

## Competition - Romania

### End of 2012 marked by bid-rigging fines and new regulatory attributions

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#### Fines for bid rigging

#### Regulatory arm of Competition Council in railway sector

#### Annual report on competition in key sectors

The Competition Council marked the end of 2012 by announcing the conclusion of two investigations into alleged bid-rigging practices surrounding public tender procedures organised by two of Romania's most important public undertakings – the national natural gas carrier, Transgaz SA, and the Romanian National Company of Motorways and National Roads (CNADNR). In addition, the legislative procedure by which the council took control of the Supervisory Board in the Railway Sector from the Ministry of Transport came to a greatly anticipated end.

#### Fines for bid rigging

##### ***Collusive tendering in the gas sector***

The Competition Council announced that four leading companies were fined for breaching the Competition Law (21/1996) by rigging bids in two public procurement procedures organised by Transgaz SA, the national natural gas transport company. The council imposed penalties on Condmag SA and Inspec SA amounting to €1 million and €1.6 million, respectively, for bid rigging in a 2009 tender procedure for the award of a public works agreement to connect a power plant to the national natural gas network. The anti-competitive agreement consisted of the exchange of sensitive information between the two tendering companies, which allowed Inspec SA to win the procedure as per the parties' agreement. In addition, the competition authority imposed fines on Moldocor SA and TMUCB SA amounting to €500,000 and €2.5 million, respectively, for an anti-competitive agreement concluded by the two companies in relation to another public procurement procedure organised by Transgaz SA in 2011. In this case the competition authority identified an adjustment of Moldocor SA's bid in accordance with data and information provided by TMUCB SA.

However, this decision did not mark the end of the council's investigation into activities undertaken by Transgaz SA or relating to it, as more than 20 companies have been under the scrutiny of the competition authority since 2011. The ongoing investigation also concerns Romgaz SA, the national natural gas producer, and the conclusions of the proceedings will be more interesting in the context of the sector inquiry into the natural gas sector that was launched by the council in late 2012.

##### ***Bid rigging for national road works***

On November 27 2012 the council issued its decision to fine five companies for bid rigging in public procurement procedures organised by CNADNR for the award of public works agreements to install cross and longitudinal markings on national roads. The investigation was launched in 2011. On the merits of the case, the Plastidrum consortium (consisting of SC Plastidrum SRL and SC Signature Semnalizare SRL) and the Swarco consortium (consisting of SC Swarco Romania SRL, Swarco Heoscont Strassenmarkierung GmbH – Austria and Eleftherios Kokkinakis LTD – Greece) entered into an agreement in which the Plastidrum consortium would submit the winning bid and the Swarco consortium would provide the minimum legal number of bidders. Following the award of the public works agreement, the Plastidrum consortium assigned the public works of road marks for the sectors of National Roads 2 – Craiova and 6 – Iași to the Swarco consortium. The aggregate amount of the fines imposed in this case by the competition authority was more than €660,000 for all five companies.

The motorways and national roads sector is under heavy scrutiny from the council, considering that in 2012 no less than four investigations were launched into alleged anti-competitive practices concerning the award of public works contracts in several counties and in Bucharest, the capital. The council is also still conducting a sector inquiry into the market for construction of motorways and national roads that was

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launched in 2010.

### **Regulatory arm of Competition Council in railway sector**

The council has announced the entry into force of Law 188/2012 approving Emergency Government Ordinance 21/2011 on the organisation and operation of the Supervisory Board in the Railway Sector. This law defines the legislative framework for the operation of this supervisory authority. The amendments were made in 2011 as a response to the European Commission's criticism of the Romanian government for its failure to ensure the independent operation of this authority, which was set up in 2005. Specifically, the supervisory board was originally an integral part of the Ministry of Transport, leading the European Commission to bring infringement proceedings against Romania.

Since 2011 the supervisory board has operated under the auspices of the Competition Council. It consists of five national competition authority experts and its members cannot be employees of government ministries, which meets the requirements of the European Commission. At present, a deputy chairman of the Competition Council is head of the supervisory board.

### **Annual report on competition in key sectors**

The Competition Council also launched the third edition of its annual Report on Competition in the Key Sectors of the Romanian Economy. This year the council's analysis focused on the energy, freight rail transport, telecommunications, food product retail, insurance and banking sectors.<sup>(1)</sup>

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### **Endnotes**

(1) The report (in Romanian) can be accessed at: [www.consiliulconcurentei.ro/uploads/docs/items/id8081/consiliul\\_concurentei\\_raport.pdf](http://www.consiliulconcurentei.ro/uploads/docs/items/id8081/consiliul_concurentei_raport.pdf).

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