non-Discrimination**

Main issues regarding the RCC attributions related to non-discrimination are the following:

The provisions of Romanian competition law apply to the acts and facts limiting, preventing or distorting competition, perpetrated by undertakings or associations of undertakings – natural or legal persons – of Romanian or foreign citizenship or nationality, hereinafter undertakings.

Any actions or inactions of the authorities or institutions of the central or local public administration and of the entities to which they delegate their attributions, which restrict, impede or distort the competition, such as:

- a) limitation of the freedom of trade or the autonomy of the enterprises, exercised in compliance with the legal regulations;
- b) establishing discriminatory conditions for the activity of enterprises.

## **c) Transparency and Predictability**

The decisions issued by the Competition Council in the application of the present law will be communicated to the parties concerned by the Competition Council and will be published in the Official Gazette of Romania, Part I, at the expense of the offender or the applicant, or on the Council's website competition.

When publishing decisions, account will be taken of the legitimate interests of the companies concerned, so that the business secret is not disclosed.

The RCC conducts studies and prepares reports on its field of activity and provides information to the Government, the public and specialized international organizations on this activity;

## **d) Investigative Process**

*i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., 3*

*forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*

*ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*

*iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

As related to economic concentration operations, the provisions refers when the cumulative turnover of the companies involved in the operation exceeds the equivalent in lei of 10,000,000 Euros and when at least two of the companies involved have performed on the territory of Romania, each separately, a turnover higher than the equivalent in lei of 4,000,000 Euros. The equivalent in lei is calculated at the exchange rate communicated by the National Bank of Romania valid for the last day of the financial year from the year prior to the operation.

The economic concentrations that exceed the value thresholds must be notified to the Competition Council before the implementation and after the conclusion of the agreement, after the announcement of the public offer or after taking over the control package. It is forbidden to implement an economic concentration operation before notification and before being declared compatible with a normal competition environment, by a decision adopted by the Competition Council. On the basis of the decision taken by the plenary or the commission, as the case may be, the president of the Competition Council orders, by order, to carry out investigations. The case handler is appointed by the same order, based on the proposal of the director general.

In applying this law, the Competition Council shall examine in plenary the investigation reports, with the possible objections made to them, and decides on the measures to be taken.

The Competition Council has the following tasks:

- a) Carries out investigations regarding the application of the provisions of the competition law, as well as of the provisions of art. 101 and 102 of the Treaty on the Functioning of the European Union;
- b) Takes the decisions provided by law for the cases of violation of the above mentioned provisions, as a result of the investigations carried out by the competition inspectors;
- c) Accepts commitments and imposes interim measures, under the conditions provided by law;
- d) Takes the decisions provided by law for cases of economic concentrations;

e) Carries out, on its own initiative, investigations regarding a certain economic sector or a certain type of agreement in different sectors, when the rigidity of prices or other circumstances suggests the possibility of restricting or distorting competition on the market. The Competition Council may publish a report on the results of the investigation into certain sectors of the economy or certain agreements in different sectors and invite interested parties to comment;

Based on the judicial authorization given by the conclusion, the competition inspector may carry out inspections, as well as in any other spaces, including the domicile, the land or the means of transport belonging to the managers, administrators, directors and other employees of the economic operators or associations of economic operators under investigation.

#### **e) Timing of Investigations and Enforcement Proceedings**

The decisions taken by the Competition Council in plenary shall be signed by the President, on behalf of the Competition Council. They may be challenged within 30 days of publication or, as the case may be, of communication, in the administrative litigation procedure at the Bucharest Court of Appeal. The sentence will be pronounced without the right of appeal, against it the appeal can be declared at the High Court of Cassation and Justice.

The decisions of the Competition Council which impose fines or establish authorization fees constitute enforceable titles, without any other formality, within 30 days from their communication.

When receiving a complaint regarding an anti-competitive practice, the Competition Council examines whether it has sufficient factual and legal grounds to justify arranging an investigation. If the complaint does not present sufficient grounds to justify the initiation of an investigation, the Competition Council rejects it, communicating to the author the decision, in writing, specifying the reasons, within 60 working days from the date on which it is confirmed that the complaint is complete and fulfills all the conditions. Rejection of a complaint is made by decision of the Competition Council after the complainant has been given the opportunity to present his point of view as to the reasons why the competition authority intends to reject the complaint. The decision to reject the complaint may be appealed to the Bucharest Court of Appeal, within 30 days from the communication.

Within 30 days of receiving the complete notification of an economic concentration operation, the Competition Council will respond in writing, by an address, in case it reaches the conclusion that the economic concentration operation does not fall under the scope of this law.

Within 45 days after receiving the complete notification of an economic concentration operation, the Competition Council will issue a non-objection decision when it finds that although the notified economic concentration operation falls under the scope of the present law:

a) there are no serious doubts regarding the compatibility with a normal competitive environment;

or

b) the serious doubts regarding the compatibility with a normal competitive environment were eliminated by the commitments proposed by the parties involved and accepted by the Competition Council. The competition authority may establish by decision conditions and obligations that ensure that the parties involved comply with the commitments they have undertaken in order to achieve the compatibility of the concentration with a normal competitive environment.

Within 45 days after receiving the complete notification of an economic concentration operation, the Competition Council will decide to open an investigation, when it finds that the notified economic concentration operation falls under the scope of the present law, presents serious doubts regarding the compatibility with a normal competitive environment and these could not be eliminated.

Within 5 months of receiving the complete notification of an economic concentration operation for which the Competition Council has decided to open an investigation due to serious doubts regarding its compatibility with a normal competition environment, the Competition Council:

a) Will issue a decision declaring the economic concentration operation incompatible with the normal competition environment, as it raises significant obstacles to effective competition on the Romanian market or on a substantial part of it, especially as a result of creating or consolidating a dominant position;

b) Will issue an authorization decision, if the economic concentration operation does not raise significant obstacles to the effective competition on the Romanian market or on a substantial part of it, especially as a result of creating or consolidating a dominant position;

c) Will issue a decision of conditional authorization, which establishes the obligations and / or the conditions destined to ensure the compliance by the parties involved of the commitments they have undertaken in order to achieve the compatibility of the concentration with a normal competitive environment.

If the Supreme Council for the Defense of the Country, in the exercise of its powers, issues a decision within the meaning of the prohibition of the operation examined the procedure before the Competition Council ceases. Within 15 days from the date of communication of this decision, the Competition Council will inform the notifying party, through an address.

#### **f) Confidentiality**

*i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*

*ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*

*iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

The Competition Council may exchange or use as a means of evidence any factual or legal element, including confidential information with the European Commission, as well as with any other competition authority in a state. Member of the European Union empowered in this respect, in compliance with the legal provisions in force.

The Competition Council, in compliance with the legal provisions in force, may transmit the information provided that the competition authority that receives them:

- a) To use them only for the application of the competition provisions and for the purpose for which they were collected by the Competition Council;
- b) To protect the confidentiality of this information and to transmit this information to third parties only with the prior agreement of the Competition Council.

The right of access to the file does not extend to business secrets, other confidential information or to the internal documents of the Competition Council, the European Commission or the competition authorities of the Member States of the European Union. The right of access to the file does not extend either to the correspondence between the Competition Council and the European Commission or the competition authorities of the Member States or the latter when the correspondence is included in the file of the Competition Council.

The documents, data and confidential information in the case file are accessible for consultation or obtaining copies and / or extracts only by order of the president of the Competition Council, which can be appealed only once the decision finalizing the investigation, by the same request.

#### **g) Conflicts of Interest**

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement

Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

The members of the Consultative College must comply with the legal provisions regarding the conflict of interests related to the activities they participate in. Former chairmen of the Competition Council participate in the work of the Consultative College.

The person who has exercised a public dignity function or a specialized public function within the Competition Council, who wishes to exercise a professional activity in the private sector, whether paid or not, within three years from the termination of the mandate or the service reports, notifies the Competition Council about it, requesting in advance the favorable opinion of the competition authority. If the activity to be carried out in the private sector is related to the economic field confined to the activity exercised at the Competition Council by the interested person during the last three years of the exercise of the function and may be incompatible with the legitimate interests of the authority, the Competition Council may, taking into account the interest of the institution, either to issue a negative opinion regarding the request addressed, or to adopt a favorable opinion containing the obligation to respect in the exercise of the activity any conditions that it considers appropriate.

At the termination of the mandate, respectively of the service relations, the person who has exercised a public dignity or a specialized public function within the Competition Council has the obligation to give a declaration attesting that he has become aware of the provisions of this article. and is bound to respect them.

#### **h) Notice and Opportunity to Defend**

The decisions taken by the Competition Council in plenary according to the provisions of par. (4) shall be signed by the President, on behalf of the Competition Council. They may be challenged within 30 days of publication or, as the case may be, of communication, in the administrative litigation procedure at the Bucharest Court of Appeal. The sentence will be pronounced without the right of appeal, against it the appeal can be declared at the High Court of Cassation and Justice.

#### ***i) Representation by Counsel and Privilege***

***i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.***

***ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.***

*iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

Communications between the investigated enterprise or association of companies and its lawyer, made within and for the sole purpose of exercising the right of defense of the enterprise or association of undertakings, respectively after the opening of the administrative procedure under this law or before the opening of the administrative procedure, provided that these communications that are related to the object of the procedure, cannot be taken or used as evidence during the procedures carried out by the Competition Council.

The Competition Council establishes through the instructions the specific procedure regarding the framework for granting a favorable treatment to the companies that recognize the committing of an anti-competitive act.

#### **j) Decisions in Writing**

The Competition Council carries out its activity, deliberates and takes decisions in plenary or in committees. The orders and decisions of the Competition Council, by which measures and sanctions are applied, are signed by the president, suspended or repealed by order of the president.

#### **k) Independent Review**

RCC decisions can be appealed in administrative procedure before Bucharest Court of Appeal within 30 days since notification. The Court may impose, upon request, the suspension of execution of the appealed decision. In case of fines, the suspension will be applied solely provided that a bail is paid according to provisions laid down by the Fiscal Procedure Code.

The Competition Law does not provide expressly for the type of jurisdiction that court enjoys regarding the fines imposed by RCC. The Romanian courts cannot aggravate the situation of the appellant, so if it finds the decision founded, the Court can maintain the fine imposed by RCC or reduce it. When the Court finds that there is no offence or the standard on proof was not met, the fine can be annulled. 1.

Once issued, RCC decisions may be subject to review by the Bucharest Court of Appeal (first appeal court) and subsequently the Bucharest Court of Appeal's decision may be appealed before the High Court of Cassation and Justice (second appeal court).

The term within which the parties may challenge the RCC decision, by submitting a request for annulment before the Bucharest Court of Appeal, is of 30 days from the communication of the decision. The mere challenge of an RCC decision does not stay its enforcement and therefore, the fine needs to be paid within



30 days from the communication of the RCC decision imposing it, irrespective of requesting its annulment in court.

However, as mentioned above, the addressee of the decision can obtain the suspension of RCC decision, until the court decides on the merits, provided that they pay a bail according to provisions laid down by the Fiscal Procedure Code.

In order to obtain the suspension, the undertakings must prove the fulfilment of two cumulative conditions: the existence of a well-grounded case (*prima facie* illegality, without requiring an analysis on the merits of the case) and the occurrence of imminent damage in case the fine was paid.

Depending on the instance of appeal, the review of RCC's decisions may be more extensive or, on the contrary, more limited.

The first instance appeal court (Bucharest Court of Appeal) is empowered to review the RCC decisions from the perspective of their legality in all aspects, including the alleged deeds and their legal assessment, the evidence and also the proportionality of the sanctioning measures imposed.

As the court will perform its own assessment both on points of facts and law, it may quash, in whole or in part, the RCC decision. As regards the review of the level of fines, the Bucharest Court of Appeal has jurisdiction to cancel or reduce the fine. Moreover, the principle of "*non reformatio in peius*" (the appellant cannot be put in a worse position than if he had not appealed the decision) is applicable, preventing the court from imposing more severe fines than those applied by RCC.

In contrast, the review performed by the High Court of Cassation and Justice during the second appeal proceedings is only possible on points of law (e.g. the Bucharest Court of Appeal's decision does not comprise the reasoning for the solution or comprises contradictory arguments). As regards the review of the amount of fines, taking into account the principle of "*non reformatio in peius*," the High Court will not be allowed to increase the amount of the fine established by the Bucharest Court of Appeal in cases where the second appeal is filed by the party.

The national Courts may alter the amounts of fine imposed by RCC for a wide variety of reasons, such as annulment of the prohibition decision for lack of evidence, procedural shortcomings and non-compliance with the sanctioning Guidelines.