

INSIDE A COMPETITION AUTHORITY

The Competition Council of the Republic of Moldova

The Institution

The Chairperson

Marcel RĂDUCAN, *President of the Competition Council, President of the Plenum of the Competition Council*. Start of mandate: December 2018. End of mandate December 2023.

The members of the Board

Mihail CIBOTARU, *Vice President of the Competition Council, Vice President of the Plenum of the Competition Council*. Start of mandate: December 2018. End of mandate December 2023.

Ion MAXIM, *Vice President of the Competition Council, Vice President of the Plenum of the Competition Council*. Start of mandate: December 2018. End of mandate December 2023.

Mrs. Ala POPESCU, *Member of the Competition Council Plenum*. Start of mandate: December 2018. End of mandate December 2023.

Viorel MOȘNEAGA, *Member of the Competition Council Plenum*. Start of mandate: December 2018. End of mandate December 2023.

The head of the staff

Anatol BOTNARU, *Executive Head*. Start of mandate: October 2019 – indefinite period.

Appointment system for the Chairperson and other key roles

According to the provisions of the Competition Law no. 183/2012, the Competition Council Plenum is a collegial body and consists of 5 members, including the President, two Vice Presidents and two members, who are at the same time the President, Vice Presidents and members of the Competition Council. The members of the Competition Council Plenum fulfil public dignity functions and are appointed by the Parliament, on the proposal of the Speaker of the Parliament and with the endorsement of the relevant parliamentary commission for a five-year term. The Speaker of the Parliament also proposes the candidate for the President of the Competition Council. Each member of the Competition Council may be appointed for two consecutive terms.

The Executive Head it is a top-level public management function. According to the provisions of the Law no. 158 as of 4.07.2008 on Public Functions and the Status of Public Servants, the recruitment for this position shall take place via open competition.

Decision-making on competition cases

The administrative acts of the Competition Council shall be adopted during the Competition Council Plenum meetings, which may be ordinary or extraordinary. The meetings' minutes shall be signed by the President of the Competition Council, present members and the secretary of the meeting.

The meetings of the Competition Council shall be deliberative where at least 3 members are present, out of which one shall be the President or the Vice President, and shall be chaired by the President of the Competition Council, or in his/her absence by the appointed Vice President.

The administrative acts of the Competition Council shall be adopted in the Plenum by the vote of the majority of the members present at the meeting. Each member has one vote. In case of equal votes, the vote of the President, or in his/her absence, of the Vice President who chairs the Plenum meeting shall be decisive.

The members of the Competition Council Plenum do not have the right to abstain from voting. Those members voting against an act may choose to have their separate decision recorded in the minutes of the meeting concerned.

The decisions, dispositions and prescriptions of the Competition Council shall enter into force at the date or their adoption, if the decision, disposition or prescription does not provided for a later date.

Agency's competences in competition

- Antitrust (agreements and abuses of dominance)
- Mergers and acquisitions
- Advocacy to other public bodies
- Market studies
- State aid

In addition, the Competition Council has powers to investigate the following infringements:

- Actions or inactions of authorities and central or local public administration institutions resulting in the restriction, prevention or distortion of competition
- Unfair competition

Relevant competition legislation

The Competition Law provides the legal framework for the protection of competition, and sets out the rules concerning the prevention and elimination of anticompetitive practices and unfair competition, and the authorisation of economic concentrations; furthermore, its provisions detail the scope of activity and competence of the Competition Council and the applicable sanctions for competition law infringements.

This law transposes the provisions of Articles 101-106 of the Treaty on the Functioning of the European Union, EC Regulation no.1/2003, and partially (EC) Regulation no.

139/2004 on the control of concentrations between undertakings.

The State Aid Law no.139/2012 establishes the legal framework for the authorisation, monitoring and reporting of the state aid granted to beneficiaries from all sectors of the national economy, except for the agriculture sector, to prevent competitive distortion.

Other competences

According to the Advertising Law no. 1227/1997, the Competition Council is endowed with the following powers:

- ensuring that advertising activities are conducted in a manner that complies with the legislative provisions relating to advertising;
- requiring advertisers to terminate any behaviour that infringes advertising law;
- providing recommendations and proposals to prosecution bodies and other law enforcement bodies, within the limits of its competence, about how to address identified problems related to advertising.

In addition, the Competition Council is entitled to bring actions in court, including in the interests of an undetermined circle of advertising consumers, in connection with the violation of the legislation on advertising committed by advertising agencies, as well as on the cancellation of transactions related to inappropriate advertising.

Number of staff of the authority

As of February 2019, the Parliament of the Republic of Moldova approved the new organisational structure and the staff-limit of the Competition Council.

According to the new structure, the Competition Council has an administrative and executive body consisting of 11 specialised and seven operational subdivisions, and three territorial branches (operating in the North, South, Gagauzia regions). The limit number of the staff is 130.

Staff structure by functional unit (% of total), 2019		
Functional units	Actual number of positions filled as of 31.12.2019	Number of positions as provided for by the organisational structure
Management		
Competition Council Plenum	5	5
Executive Head	1	1
Specialised divisions, of which:	57	90
<i>Competition Divisions</i>	26	45
<i>State Aid Divisions</i>	17	25
<i>Territorial Offices Division</i>	9	12
<i>Legal Division</i>	5	8
Operational divisions	27	34

Number of staff working on competition		
Competence	Number of case handler/manager positions filled as of 31.12.2019	Number of case handlers/managers as provided for by the organisational structure
Antitrust	10	16
<i>Anti-cartel</i>	5	8
<i>Abuse of dominant position</i>	5	8
Mergers and acquisitions	6	8
Market studies	3	9
Advocacy to other public bodies*	9	14
State aid	17	25
Other	16	24
<i>Actions or inactions of authorities and central or local public administration institutions resulting in the restriction, prevention or distortion of competition</i>	4	6
<i>Unfair competition</i>	3	6
<i>Territorial Offices Division</i>	9	12
TOTAL	61	96

* In the implementation of Advocacy, all employees of the specialized competition and state aid divisions are involved together with the Legal Division and Policy, Protocol and External Relations Division.

Accountability

According to the provisions of the Competition Law no. 183/2012 the Competition Council is an autonomous public authority accountable to Parliament, which ensures the observance and enforcement of the legislation regarding competition, state aid and advertising within the limits of its competence.

On an annual basis, the Competition Council prepares a report on its activity. The report of the Competition Council is adopted by the Plenum of the Competition and is annually presented to the Parliament of the Republic of Moldova in plenary by 1 June, and is then published on the official website of the authority.

The activity report shall contain:

- the annual financial report and the audit report;
- the Competition Council's activities in the accomplishment of the objectives provided for by the present law and in the legislation on state aid and advertising;
- the most important priorities for the following year;
- other information deemed important by the Competition Council.

In addition, according to the provisions of the State Aid Law no. 139/2012 the Competition Council shall prepare an annual report on the granted state aid, which shall be submitted annually to the Parliament in plenary and the Government by 1 June and then published in the Official Gazette of the Republic of Moldova.

1. ANTITRUST ENFORCEMENT OVER THE LAST 24 MONTHS

Cartels

Number of cases			
	2018	2019	TOTAL
Infringement decisions	8	2	10
<i>With fines</i>	8	2	10
<i>Without fines</i>	0	0	0
Non-infringement decisions	0	0	0
Other (specify)	12	7	19
<i>imposition of fines</i>	0	4	4
<i>acceptance of commitments</i>	5	0	5
<i>carrying out dawn raids and executing penalties</i>	5	2	7
<i>termination of investigations</i>	2	1	3
TOTAL	20	9	29

Fines

Total sum of cartel fines in 2018 and 2019 was around **MLD 10.5 million** (over **€0.542 million** according to the exchange rate of the National Bank on 31.12.2019).

- In 2018, 23 undertakings involved in anti-competitive cartel agreements were sanctioned and fines totalling over **MLD 10 million** (over **€0.519 million** at the exchange rate of the National Bank on 31.12.2019) were imposed for infringements of the provisions contained in the Competition Law.
- In 2019, 6 undertakings involved in anti-competitive cartel agreements were sanctioned and fines totalling approximately **MLD 0.432 million** (over **€0.022 million** at the exchange rate of the National Bank on 31.12.2019) were imposed for infringements of the provisions contained in the Competition Law.

Leniency applications

In 2018-2019, only one leniency application was submitted to the Competition Council (in 2018). This application related to an investigation that had been initiated by the Competition Council into alleged anti-competitive collusion in the form of bid rigging by undertakings involved in public procurement procedures.

It is important to point out that it was only in 2018 that the Law for amending and supplementing the Criminal Code was approved which enables the representatives of undertakings that are cooperating with the Competition Council under the framework of the leniency policy, as provided by the Competition Law, to be exempt from the application of the criminal law.

Following the entry into force of these amendments to the Criminal Code, which provided for criminal liability in the event of an infringement restricting competition, natural persons may be exempt from criminal liability if they are representatives of undertakings that are cooperating with the Competition Council within the framework of the leniency policy.

Dawn raids

The Competition Council has carried out **47 dawn raids** (32 in 2018 and 15 in 2019) in cartel cases.

Main cases

The Competition Council Plenum adopted, in 2018-2019, 10 decisions concerning the conclusion of anti-competitive agreements that aimed to distort or restrict competition in procurement procedures through bid rigging behaviour.

One of the main completed investigations:

Decision of the Competition Council Plenum no. DA-42/17-48 as of 28.06.2018

Defendants: “BTS PRO” LLC, “MSA GRUP” LLC and “ESEMPLA SYSTEMS” LLC

Brief description:

The Competition Council Plenum established that “BTS PRO” LLC and “MSA GRUP” LLC had concluded an anti-competitive agreement through their participation in bid rigging in the public procurement procedure no 239/17 on 19.06.2017, which was organised and conducted by the National Integrity Authority, and also that “BTS PRO” LLC, “MSA GRUP” LLC and “ESEMPLA SYSTEMS” LLC had concluded an anti-competitive agreement through their participation in bid rigging in the public procurement procedures no.17/01728 22.06.2017 and no. 17/01732 as of 22.06.2017, which were organised and conducted by the General Prosecutor’s Office.

Committed violation:

The bid rigging was carried out by exchanging sensitive commercial information, as well as by presenting cover bids at the mentioned tenders to simulate competition, thereby violating the provisions of Art. 5 para. (1) of the Competition Law.

Total fine imposed:

The total amount of the fines imposed on “BTS PRO” LLC, “MSA GRUP” LLC and “ESEMPLA SYSTEMS” LLC was over **MLD 5.175 million** (over **€0.264 million** at the exchange rate of the National Bank on 31.12.2019).

Non-cartel agreements

In 2018-2019 the Competition Council only investigated cartel agreements.

Abuses of dominance

	Number of cases		
	2018	2019	TOTAL
Infringement decisions	3	2	5
<i>With fines</i>	3	2	5
<i>Without fines</i>	0	0	0
Commitment decision	1	0	1
Non-infringement decisions	2	3	5
Other (specify)	2	2	4
<i>imposition of fines</i>	0	1	1
<i>termination of investigations</i>	2	1	3
TOTAL	8	7	15

Fines

Total sum of abuse of dominance fines in 2018 and 2019 was around **MLD 7.8 million** (over **€0.407 million** at the exchange rate of the National Bank on 31.12.2019).

- In 2018, 3 undertakings were sanctioned for an abuse of a dominant position, and fines totalling over **MLD 0.573 million** (over **€0.029 million** at the exchange rate of the National Bank on 31.12.2019) were imposed on the undertakings for infringements of the provisions contained in the Competition Law.
- In 2019, 2 undertakings were sanctioned for abuse of a dominant position and fines totalling over **MLD 7.261 million** (over **€0.377 million** at the exchange rate of the National Bank on 31.12.2019) were imposed on the concerned undertakings for the infringements.

Dawn raids

The Competition Council has only carried out **one dawn raid** in an abuse of dominance case, which took place in 2019.

Main cases

The Competition Council Plenum adopted, in 2018-2019, 5 decisions establishing an abuse of a dominant position. One of the main cases was “**Apă-Canal Chişinău**” JSC (concerning the provision of public services for the sewage treatment of wastewater in Chişinău and Ialoveni).

Decision of the Competition Council Plenum no. APD-35/17-64 as of 13.09.2019

Defendants: “Apă-Canal Chişinău” JSC

Brief description:

Following an investigation, which lasted 1 year and 10 months, the Competition Council qualified the action of the municipal enterprise as an abuse of a dominant position and found that “**Apă-Canal Chişinău**” JSC had acted illegally. This is because “Apa-Canal Chisinau” JSC had applied differentiated and arbitrary coefficients to establish differentiated tariffs or additional payments. At the same time, “Apa-Canal Chisinau” JSC did not charge a large majority of the economic agents from the Chişinău municipality - 95.47% of about 23 000 - differentiated tariffs or additional payments for overloaded wastewater spillage.

Committed violation:

The Competition Council Plenum established that “Apă-Canal Chişinău” JSC had violated the provisions of Art. 11 para.(1) and (2) letter c) of the Competition Law 183/2012 by applying arbitrarily differentiated coefficients when fixing differentiated rates/additional payments for exceeding the maximum allowable concentration in waste water, as well by not levying additional payments on a number of the undertakings active in Chişinău and Ialoveni.

Total fines imposed:

A fine of **MLD 7.19 million** (over €0.373 million at the exchange rate of the National Bank on 31.12.2019) was imposed on “Apă-Canal Chişinău” JSC for the infringement. Additionally, the Competition Council obliged “Apa - Canal Chisinau” JSC to ensure non-discriminatory and equitable access to the public service of treatment of wastewater.

2. JUDICIAL REVIEW OVER THE LAST 24 MONTHS

Outcome of the judicial review by the Supreme Administrative Court			
	2018	2019	TOTAL
Entirely favourable judgments (decision entirely upheld)	10	5	15
Favourable judgments but for the fines	-	-	-
Partially favourable judgments	-	2	2
Negative judgments (decision overturned)	6	1	7
TOTAL	16	8	24

Outcome of the judicial review by the first instance Courts			
	2018	2019	TOTAL
Entirely favourable judgments (decision entirely upheld)	22	6	28
Favourable judgments but for the fines	-	-	-
Partially favourable judgments	-	2	2
Negative judgments (decision overturned)	5	3	8
TOTAL	27	11	38

Main judgements

As a result of the examination by the courts of the cases of the Competition Council, the percentage of decisions favourable to the Competition Council pronounced by the courts was 81% out of the 21 cases completed in 2019 and 78% out of the 27 cases completed in 2018.

A good example of how the courts deal with competition issues can be seen in the “Litarcom” case, which concerned participation in bid rigging in public procurement procedures for the purchase of road repair works.

In this case the Competition Council Plenum established that three undertakings had violated the provisions of Art. 5 of the Competition Law by concluding an anti-competitive agreement that qualified as a hardcore cartel.

The Competition Council found that, on the initiation of “Litarcom” LLC, the concerned companies had participated in

a hardcore cartel through their participation in bid rigging in the public procurement procedure organised by SE “State Road Administration”. Their coordinated actions led to false competition during the procurement procedure and resulted in the artificial increase of prices by around 27%.

Fines totalling **MLD 2.02 million (over €0.103 million** at the exchange rate of the National Bank on 31.12.2019) were imposed on the undertakings for this infringement.”Litarcom” LLC disagreed with the decision of the Competition Council Plenum and filed an action to have it overturned.

The first instance Court overturned the contested decision. The Court of Appeal in Chisinau quashed the decision of the first instance and upheld the decision, both in terms of the existence of the anti-competitive act and the individualisation of the sanction applied.

“Litarcom” LLC appealed against the decision of the Court of Appeal in Chisinau. The Supreme Court of Justice rejected the undertaking’s appeal, thus maintaining the validity and legality of the decision of the Competition Council Plenum, which had established and sanctioned the hardcore anti-competitive agreement.

3. MERGER REVIEW OVER THE LAST 24 MONTHS

	Number of cases		
	2018	2019	TOTAL
Blocked merger filings	-	-	-
Mergers resolved with remedies	1	0	1
Mergers abandoned by the parties	-	2	2
Unconditionally cleared mergers	9	16	25
Other (specify)	5	3	8
TOTAL CHALLENGED MERGERS	-	-	-

Main cases

Notifications of economic concentrations carried out by “ABI”

The notified merger transaction concerned the intention of “ABI” to restore certain special voting rights for minority shareholders held by “SAB Miller” PLC (hereinafter “SAB”) in “Anadolu Efes Biracılık ve malt Sanayii” AŞ (hereinafter “AE”), lost as a result of the “ABI”/“SAB” transaction. After the completion of the notified transaction, “AG Anadolu Grubbu holding” and “ABI” were to jointly control “AE”.

The transaction notified by “ABI” was extremely complex and it was the first time that the Competition Council had applied, in relation to an economic concentration, the Regulation on commitments proposed by undertakings and approved by the Competition Council Plenum Decision no. 2 of 22.01.2015. The relevant market concerned by the transaction was determined as the wholesale beer market throughout the territory of the Republic of Moldova.

The Competition Council Plenum cleared the merger subject to commitments offered by “ABI”.

4. ADVOCACY OVER THE LAST 24 MONTHS

Main initiatives

In 2018 and 2019, the Competition Council disseminated information on competition law and state aid to the central and local public administration authorities and the business environment via 207 events (seminars, conferences, round tables, meetings, etc.), which were attended by over 2,500 persons.

2018 was also a year in which the cooperative relationship between the Competition Council and the National Anticorruption Centre was strengthened via the signing of a collaboration agreement, under the framework of which the institutions aim to prevent and fight corruption and thereby strengthen public integrity in the field of competition. In order to mark the beginning of this initiative a conference entitled “Platform for anti-corruption cooperation with the private sector” was organised and attended by over 100 participants.

Furthermore, in 2019 several important events were organised: a round table dedicated to the implementation of competition law and public procurement with the National Agency for the Resolution of Complaints, a competition training seminar for judges and employees of the Competition Council of the Republic of Moldova and the TAIEX Workshop of the European Commission on “Monitoring and evaluation of State aid”.

The Competition Council also conducted an information campaign consisting of 16 seminars with representatives of local public administration authorities in order to inform them about the provisions of the State Aid Law. Additionally, it broadcast a public service announcement on 22 local and national TV channels about the deadline for reporting the granted state aid.

In order to assess the regulatory impact on the competitive environment, the Competition Council prepared 226 opinions during 2018-2019. 134 of these opinions contained proposals and recommendations about how the regulatory framework could be complied with in the field of competition, state aid and advertising, with a view to ensuring competition. The main areas covered were: public procurement, insurance, public-private partnership, electricity and natural gas market, advertising of alcoholic beverages, financial and banking services, tourist services, security services, public water supply and sewerage services, etc.

Results

The recommendations of the Competition Council have led to substantial improvements in the enforcement of the Competition legislation with the aim of preventing undertakings and local public authorities from engaging in anti-competitive practices.

As a result the proposals submitted on the *Methodology of formation and application of prices for petroleum products*, the protection of competition has been ensured through the adoption of legislation concerning the formation and application of prices to petroleum products. Furthermore, the unfounded restrictions placed on the right to market insur-

ance policies by insurers (reinsurers) as a consequence of non-compliance with the solvency ratio requirements, have been excluded after the National Financial Market Commission (hereinafter NFMC) took into account all the objections and proposals submitted by the Competition Council regarding the *draft decision of the NFMC on the presentation and approval of actuarial calculations of compulsory motor third party liability insurance premiums*.

As a result of the advocacy actions carried out by the Competition Council, the knowledge of public authorities' representatives has been improved in the field of state aid monitoring in accordance with EU rules. Additionally, new practices have been identified for the efficient use of public resources under the State aid mechanism, which will help reduce the share of state aid in GDP to 1%, according to the European Union average.

Furthermore, we would like to point out that in 2020, following the information campaigns, seminars and conferences carried out by the authority, the number of providers who reported state support measures offered to undertakings increased by three times in comparison to 2015 (the first year of reporting state aid, granted after the entry into force of State Aid Law no. 139/2012).

5. MARKET STUDIES OVER THE LAST 24 MONTHS

Main initiatives

The on-going assessment of the competitive environment through market studies was one of the priorities of the Competition Council in 2019. Consequently, the Competition Council initiated the following 19 market studies aimed at removing anti-competitive barriers from the regulatory framework, in order to ensure compliance with Competition Law:

- medical devices market
- the sale of vehicles, spare parts and related services market
- processing and sale of fish, crustaceans, molluscs and fish products market
- processing and sale of cereal and oil crops
- transport services and related activities market
- the chemical market
- identification of the entities vested with exclusive rights and monitoring their activity
- advertising market
- wholesale drug market
- wholesale and retail market of the main oil products and liquefied gas in the Republic of Moldova
- banking services market (lending services, gathering of deposits, current accounts service)
- import, production and sale of meat and meat products market
- sale of socially important products
- identification of the entities vested with exclusive rights and the monitoring of their activity; (SGEI)
- sale of agricultural machinery, equipment and related services
- construction market
- market of research and development activity
- electricity production and sale market
- processing of agri-food products market.

At the end of 2019, the systematisation of the information received from the surveyed companies was in progress in relation to eight market studies, informative investigation progress reports had been drawn up for nine market studies, and useful investigation reports for two market studies had been presented and discussed at Competition Council meetings.

