

## CONSIDERATIONS CONCERNING THE PROTECTION OF COMPETITION IN ROMANIA, IN THE 2015-2019 PERIOD

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**Abstract.** *The paper "Considerations concerning the protection of competition in Romania, in the 2015-2019 period" presents a few aspects related to the duration of the investigations related to the potential violation of the competition laws in the analysed period, the entities penalised by the Competition Council and the investigations on progress at the end of the year during this period.*

**Key words:** *protection of competition, investigation, competitive environment, competition.*

### INTRODUCTION

Currently, the competitive environment in Romania benefits from a normal development. The legislation in the competition field is applied in compliance with the EU legislation, being arbitrated by the Competition Council, an independent institution that ensures the proper functioning of competition, applying sanctions according to the established rules, if the imposed limits are violated. The law in the competition field has been elaborated so that there is fair competition in the markets, focusing on consumer protection.

The current legislation prohibits the practice of anti-competitive policies likely to affect the proper development of the competitive environment, such as: abuse of a dominant position, different types of agreements between economic operators, restriction of competition or elimination of competition in the market.

The current legislation in the competition field provides for the right choose a leniency policy, with the purpose of encouraging manufacturers who have practiced anti-competitive policies to work with the Competition Council, in order to elucidate market segments where practices that have negative effects on the competitive environment take place, and to help punish those who practice them and eliminate them. If an economic operator cooperates with the Competition Council, the fines received by it for non-compliance with the competition regulations may be eliminated or significantly reduced.

In addition to the use of tools used to fight anti-competitive policies and control of competition in the market, it is necessary to use methods to inform market participants about competition, as well as to promote a culture of competition.

The competition policy must be presented to every participant in economic life, a thing which cannot be achieved without the use of principles based on non-discrimination and transparency. Under such circumstances, it is not only necessary to know the rules of operation of the market, but also the procedures on the basis of which the Competition Council makes its decisions.

All participants in the competitive environment need to be aware of the role that national authorities play in maintaining the functioning of the market economy, as well as the ways in which they use it to implement rules in the competition field. Economic operators must also be informed and aware of both the ways in which they can be protected by law if they become victims of anti-competitive practices and the risks they face if they break the rules. The consistent application of the competition rules has disadvantages only for inefficient companies, and for the economy and consumers, the effects shown in dozens of countries are those of promoting technical progress, efficient allocation of resources,

private sector development and social welfare, in other words to increase overall competitiveness.

It is necessary to have rules on competition that are applied in the markets, due to the fact that it cannot have a normal, natural evolution without interventions. The market cannot be influenced by a single manufacturer, but by all participants in it. Thus, the market can be largely influenced by the prices used by manufacturers. In order to obtain the best possible position on the market, they tend to reduce prices so much that a very small profit is achieved, the manufacturer only managing to ensure its existence on the market.

### **MATERIALS AND METHODS**

The paper was drawn up based on the reports published by the Competition Council for the analysed period.

In this paper we presented some aspects related to the protection of competition in Romania in the 2015-2019 period, substantiated in the activity carried out by the authority that regulates the good development of free competition.

### **RESEARCH RESULTS**

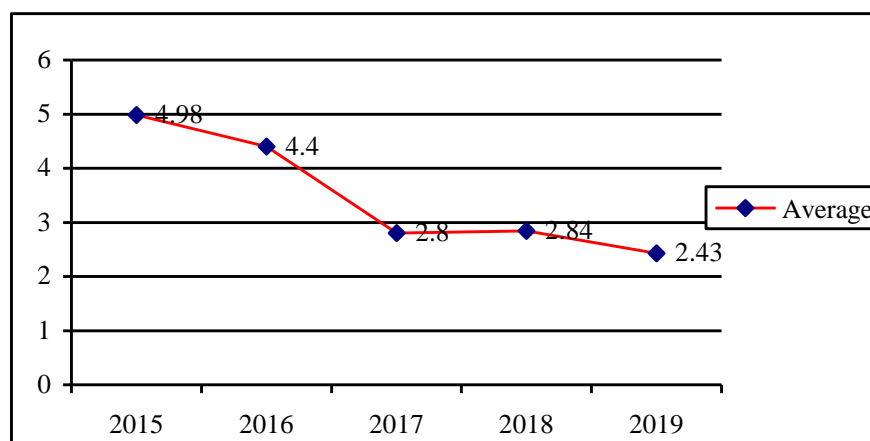
The Competition Council is the one that establishes and applies the necessary measures for the restoration of the order from the competitive point of view on the market.

Thus, the business environment in our country has benefited, in recent years, from the appropriate tools to promote a culture of competition, such as: [1]

- media coverage of the actions and decisions of the Competition Council;
- organization, at central and regional level, of specialized seminars, conferences, round tables, with national and international participation;
- dissemination of numerous specialized documents of the national competition authority.

Therefore, economic entities are constantly informed about the rules of the game that contribute to the normal functioning of market economy mechanisms. On the other hand, companies that do not comply with these rules are strictly sanctioned, thus encouraging market players that operate efficiently and that can contribute to the sustainable growth of the competitiveness of the national economy. [2]

In the 2015-2019 period, the Competition Council aimed at enforcing and complying with the rules in the field of competition, thus, due to non-compliance with these rules, the Council was put in the position of imposing fines and conducting investigations on economic operators that were considered not complied with the imposed measures.



**Figure 1. Duration of the investigations of potential violations of the competition laws completed in 2015-2019 period (years)**

Source: Competition Council - 2019 Annual Report, page 18. [15]

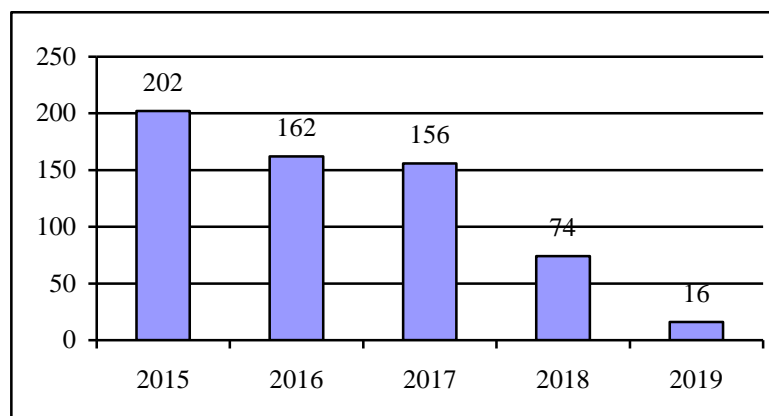
Figure 1. shows the average completion duration of the investigations completed in the 2015-2019 period.

We can notice a decrease in the investigation settlement duration, in 2018 the value reached being approximately 50% lower compared to 2015. The decrease in this value took place as follows: [15]

- in 2015, the average duration was 4.98 years for completed investigations;
- in 2016, a decrease by 0.58 compared to the previous year was recorded, reaching a duration of 4.4 years;
- the year 2017 shows a decrease by 1.6 compared to 2016, and a decrease by 2.18 compared to the year 2015; this year records the lowest value in the entire analysed period;
- in 2018 a decrease in the investigation settlement duration is recorded as follows: by 2.14 compared to 2015, by 1.56 compared to 2016; and an increase by 0.04 compared to 2017.
- the year 2019 brought a substantial improvement in terms of reduction in the period of time of an investigation (on average, a reduction by approximately 5 months). Mention should be made of the fact that there were cases where the *Forensic analysis* was used, more specifically, when the volume of the data collected within the inspection is very high, or when there are suspicions that certain evidence was deleted from the computers. The use of the *Forensic analysis* expands, to a certain extent, the duration of the investigations. We should highlight that, in most cases where this analysis was used, the results obtained led to a better understanding of the actual situation by the case team, and to the substantiation of conclusions closer to reality.

The efficiency of the Competition Council is shown by the reduction of the duration of the investigation settlement.

In addition to the decrease of the time required to complete an investigation, in 2019, a decrease in the percentage of investigations closed without the ascertainment of a violation of the law was also recorded (only 7% in all completed investigations). Thus, in most initiated investigations, the suspicions related to anti-competitive practices were confirmed after the collection of evidence.



**Figure 2. Entities penalised in 2015-2019**

Source: Competition Council - 2019 Annual Report, page 19.. [15]

Figure 2 shows the number of entities to which the Competition Council applied penalties in the last 4 years. We can see that there was a decrease in the number of penalised entities each, which means that the competition laws are increasingly observed. The decrease in the number of penalised entities is as follows: we have a decrease by approximately 19.8% in 2016 compared to 2015; in 2017 a decrease by approximately 22.8% was recorded, compared to 2015, respectively by 3.7% compared to 2016; and in 2018 the decreases were of approximately 64.4% fewer companies penalized compared to 2015, by 54.3% fewer compared to 2016, respectively by 52.7% compared to 2017.[12]

Thus, 2018 accounts for the smallest percentage of companies penalised by the Competition Council.

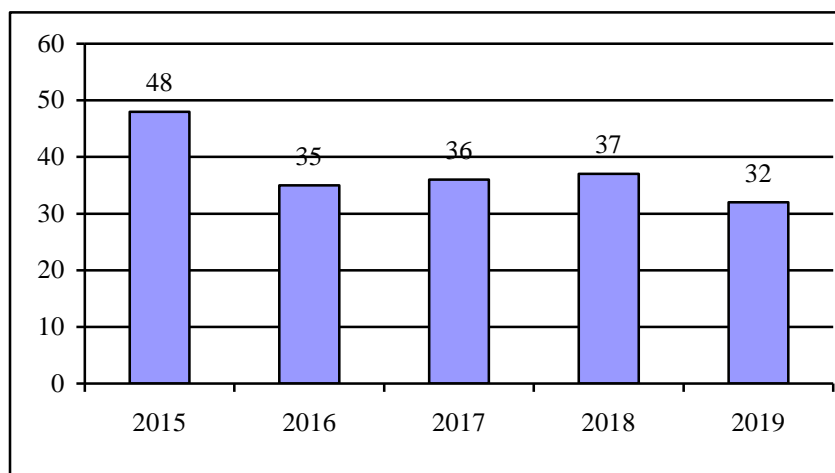
Although the number of companies to which measures were applied decreased each year, the value of the fines imposed by the Competition Council was not reduced from one year to the next, it recorded certain fluctuations instead. The situation of the fines imposed in the 2015-2018 period is as follows: [9]

- in 2015, fines in the amount of 239,680,544 RON were imposed;
- in 2016 fines in the amount of 76,802,672 RON, the difference compared to previous year being lower by 162,877,872 RON;
- in 2017, the amount of the fines applied was 123,114,190 RON, and a decrease was also recorded compared to 2015 by 116,566,354 RON, and an increase compared to 2016 by 46,311,518 RON;
- in 2018, the total value of the penalties applied was 435,194,858 RON, being higher by 195,514,314 RON compared to 2015, by 358,392,186 RON higher compared to 2016, respectively by 312,080,668 RON higher compared to 2017.
- Out of the total number of 16 investigations completed in 2019:
  - in 10 cases a violation of the competition laws was ascertained;
  - 3 investigations were closed by the acceptance of commitments;
  - in one case, the investigation was closed without the ascertainment of any violation of the competition laws.

The value of the penalties applied in 2019 was 96,000,000 RON, being smaller compares to 2018 by 339,000,000 RON and by 27,000,000 RON lower than in 2017.

We can see that, although in 2018 the fewest companies were penalised, compared to the previous years, the value of the fines they had to pay was the highest in the last 4 years.

In 2019, most penalties (91%) were imposed for violations such as abuse of dominant position, while the remaining ones (9%) were imposed for anti-competitive acts such as cartels. The total value of the penalties applied by the Competition Council was 96,432,485 RON. Compared to the budget of the institution, the value of the sanctions applied in 2019 is 1.48 higher. In 2019, the number of penalised companies compared to the previous years dropped from 74 to 16. The number of the penalised companies is, from 2015, on an uptrend, which can also mean that companies are much more careful in relation to potential violations of the competition laws. Out of the 16 companies penalised in 2019, 6 admitted committing their acts, thus benefiting from a decrease in their fines.



**Figure 3. Investigations in progress at the end of the year, 2015-2019**

*Source: Competition Council - 2019 Annual Report, page 20. . [15]*

The settlement of an investigation can take place throughout a long period of time, thus at the end of each year there were investigations opened in the course of the same year, or in the previous years.

In Figure 3., we can see that the year with the highest number of investigations opened was 2015, year 2016 records fewer investigations, namely 35, while in 2017 and in 2018, the number of investigations grows by one unit each year.

In 2019, the Competition Council continued to reduce the number of investigations in progress at the end of the year, more specifically from 38 to 32, a trend similar to that of the period required for the completion of an investigation being recorded. Most investigations that are still in progress focus potential violations of the law of the horizontal agreement type (68.8% of all the investigations).[15]

## CONCLUSIONS

The average duration required for the completion of an investigation is different for each year, thus this duration records a decrease throughout the four years, from 4.98 years in 2015, to 2.84 years in 2018. This decrease in the investigation settlement duration can be due to the activities carried out by the Council for the competition welfare, and to the decrease in the number of companies that committed anti-competitive practices.

In addition to the time required to complete an investigation, 2019 also recorded a decrease in the percentage of investigations closed without the ascertainment of any violation of the law (only 7% out of all the completed investigations). Thus, within most of the initiated investigations, the suspicions related to the anti-competitive practices were confirmed after the collection of the evidence.

The Competition Council sought to make its actions carried out for the maintenance of a competitive environment known, and also to present certain legal aspects related to the competition carried out by business entities. For this purpose he had numerous appearances on TV, appearances on the radio, as well as appearances in the written press, it held press conferences, it took part into meetings with representatives of the business environment, it appeared in the online environment, etc.

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