

Competition - Romania

Regulatory reform: guidance the key to transparency and legal certainty

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A number of amendments to Romania's competition control regime have been implemented by a government ordinance, which was published in the *Official Gazette* on July 6 2010. The package seeks to combine both structural and operational changes to the Competition Council and a shift in its policy on monitoring and enforcement (for further details please see "[Internal shake-up at Competition Council will sharpen enforcement](#)"). Companies, professional associations and antitrust practitioners continue to assess what the modified approach will mean for them.

In this respect, the changes to secondary legislation are arguably the most significant, as they detail the provisions of the Competition Law and the council's approach in specific economic contexts and in respect of specific practices or agreements between private companies. In the seven years that followed the previous revision of Romania's competition rules, the economic climate, Romania's business environment and the practicalities of M&A transactions all changed, in some cases radically. As a result, certain aspects of the previous legislation became either difficult to enforce or simply inapplicable.

It has been suggested that greater use of guidance letters and official position statements would help companies to identify and avoid anti-competitive practices. The elimination of individual exemptions and exhaustive filings in the case of franchise, technology transfer, cooperation and distribution agreements, where block exemptions do not apply, requires companies to conduct more extensive self-assessment in line with the European Commission's best practice. Beneficiaries of council guidance stand to gain greater insight into regulatory issues and thus a competitive advantage, but making more official viewpoints publicly available - on the council website, for example - would prevent discrimination where many economic operators face the same situation.

The chairman of the council has acknowledged that ensuring greater predictability of the regulator's decisions for the benefit of companies is one of the key aims of the council's changes. The implicit acknowledgement that most companies would rather comply on the basis of legal certainty than take the chance of justifying and defending themselves later will be welcomed by the private sector.

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