

THE ROMANIAN COMPETITION COUNCIL RELEASES ITS COMPLIANCE GUIDE

In what is a significant step in the promotion of competition law compliance, the Romanian Competition Council ("**RCC**") released its Compliance Guide ("**CG**") aimed at assisting all types of companies, irrespective of their size, in the implementation of a tailored and effective compliance program.

SUBSTANCE OVER FORM

The RCC uses the CG to signal a departure from a formalistic approach towards a substance based approach insofar as compliance programs are concerned. To date, competition compliance programs have typically been the focus of larger international companies; however, they are now expressly identified within the CG as essential for all companies, irrespective of their size or activity sector.

Furthermore, the CG stresses the fact that the **effectiveness** of a compliance programme is directly correlated to the decision-making level at which it is assumed, as well as the credibility and decisional autonomy of the representative in charge of monitoring the compliance.

Finally, the RCC recognises the need for **personalized, tailor-made compliance programs**, the content of which may well differ significantly in relation to a particular company. In addition, it recommends that a **risk analysis** be carried out, aimed at identifying the particular competition risks applicable to the respective company and the manner in which those risks can be addressed through a compliance program.

COMPONENTS OF COMPLIANCE PROGRAMS

While the RCC recognizes that there is no one-size-fits-all compliance program, the CG does identify a number of elements which should form part of each compliance program, as follows:

The compliance manual

The compliance manual, to be drafted and readily available in all the working languages of the company, contains a **brief, but clear and exhaustive**, outline of the main **competition provisions**, the main **competition risks** deriving from the activity of the company, and the **recommended course of conduct in sensitive situations** in relation to both management and operational decisions. Furthermore, the compliance manual must include **monitoring procedures** aimed at ensuring that the company's activities are

competition compliant, as well as **disciplinary measures** against employees found in breach of these rules.

Implementation measures

Underlying the entirety of the compliance strategy is a **4-step process: risk identification, risk assessment, risk evaluation and risk management**. Notably, the RCC points to potential means of identifying risks by relying on elements such as the size of the company, its geographical presence, its object of activity, its level in the commercial chain, third-party relations and others. Such a risk analysis should be performed at both an internal and an external audit, taking into account the changes in the activity of the company.

DISSEMINATION OF THE COMPLIANCE PROGRAM

The CG emphasizes the fact that a compliance program which is not disseminated both internally and, to some extent, externally, does not accomplish its purpose. Since the conduct of any employee may well implicate the liability of the company, the RCC expects each compliance program to include **mandatory compliance training** (either by direct interaction or on-line). Its recommendation in this respect, is to have **specialized, independent assistance** - the CG identifies trade associations as having an important role in the promotion of competition compliance, insofar as smaller companies are concerned.

COMPETITION DUE DILIGENCE

The CG also provides an outline of the assessment which must be done in relation to third parties, focusing particularly on **M&A transactions**. As such, commercial agreements should contain clauses whereby the parties **undertake to implement an effective competition compliance program**.

M&A transactions, on the other hand, should involve a competition due diligence aimed at identifying the existence of a competition compliance program implemented by the target company, as well as of any competition risks arising from its activity. Furthermore, the use of '*clean teams*' is highly recommended.

RELEVANCE OF THE COMPLIANCE GUIDE

It is important to keep in mind that the purpose of a compliance strategy is not only risk minimization, but also the **reduction of or exoneration from costs** resulting from anti-competitive behaviour. The existence of an effective compliance programme allows the company to file for a leniency application, and is a particular advantage in case of settlements.

The RCC can apply **finances of up to 10%** of the global turnover in the financial year preceding the RCC's decision. Additionally, **corrective measures** (e.g. termination of

exclusive distribution contracts) or **structural measures** (e.g. transfer of IP rights) may be applied, as well as deeming anti-competitive agreements as **null**.

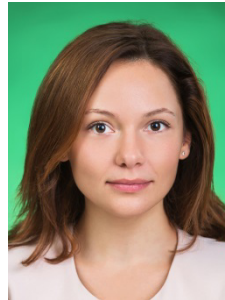
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For more information about our services, please contact:



Adrian Șter
Partner
adrian.ster@wolftheiss.com
T: +40 21 308 8100



Raluca Maxim
Associate
raluca.maxim@wolftheiss.com
T: +40 21 308 8100

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Wolf Theiss Rechtsanwälte GmbH & Co KG
Gheorghe Polizu 58-60
13th floor, sector 1, 011062
Bucharest

T: +40 21 308 81 00
F: +40 21 308 81 25
bucuresti@wolftheiss.com

www.wolftheiss.com