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Competition DG

Director General

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Mr. Bogdan Chiritoiu
President of Competition Council

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Dear Mr. Chiritoiu, dear Bodgan,

Thank you for your letter dated 12 February in which you ask for our assistance in terms of providing the views of DG COMP on the compatibility of certain contemplated amendments to the Romanian Competition Law with the ECN+ Directive 2019/1¹.

We understand from your letter and from the Romanian press, that the Romanian Government recently attempted to amend the Competition Law through a draft Emergency Ordinance. The draft Ordinance prescribed that the Romanian national competition authority would be under the obligation to start investigations in specific cases at the request of the Government and also prescribed short timeframes for finalisation of those investigations. We also understand that even though the proposed amendments of the Competition Law were dropped at the end of January, there is still, in your view, a risk that the issue comes up again.

As you know, on 14 January 2019 the ECN+ Directive 1/2019 empowering national competition authorities (NCAs) to be more effective enforcers was published in the Official Journal. The Directive entered into force on 4 February 2019.

Article 4 of the ECN+ Directive on Independence states that the Member States (MSs) shall ensure that NCAs i) shall be "able to perform their duties and to exercise their powers for the application of Articles 101 and 102 TFEU independently from political and other external influence" (Article 4(2)(a)); ii) shall "neither seek nor take any instructions from government (...) when carrying out their duties and exercising their powers for the application of Articles 101 and 102 TFEU" (Article 4(2)(b)).

¹ Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market - OJ L 11, 14.1.2019, p. 3–33.

Also according to Article 4(5) of the ECN+ Directive, "*NCAs shall have the power to set their priorities for carrying out the tasks for the application of Articles 101 and 102 TFEU (...)*".

Clearly, the contemplated changes in Romania, if they would have been adopted, would be against the quoted provisions of the ECN+ Directive.

As soon as the Directive entered into force, it is clear from the case law of the European Court of Justice that MSs have duty of abstention from national measures that could compromise the aim of a Directive which has entered into force but has not yet been implemented and the deadline for implementation is still running (see in this respect for example Case C-212/04, *Adelener*, para 121: "*(...) during the period prescribed for transposition of a directive, the Member States to which it is addressed must refrain from taking any measures liable seriously to compromise the attainment of the result prescribed by it ...*").

In conclusion, DG Competition services are of the view that a similar Ordinance in the future, if adopted, would most likely run counter to the ECN+ Directive and appear to breach Romania's duty to abstain from adopting measures liable to compromise the aim of the Directive.

This position is of course not a definitive position of the Commission itself, but only a preliminary view of the services of DG Competition, based on the information available at present.

We are at your disposal in case you would to discuss the matter further.

Yours sincerely,


Johannes LAITENBERGER