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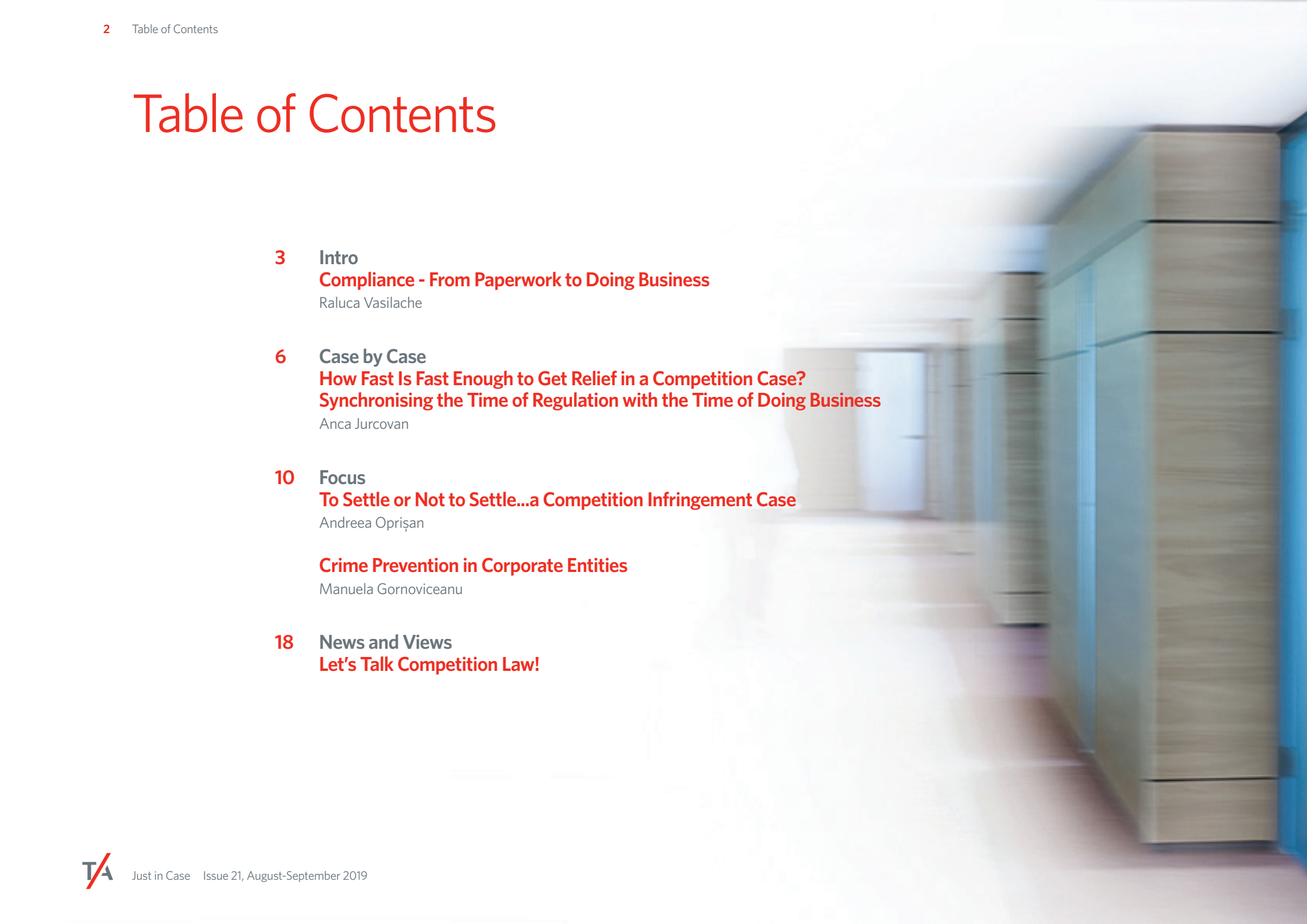

Intro

Compliance - From Paperwork to Doing Business

Compliance - From Paperwork to Doing Business

Compliance seems to be a trendy word with companies in recent years, stimulated also by the vigorous activity of the Competition Council which resulted in several investigations leading to considerable fines.

Competition compliance programs conducted by companies still count for a 10% reduction in the fine, should the authority decide to sanction a company further to an investigation. This way, potential subjects of an investigation are even more interested in rolling out conformity programs. While having a written internal policy would be enough to get the 10% reduction in case of a fine, does it really amount to more than some nice words put on paper? Do the company's employees take heed of the spirit of the law when going about their day-to-day business? Apart from being aware of the principles of law, can they actually envisage the impact these norms have on their everyday conduct?

Experience shows that people are more inclined to behave as the market flows and as competitors are acting in order to gain clients, market share, increase sales. From this perspective, the greatest challenge appears to be changing people's mentality and convincing them to act in the spirit of the law rather than in the spirit of a well-established custom. Antitrust compliance education needs to be approached in-depth within any organisation. Having just the upper management educated at the desired level is not enough since day-to-day business is in the hands of so many others and their actions and reactions may cause serious problems.

"This is how everybody has been doing it in this market for so many years now, we would be seen as chumps if we were to change the practice now and we would definitely lose clients. We need to fight every day for sales while competitors are aggressive, these compliance rules will only slow us down" businesspeople tend to say. It is not easy to change behaviour that has not (yet) been sanctioned by the authority and when none of the competitors are changing anything either. This is the biggest challenge for companies: to make employees truly change practices that would bring risk from an antitrust perspective, to make them understand and apply the rules, not just sign and confirm they are aware of such.

During our extensive practice in assisting>

companies with tailor-made compliance programs, we often faced reactions such as the one mentioned above. Nicely written presentations and online quizzes addressing the standard theoretical approach are surely not enough to ensure proper and substantive education. Companies need to further develop the practical and user-friendly approach, thus helping staff members understand themselves the essence of compliance in connection with the actual tasks they usually perform.

Although conferences, seminars and public presentations on competition topics have multiplied in recent times and companies that are aware of the need for education in this field are sending employees to attend such events, the real education lies in workshop discussions applied to cases that employees encounter daily in their jobs, followed by challenges and tests simulating as close as possible certain particular, real-life situations. This way, people have the chance to get acquainted with concepts, challenge what seems to come in conflict with their business practice, dissect and digest the "new" rules and understand the consequences of not being compliant. Quizzes based on facts extracted from their regular activity would be more useful than any handbook on extensive theory and explained case studies, but which do not fit their actual work context.

Consistency is another attribute that needs to accompany a sound and successful compliance program. After ticking the box for compliance, people tend to either forget or intentionally return to old practices. Robust and committed compliance programs should be recurrent as to become part of the company policy and duly embraced by all targeted employees. This consistent approach proves to be more expensive for companies, but it pays off quickly. We noticed the companies' tendency to invest in vigorous and efficient programs which bring comfort in that the employees are really trained to face antitrust challenges rather than just tick the box for the sake of it and not keeping the risk of exposure at bay.

The wide range of practices and agreements that might raise competition concerns is a continuous challenge for competition authorities and, subsequently, for companies, which need to stay alert. One could say that employees are the most valuable intangible asset. Not properly instructed, the same employees may bring about fines consisting of a percentage of the company's turnover. Many cases instrumented by the competition authority in the recent years were not generated by the company's official policy, but by the employees' actions and interactions in performing their day-to-day activities, in good faith and having no representation that they might act in breach of competition law.

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Case by Case

How Fast Is Fast Enough to Get Relief in a Competition Case? Synchronising the Time of Regulation with the Time of Doing Business

How Fast Is Fast Enough to Get Relief in a Competition Case? Synchronising the Time of Regulation with the Time of Doing Business

On One Side of the Story

When you know that your competitor(s) or supplier are crossing the lines of fair competition and there are no further strategic moves you can use to neutralise their actions and stay competitive, you want to seek fast and effective remedy from the competition authority. This could happen, for instance, when a company is being discriminated against, based on price or non-price related measures, by a supplier for whom there is no viable substitute or that holds a product portfolio highly demanded in the market (above 40%), thus disrupting fair competition on the market. Or, when a supplier deliberately sells at a loss for a period, targeting the exclusion of competitors and the creation of a monopoly to be further exploited at higher prices.

Since the investigations of the Romanian Competition Council ("RCC") usually take longer than two years, is there any way you can get relief any faster? What is possible under the current legal framework since in most cases, two years of resistance in face of abusive practices could force market exit? If the abusive competitor is fined two to three years later by the RCC, and the affected company promotes a damages claim in court, which could be ruled upon, in a best case scenario, in four or five years[1], is such course of action likely to guarantee the price of market exit and lost opportunities?

These are natural questions crossing the mind of potential victims of unfair practices used on the market by dominant players or by companies jointly acting unlawfully. Plaintiffs in fast paced technology sectors would probably strongly voice that immediate intervention of competition authorities is key to prevent ultra-dominance by one single player, achieved through unfair means and that the time of regulation needs to be synchronised with the time of doing business.

On the Other Side of the Story

Companies which may be subject to interim relief play the caution card. They argue that interim>

1. Generally, the damages claims are suspended until a final award on the competition case is obtained (i.e. as the company fined by the RCC is likely to promote an appeal against the RCC decision).

measures are difficult to reverse and can even lead to competitive harm, especially if the competition authority ends up closing its investigation or loses a challenge in court. Thus, in their view, interim measures should not be a substitute for speedy and streamlined main proceedings. For these reasons, the use of interim measures in rapidly-evolving technology markets, where new business models and disruptive innovations are difficult to assess *prima facie*, in a fast track procedure, is particularly controversial.

So, What Is Possible and Adequate to Keep a Competitive Level Playing Field?

Both the legislation at national and EU level empowers the competition authority to impose provisional measures in a pending investigation, before it reaches a final decision on the merits of the case.

Based on the RCC Guidelines, two conditions must be met: the RCC should assess that, *prima facie*, there is an infringement of Competition law (e.g. abuse of dominant position, illegal boycott, cartel or other restrictive agreements). This does not involve a fully-fledged investigation of the facts, but the RCC should feel comfortable with the preliminary conclusions, given the effects such measures could have on the addressee and the fact that its decision to award interim relief may be further challenged in court. From the plaintiff perspective, chances are increased with the submission of a well-written and substantiated initial complaint, which shall be confronted against the "story" of the defendant justifying its practice.

The second condition to be proved relates to the **urgency of the required relief**. This is usually the job of the plaintiff, who should be able to show that absent the RCC provisional intervention, it suffers **serious and irreparable damage** (that it is about to suffer major harm, which could not be remedied or would be difficult to repair when the RCC finally issues a sanctioning decision several years later).

The approach of the Guidelines seems to be that interim relief are not suited only for the prevention of insolvency or imminent market exit of the affected party. For instance, while not in peril of forced market exit, the complainant may also prove a loss in market share, which is sufficiently high and caused by the conduct of the addressee of the interim measure.

> *"The use of interim measures in rapidly-evolving technology markets, where new business models and disruptive innovations are difficult to assess prima facie, in a fast track procedure, is particularly controversial.*

Importantly, according to the RCC Guidelines, the imminent damage must not be certain (as in having been suffered already) but should be sufficiently probable, depending on several market factors.

The actual measures to be ordered may be behaviour related (e.g. to modify the restrictive terms in contracts, to provide access to an essential facility, to provisionally stop discrimination) and, exceptionally, structural. Importantly, the content of measures should aim at preserving the level of competition in the market and not creating an advantage to the plaintiff. Thus, the RCC should wisely create a balance between the interests of the plaintiff, the potential effects on the plaintiff and the general competitive conditions on the market.

Interim Measures, an Efficient Tool?

Time wise, this is a fast track procedure, ticking the steps of a regular investigation procedure. Technically, the RCC could issue an interim measures decision within 30 days from the investigation team is convinced of the necessity of such measures. It is the case team who first delivers a preliminary assessment on the interim measures called for by the plaintiff and issues a proposal to the RCC Plenary. The parties have 15 days to provide comments on the proposal, access the RCC file and request a hearing before the RCC Plenary. The RCC Plenary should decide on the interim measures proposal within 15 days from the submission of the parties' comments.

In practice, the award of interim measures may take several months, given the time required for the case team to prepare the preliminary assessment. As an example, it took more than seven months for the RCC to instrument its last case. It is thus up to the complainant to call for interim measures as early as possible in the procedure and to bring enough evidence to open the door for interim relief.

Once this door is opened, the instrument may be quite powerful to provisionally protect the competition in the market. The RCC may, by decision, oblige undertakings to pay daily penalties in the amount of up to 5% of the average daily turnover of>

the previous year for infringing the interim measures decision.

Interim Measures, a Revived Weapon?

For quite a while, this tool, which could be used *ex officio* or upon request (at national level[2]) has been a dormant weapon. As is the case in many industries nowadays, speed and adequate market reaction are essential to stay and compete effectively, thus, the competition authorities should be more open to enforce provisional redress.

Signs of reviving this tool at EC level have been shown this summer when, for the first time in nearly two decades, the European Commission announced plans to impose "interim measures" in a pending investigation. The Commission currently investigates Broadcom, a leading manufacturer of TV and modem chipsets, with regards to implementing a range of exclusionary practices concerning these products, among which (i) setting exclusive purchasing obligations, (ii) granting rebates or other advantages conditioned on exclusivity or minimum purchase requirements, (iii) product bundling, (iv) abusive IP-related strategies and (v) deliberately degrading interoperability between Broadcom products and other products[3]. The interim measures case is currently under review before the Commission, but the final decision on such relief may take quite some months, even a year, given the procedural steps to be followed.

At national level, the RCC has also been quite reluctant in applying this tool, as the last case occurred in 2012 and the authority had then rejected the interim measures requested by Carpatair in an abuse of dominance case against Timisoara Airport (tariff discrimination between Carpatair and Wizzair). The investigation was closed two years later, with no fines, with Timisoara Airport committing to apply a non-discriminatory policy. Since then, neither the companies, nor the RCC have attempted to use this weapon.

Past reluctance should not predict the future. While businesses move and react at an ever-higher speed, time is likely to be of the essence when it comes to effective regulatory intervention. Balance should be the key to enforcing provisional relief. Swift and balanced assessment is now possible given the high level of market understanding and experience of competition authorities, as well as the increased quality of data provided by businesses on the plaintiff or defendant side, which in most cases, make the difference towards a sound grounded case.

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2. The RCC may apply interim measures procedure ex officio and upon request.

3. https://europa.eu/rapid/press-release_IP-19-3410_en.htm.

Focus

- To Settle or Not to Settle...a Competition Infringement Case
- Crime Prevention in Corporate Entities

To Settle or Not to Settle...a Competition Infringement Case

With fines that could be significantly heavy on the business as such are linked to the total turnover, companies are more and more aware of procedures that could trigger a diminished financial effort and an economy of procedure.

In case of breach of competition norms, fines applied by the Romanian Competition Council ("RCC") may go up to 10% of the total turnover achieved in the year preceding the issuance of the sanctioning decision. Competition Law[1] also provides a minimum level of the fine. Such is currently set to 0.5% of the total turnover.

Competition Law offers various the options to obtain a decrease in the level of a potential fine:

- **Leniency**[2] - the leniency policy provides that companies may benefit of total (100%) or partial immunity from fines (but, in case of partial immunity, the leniency reduction would not exceed 50%) in case such provide proof to the RCC that allows the authority to open or instrument a case and identify severe breaches of Competition Law that include hardcore horizontal cartels (e.g. price fixing, market/ production allocation or market sharing, bid rigging, restrictions on parallel trade or boycotts) or vertical agreements or practices related to pricing; or
- **Settlement** – a reduction of 10%-30% of the level of the fine in case the company admits to the breach of Competition Law and undertaking not to challenge the sanctioning decision in court (the "Settlement Procedure")[3]. As opposed to leniency, the settlement is not aimed at rewarding an added value in providing proof for the case to the authority, but to reward an economy of procedure given that the will be no further efforts related to challenging a sanctioning decision in court and the administrative procedure is somewhat>

1. Competition Law No. 21/1996 republished in the Official Gazette, Part I, No. 153 of 29 February 2016.
2. The leniency policy is detailed under the RCC Guideline on the conditions and criteria for the application of the leniency policy, as approved under Order No. 300/2009, published in the Official Gazette, Part I, No. 610 of 7 September 2009.
3. The Settlement Procedure is provided under Article 57 of Competition Law and further detailed under the RCC Guidelines on the method of setting the fines for misdemeanours provided under Article 55 of Competition Law No. 21/1996 (the "Guidelines") as approved under RCC Order No. 694/2016 (further amended and supplemented). The Guidelines were published in the Official Gazette, Part I, No. 882 of 03 November 2016.

simplified. Although the percentage of the reduction is lower, the Settlement Procedure has the advantage that the minimum fine threshold could be legally reduced up to 0.2% only in case the company settles the case with the authority.

Given that the reduction could be quite relevant, at least in cases of clear infringements, the Settlement Procedure could be an option for companies finding themselves in a breach of competition law circumstance, especially if the respective company does not firstly undertake the leniency route or does not have in its possession proof that could allow the initiation of a leniency procedure.

In any case, the Settlement Procedure may be cumulated with a leniency application thus triggering a higher reduction level from a potential fine. However, in this case the cumulated reduction of a potential administrative fine may not exceed 60%. In case the leniency policy is applied, the Settlement Procedure could not trigger a reduction of the fine by more than 20% of the base level of the fine established by the RCC.

Although the leniency policy was implemented by the RCC earlier than the Settlement Procedure, statistics show that in the last two-three years, the cases finalised by the RCC by Settlement Procedure are increasing steadily:

- In its 2018 activity report[4], the RCC indicates that 80% of the instrumented investigations were finalised by identifying the existence of an infringement and corresponding application of administrative fines. According to the RCC report, almost half of the sanctioned companies resorted to a Settlement Procedure.
- The 2018 report also indicates that by reference to 2017, the percentage of companies that decided to apply for the Settlement Procedure doubled, reaching a percentage of 40-41% in 2018 as opposed to 21% in 2017.
- The 2017 activity report[5] issued by the RCC indicates that in 11 out of 13 cases finalised in that year with a conclusion of an infringement, 21% of the total number of the sanctioned undertakings settled the case.
- The RCC currently accepts the application of the Settlement Procedure irrespective of the infringement potentially identified and irrespective if all the parties found to be in breach of Competition Law settle the case (i.e. full settlements) or only one or some resort to such procedure (i.e. hybrid settlements).

This confirms that both the RCC and companies under investigations see the Settlement procedure as a potential go to option in order to achieve various efficiencies.

Nevertheless, this does not automatically mean that companies have any obligation to apply for the Settlement Procedure or that as of the implementation of such policy companies would not have access to defend their position and absence of a breach of Competition Law both before the RCC Plenum in the administrative procedure, as well as in courts. The statistics should only be interpreted in the sense that, in certain cases, companies, depending on their particular circumstances of the case, may choose to settle the case as such option would appear a more suitable financial option for them at that point in time.

The Settlement Procedure requires that, the undertaking:

- Admits, through a duly authorised representative, **expressly**, **clearly** and **unequivocally** its liability for the infringement of Competition Law as identified by the RCC on all applicable aspects (legal qualification, geographic impact and duration). The admission of guilt may occur prior to the delivery by the RCC of the statement of objections (the "SO") detailing the infringement and the RCC case-team's arguments for finding an infringement or after the SO is communicated to the party, but, in any case, prior to the start of the hearings related to the case before the RCC Plenum[6];>

4. The report is available at: http://www.consiliulconcurentei.ro/uploads/docs/items/bucket14/id14441/raport_anual_2018_final.pdf

5. The report is available at: http://www.consiliulconcurentei.ro/uploads/docs/items/bucket13/id13184/raport_anual_2017.pdf

6. During the hearings before the RCC Plenum, the case-team presents the accusations and the investigated parties present their defenses. The RCC Plenum finally decides on the case based on such arguments.

- Accepts the payment of a maximum fine level (such level is accepted also in consideration of the settlement);
- Does not challenge in court the sanctioning decision issued by the RCC. In case the RCC's sanctioning decision is challenged in court by the company benefiting of the Settlement Procedure, the fine reduction triggered by the settlement benefit is no longer applied;
- If applicable, proposes remedies to remove the causes and/or the effects of the infringement.

As of the date the Settlement Procedure was firstly included in Competition Law, the RCC refined its Settlement Procedure with the aim to simplify and render the procedure more efficient, as well as award the maximum reduction level (30%) only in cases when the economy of procedure is significant for the authority.

Accordingly, the RCC introduced various procedures and levels of benefits linked to the Settlement Procedure, as shown below.

From a procedural perspective:

- The RCC implemented a specific settlement form to be filled-in by the interested parties depending on the moment the settlement is initiated (either before or after the SO is communicated to the parties).
- The parties interested in a potential settlement have the legal comfort that discussions with the authority on a potential settlement do not qualify as an admission of guilt or the undertaking of any related liability.
- In case discussions for a Settlement Procedure are initiated by the authority upon its own initiative or following the initiative of another party under investigation, the refusal to start the Settlement Procedure does not represent a refusal to cooperate with the RCC.
- The party may also withdraw from the settlement but, in any case, not later than the start of the hearings before the RCC Plenum.
- The discussions with the RCC under the Settlement Procedure are recorded based on minutes of meeting drafted in accordance with a standard for attached to the Guidelines. Such minutes are confidential towards other parties under investigation.
- Settlement proposals that are withdrawn or are not accepted by the RCC may not be used as proof against any of the parties to the investigation.

In terms of settlement benefits, the discount that could be accessed under the Settlement Procedure significantly depends on the moment the settlement is reached either prior or post the delivery of the SO:

- If the procedure is performed prior to the communication by the RCC of the SO, the interested party could access a reduction of up to 30% of the potential fine (the maximum reduction possible) if the party admits in full to the RCC's infringement conclusions, while a maximum 20% reduction could be accessed in case of a partial admission of guilt[7]. The higher level of reduction applies as the settlement prior to the communication of the SO facilitates the administrative procedure.

> *"The final decision on accepting the Settlement Procedure and awarding the corresponding reduction in the level of the administrative fine rests with the RCC Plenum.*

- If the procedure is performed subsequent to the communication of the SO, the interested party in the settlement may access up to 15% reduction of the potential administrative fine in case of full admission of the RCC's infringement conclusions, while for a partial admission of guilt a discount of 10% could be accessible at such point of the administrative procedure.

The final decision on accepting the Settlement Procedure and awarding the corresponding reduction in the level of the administrative fine rests with the RCC Plenum. Naturally, the Settlement procedure would be applicable only in case the RCC Plenum>

7. Partial admission of guilt may refer to part of the anticompetitive practices identified by the RCC, a limited duration of the practice by reference to that identified by the RCC.

would conclude that a breach of Competition law occurred.

The need to refine the Settlement Procedure is in line with the practices of other competition authorities of Member States of the European Union (e.g. France) and is aimed to actually reward a true efficiency for the authority in undertaking its administrative procedure.

However, prior to the communication of the SO, it could be difficult for companies to identify if it may find itself in the circumstance of a breach of competition norms.

Prior to the communication of the SO, the parties under investigation are not aware of the assessment performed by the authority and do not have the procedural means to access the non-confidential version of the RCC's investigation file comprising the applicable proof on the case.

In this case, the parties could only consider initiating a Settlement Procedure prior to the communication of the SO if a potential breach would be apparent for that party based on a self-assessment performed by the company or in case the RCC would initiate discussions to verify the potential interest of the parties under investigation to undertake discussions in the Settlement Procedure.

Assuming that the RCC initiates talks under the Settlement Procedure prior to the communication of a SO (i.e. the party does not have an internal self-assessment indicating towards a breach of Competition Law), the party is presented the general conclusions of the RCC case-team and might have access to see, but not take copies, of the non-confidential version of certain elements of proof in the RCC's file, but there is not a formal procedure of access to the investigation file as it would occur in absence of the settlement discussions in the customary administrative procedure.

If an agreement is reached for the settlement, the RCC could prepare a short form SO (a significant procedural efficiency), but this would be applicable if all the parties under the investigation would settle the case. In the presence of a hybrid settlement, the RCC would still prepare an extended SO. Yet, for the parties taking the settlement route, the procedural effort should be simplified.

Therefore, even if the Guidelines confer certain procedural safeguards for the parties, the settlement prior to the communication of the SO implies a level of uncertainty for the parties on the proofs available to the RCC and the decision to undertake the Settlement Procedure would also be largely based on a self-assessment of the party under investigation.

If the Settlement Procedure is accessed after the communication of the SO, the party under investigation would have the certainty on the RCC case-team's conclusions that are described in the SO. In addition, the party may have access to the non-confidential form of the case file. Hence, the level of awareness for a decision to request a Settlement Procedure is higher, but the possibility to access the maximum discount is not available anymore.

Thus, the Settlement Procedure, is aimed to encourage companies to opt for efficiencies in the administrative procedure by admitting the breach of competition norms as identified by the RCC and receiving a reduction from the level of the fine by 10% to 30% depending on the moment of the settlement and if the settlement represents a full or partial admission of guilt. For companies, the Settlement procedure, may also translate in certain financial efficiencies resulting from the additional reduction of a potential fine, as well as removing the cost of challenging the RCC's conclusions. In any case, the settlement should normally be accessed if the party under the investigation is truly convinced that the RCC's conclusions may not be overturned. Besides the provisions of Competition Law, prior case-law could offer a relevant proxy for such self-assessment.

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Crime Prevention in Corporate Entities

The fight against crime is carried out in all fields of activity, regardless of the public or private sector. Although salutary in many respects, the current regulations in the field expand, in many cases, the scope of actions that can constitute offences and that of persons who may be held liable.

Anticorruption Management System

For instance, corruption and malfeasance in office specific to public officers may also be upheld against so-called *private officers*, i.e. any person performing a task within a legal entity, be it a private body or an individual. The *officer* concept is extended to include new categories of persons that may be held liable for corruption or malfeasance, while public authorities will most likely enjoy a discretionary margin in determining and assessing when and who is liable for such offences.

By implementing an anticorruption management system, the legal entity's management bodies will be able to prove that the company implemented measures to prevent and fight corruption offences that could have been perpetrated in conducting the company's business, on behalf or in the interest thereof.

Violations of the anticorruption laws, including failing to prevent bribery and abuse, is damaging to the company's reputation and entails serious penalties, including harsh fines or the dissolution of the legal entity and imprisonment of individuals.

In the national legal system, as a rule, the legal entity's liability is for its own actions, which means that it concerns the management bodies and the organisation thereof, so establishing the guilt of the individuals acting in the management of the legal entity may be the equivalent of establishing the guilt of the relevant legal entity.

The criminal liability of a legal person may also be triggered by acts or facts of any individual acting for the company, including representatives, agents or even individuals who do not hold an official position within the company, but who act under the company's supervision/authority. In other words, the legal entity could still be held criminally liable for said offence/s if the members of the legal entity's management bodies knew or should have known about the criminal activity conducted by the individual/s who acted for the company.

The existence of guilt or of the form or method of implementation thereof shall result from the objective aspects of decision-making by the legal entity's management bodies or from existing, known, accepted or tolerated practices, in the activity of the legal entity.

If the legal entity has created a well-organised>

surveillance and control system reasonably apt to prevent offences, the legal entity's liability could be reduced or even excluded.

Increased Attention in Day-to-Day Activity

Depending on the specific nature of the legal entity's activity, it may be of interest to check the content of the criminal regulations that may be applicable besides those governing corruption offences or malfeasance.

Legal measures with respect to health and safety

Health and safety at work is one of the lawmaker's utmost concerns in employment law. Therefore, issues related to such have had, over time, through the internal regulations in the field, a complex and ever-developing protection. Accordingly, it is natural for criminal law to provide or contain regulations incriminating conducts to the highest degree of social threat in the field, i.e. those concerning the failure to take or observe the legal measures for health and safety in the workplace.

"*Health and safety at work*" encompasses the entirety of the institutionalised activities aimed at ensuring the best conditions for conducting the process of work, defending the life, the physical and psychological integrity, the health of workers and other persons participating in the work process.

Therefore, it is mandatory for companies to implement a set of measures on health and safety with a view to: a) ensuring the safety and protection of workers' health; b) preventing occupational hazards; c) informing and training workers; d) ensuring the organization framework and the means necessary for health and safety in the workplace.

Tax evasion

In practice, it is hard to draw a line between legal and illegal. The risk of crossing the line between the two reveals itself so much more poignantly when considering the dynamics and inconsistency of the relevant legislation, as well as the interpretation and application thereof by tax authorities (for instance, the tax legislation allows tax authorities, when determining the amount of a tax, to disregard a transaction lacking an economic purpose or reclassify a transaction in order to reflect the economic content thereof).

> *" Depending on the specific nature of the legal entity's activity, it may be of interest to check the content of the criminal regulations that may be applicable besides those governing corruption offences or malfeasance.*

It has become common practice to consider that the responsibility of checking the fiscal behaviour of the companies involved in a transaction, upstream or downstream, lies with the economic operator and the failure to check reveals a criminal conduct.

Also, the trend is to interpret any operation requalified by the tax authorities as being aimed at reducing or removing tax liabilities to the State Budget.

In order to prevent such situations, it has become imperative to obtain specialised consultancy for knowing and managing fiscal duties.

Public procurement

In addition to the offences provided under Law No. 78/2000 , brought into force so as to protect the financial interests of the European Communities, the current Criminal Code introduced a regulation on illegally obtaining funds, in reference to funds obtained from or guaranteed by national public funds, thus extending the scope of application of the criminal law regulations in the field of accessing national and European funds.

Also, changing the purpose of money or other material sources allocated to a public authority or public institution constitutes an offence.

As soon as economic operators provide the tender documentations in procedures for awarding / obtaining funds, they need specialist advice in order to avoid "*providing false, inaccurate or incomplete documents or data*" that would entail criminal law penalties.

Insolvency

Increased attention should be paid to the situation where the legal entity is subject to an insolvency procedure. Here as well, there is criminal legislation that could be applicable if creditors' interests are or may be circumvented by reducing the assets or artificially increasing the liabilities of an insolvent company.

The novelty is that criminal law no longer makes the incrimination of fraudulent bankruptcy conditional on opening the insolvency procedure in every case, so the understanding is that the offence may also be perpetrated when the insolvency exists *de facto*, without having a legal confirmation of such state, i.e.>

a court decision to commence the procedure.

Post-Factum Offences

While the areas mentioned above do not make up an exhaustive list of what is of interest from the perspective of criminal law, it may be concluded that nearly in any field of activity there are specific regulations that require close attention from the legal entities' management bodies.

Furthermore, any use of the documents or products resulting from the perpetration of an offence may constitute the offence of using forged documents, discriminating in favour of the perpetrator, concealment or money laundering.

As concerns the offence of money laundering, legal entities have the obligation to appoint a person to report suspect transactions to the National Office for the Prevention and Control of Money Laundering.

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News and Views

Let's Talk Competition Law!

Let's Talk Competition Law!

**Technological speed, single market, innovation, expansion in the online environment...
Markets are constantly moving, companies are adapting "on the go" to new realities, trying to anticipate, to diversify, to keep on top with what's new.
The classic recipe is no longer a guarantee of success, market leaders can be replaced overnight or, on the contrary, consolidate their position through innovative approaches.
The data is a commodity, the currency - the step to the next level? Does competition intensify or slow down? Do competition laws apply as a template or do they adapt to change and speed?**

We are happy to invite you to our annual **Let's Talk Competition Law!** seminar which will take place on 10 October 2019.

We will explore current issues, which emerged from our practice, but also at the level of the competition authorities, in the context of markets that we see as being increasingly dynamic, oriented towards cost efficiencies and profitability.

Let's Talk Competition Law! seminar is delivered by a team of lawyers specialised in competition law within Țuca Zbârcea & Asociații, which offers legal assistance and consultancy services regarding the applicable regulations in the field of competition.

Our lawyers have defended our clients' interests before the national competition authority, as well as in litigation before the courts in relation to a wide range of specific issues. Moreover, our compliance team is helping clients observe competition regulations (respectively, the assessment of potential exposure, implementation of compliance programs) so as to avoid the sanctions applicable in case of violation of the competition laws.

Some of the main topics covered by the event are as follows:

Competition authority - vision, actions, future

- What are the trends of the European Commission regarding the application of the competition law? What to expect in Romania?
- Commitments instead of fines? "Preferred" industries or practices for commitments?
- The need for rapid intervention. Are the interim measures in place today?
- How is the Competition Council positioned towards the new business models in the context of digitization?

Innovation, digitization, the online market. What to expect?

- Distribution, online sales, marketplace, home delivery, the future of physical stores
- Dominance in the online environment
- Big Data, price algorithms

To compete or cooperate? Why not>

both?

- Cooperation between competitors
- Common platforms (marketing, supply, delivery)
- Consortiums for bids

We are pleased to have with us Mr. Bogdan Chiriţoiu, President of the Competition Council, who will share with us the vision of the competition authority in the current context, but also in the future.

Should you be interested in attending the event, please contact us directly for further information regarding the registration procedure and full event agenda.

Looking forward to seeing you all soon!

Ţuca Zbârcea & Asociaţii's Competition Team

/ **The materials included herein are prepared for the general information of our clients and other interested persons. They are not and should not be regarded as legal advice.**

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