



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

**CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques**

ROMANIA

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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

1. Information on the law relating to cartels

<p>A. Law(s) covering cartels:</p>	<p>The Competition Law no. 21/1996 republished.</p> <p>It is available both in English and Romanian on the web site of the Romanian Competition Council (www.competition.ro)</p>
<p>B. Implementing regulation(s) (if any):</p>	<p>REGULATION for the application of the provisions of art.5 and 6 of the Competition Law no. 21/1996, with further modifications and completions, regarding anticompetitive practices.</p> <p>REGULATION for the application of articles 5 and 6 of the Competition Law no.21/1996, with further modifications and completions, regarding anticompetitive practices, in cases of complaints</p> <p>REGULATION on the form, content and other details of applications and notifications provided for in Competition Council's Regulation for the application of the provisions of art.5 and 6 of the Competition Law no. 21/1996, with further modifications and completions, regarding the anti-competitive practices.</p> <p>They are available both in English and Romanian on the web site of the Romanian Competition Council (www.competition.ro)</p>
<p>C. Interpretative guideline(s) (if any):</p>	<p>GUIDELINES on the individualization of sanctions for the offences stipulated under Article 56 of Competition Law no.21/1996, with further modifications and completions,</p> <p>GUIDELINES on individualization of sanctions for minor</p>

	<p>offences provided by art. 55 of the Competition Law no. 21/1996 with further modifications and completions</p> <p>GUIDELINES on the applicability of article 5 of the Competition Law no 21/1996, with further modifications and completions, to horizontal cooperation agreements</p> <p>GUIDELINES regarding the conditions and application criteria of a leniency policy pursuant to the provisions of the art. 56(2) of the Competition Law no. 21/1996 with further amendments and completions</p> <p>Order no. 519 of 21 December 2004 on the amendment of the threshold stipulated in article 8 (1) of the Competition Law no. 21/1996 with further amendments and completions</p> <p>They are available both in English and Romanian on the web site of the Romanian Competition Council (www.competition.ro)</p>
<p>D. Other relevant materials (if any):</p>	<p>–</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>No, it does not. The Romanian Competition Law defines the term as horizontal agreement having as object the restriction of competition.</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas¹) and other types of “cartels”?</p>	<p>The provisions of the Article 5(1) of the republished Competition Law specify that the deeds and facts having as object or which may have as effect the restriction, prevention or distortion of competition on the Romanian market or on a part of it are prohibited. A list of this kind of deeds and facts is also included (e.g.: concerted fixing, directly or indirectly, of the selling or purchase prices, tariffs, rebates, markups, as well as any other terms of trading; limiting or controlling production, distribution, technological development or investments; allocating distribution markets or supply sources according to territorial criteria, sales-and-purchase volume or other criteria; imposing unequal terms for equivalent services to trading partners, thus causing a competitive disadvantage to some of them; conditioning the conclusion of contracts by imposing upon partners the acceptance of certain clauses stipulating additional services which, either by their nature or by commercial usage, do not relate to the object of such contracts;</p>

¹ In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

	<p>participating, in a concerted manner, with rigged bids in auctions or any other forms of competitive tendering; eliminating competitors from the market, limiting or preventing access to the market and the free exercise of competition between other undertakings, as well as agreements not to buy from or to sell to certain parties without reasonable justification).</p> <p>However, under Article 5(2), the republished Competition Law grants exemptions for that practices that meet the criteria set by the Law.</p> <p>The provisions of Article 8(1) also exempts from the application of Article 5 the undertakings or groups of undertakings if their turnover for the fiscal year prior to the alleged anticompetitive behavior does not exceed the threshold annually set by the Competition Council, and if certain market shares thresholds of the undertakings involved are not exceeded.</p> <p>Nevertheless, according to Article 8(2) of the republished Competition Law the anticompetitive practices prohibited under Article 5 referring to prices, tariffs, market share agreements or auctions may not be granted the exemption of Article 8(1). They may be considered the most engreuous types of conduct.</p>
C. Scope of the prohibition of hardcore cartels:	There is no differentiated treatment applied in case of one market or another.
D. Is participation in a hardcore cartel illegal <i>per se</i>?	Yes, it is.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	It is a combined administrative and criminal offence.

3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	The Romanian Competition Council through competition inspectors.
B. Contact details of the agency:	<p>Competition Council Piata Presei Libere, nr. 1, Corp D1, Sector 1, 013701 Bucharest OP 33 Romania Tel: +4021 318 11 98 Fax: +4021 318 49 08 www.competition.ro (English and Romanian)</p>

C. Information point for potential complainants:	<p>www.competition.ro</p> <p>Within the Competition Council a free phone line for the public has been made available from Monday, April 18, 2005, which can be used in order to get more information about the competition field or to inform the competition authority about the potential anticompetitive practices. The number is: 0800.800.267. It may be used any time of the day, from Monday to Friday. Between 8.30 and 16.30 a competition expert will answer to it; any other phone call after 16.30 and before 8.30 will be recorded and treated accordingly afterwards.</p>
D. Contact point where complaints can be lodged:	<p>Competition Council Piata Presei Libere, nr. 1, Corp D1, Sector 1, 013701, Bucharest, OP 33 Romania competition@consiliulconcurentei.ro</p>
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	<p>In case of articles 37 and 38, the judge body may assist the investigating authority.</p> <p>According to art. 38 of the republished Competition Law “the inspection and related acts shall be carried out under the authority and control of the judge who issued the ruling. The judge may inspect the searched places, and may decide to suspend or to terminate the search, at any moment.”</p>

4. Decision-making institution(s)² [to be filled in only if this is different from the investigating agency]

A. Name of the agency making decisions in cartel cases:	<p>Romanian Competition Council through its Plenum.</p>
B. Contact details of the agency:	<p>Competition Council Piata Presei Libere, nr. 1 Corp D1, Sector 1, 013701 Bucharest OP 33 Romania Tel: +4021 318 11 98 Fax: +4021 318 49 08 www.competition.ro (English and Romanian)</p>
C. Contact point for	<p>Competition Council</p>

² Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

questions and consultations:	Piata Presei Libere, nr. 1 Corp D1, Sector 1, 013701 Bucharest OP 33 Romania competition@consiliulconcurentei.ro
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	The investigating authority, i.e. the rapporteur and the investigating team made of competition inspectors assess the case and propose the sanctioning to the Plenum.
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	The investigating authority, i.e. the rapporteur ascertains that the infringement of the law falls under the criminal law and proposes to the Plenum in the investigation report that the competent criminal bodies to be referred.

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	<p>According to Article 34 of the Competition Law republished, the Competition Council shall order an investigation, within its competence and according to the provisions of Art. 40 of the law:</p> <ul style="list-style-type: none"> a) ex officio; b) following a complaint by an individual or a legal person who was in effect and directly affected by a violation of Art. 5 (1), Arts. 6, 12 and 15; c) at the request of the undertakings of the associations of undertakings concerned, according to Art. 5 (2) or Art. 13 (2); d) at the request of any of the authorities, institutions, organizations or bodies mentioned under Art. 29 sections a) - f). <p>Upon receipt of a request or complaint denouncing, respectively claiming an anticompetitive practice, the Competition Council examines whether there is enough de jure and de facto evidence to support starting an investigation. If the request or complaint does not justify an investigation, the Competition Council shall reject it and notify their decision to the initiator, in writing, stating the rejection reasons, within 30 days from the date the request or complaint was filed (Article 40).</p>
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	Yes, in writing. The form can be found on the website of the Romanian Competition Council (www.competition.ro), annex to the REGULATION for the application of articles 5 and 6 of the Competition Law no.21/1996, with further modifications and completions, regarding anticompetitive practice, in cases of complaints.
C. Legal requirements for	Yes, there is required the legitimate interest (see art. 34 and

lodging a complaint against a cartel:	40)
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	No, only where there is de jure and de facto evidence.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	Yes, the Competition Council issues the rejection decision according to art. 40(2): "If the request or complaint does not justify an investigation, the Competition Council shall reject it and notify their decision to the initiator, in writing, stating the rejection reasons, within 30 days from the date the request or complaint was filed."
F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?	Yes, the time limit is set at 30 days from the date the request or complaint was filed.

6. Leniency policy³

A. What is the official name of your leniency policy (if any)?	The official name of the leniency policy in Romania is "Politica de clemență" (The "Leniency policy"). Leniency is granted under Art.51 (2) of the Competition Law no. 21/1996 republished and in accordance with the Guidelines regarding the conditions and application criteria of a leniency policy pursuant to the provisions of the art. 51(2) of the Competition Law no. 21/1996 republished, which were published in the Romanian Official Gazette, also being available on the Competition Council web page.
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	The Romanian jurisdiction offers full leniency (immunity from fines) as well as partial immunity (reduction of fines).
C. Who is eligible for full leniency?	Only the first one to come forward is eligible for full leniency.
D. Is eligibility for leniency	Yes, the eligibility is dependent on this aspect, but is not the

³ For the purposes of this template the notion of 'leniency' covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like 'leniency' 'amnesty' and 'immunity' are considered as synonyms.

<p>dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	<p>only one to be considered; the undertaking must be the first to submit evidence which, in the Competition Council's view may permit it to open the investigation procedure pursuant to the art. 34 of the Competition Law republished. In this situation, the immunity from fine will be granted only if the Competition Council did not have sufficient evidence, at the date when the undertaking submitted the evidence relating to the alleged cartel, in order to open the investigation, according to the Art. 34 of the Competition Law republished.(see Chapter II of the Guidelines on the leniency policy)</p> <p>Yes, in order to determine the reduction of the fine in cases mentioned in Chapter IV of the above said Guidelines, the Competition Council takes into consideration the date when the evidence was submitted.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>The leniency programme addresses only to businesses (undertakings).</p>
<p>F. What are the conditions of availability of full leniency:</p>	<p>The conditions of availability of full leniency are:</p> <ol style="list-style-type: none"> 1. In the case the undertaking is the first to submit evidence which may permit to open the investigation procedure, full leniency will be granted only if the Competition Council did not have sufficient evidence at the date of the evidence submission by the undertaking, relating to the alleged cartel in order to open the investigation. 2. In the case the undertaking is the first to submit evidence that may permit the Competition Council to prove an infringement of the Competition Law; full leniency will be granted if the following conditions are met cumulatively: <ol style="list-style-type: none"> a) the Competition Council did not have, at the date of evidence submission by the undertaking, sufficient evidence in order to establish the infringement of the Competition;and b) no undertaking had obtained conditional immunity relating to the alleged cartel. In addition to the conditions in points 1 and 2, the following cumulative conditions must be met in any case to qualify for immunity from a fine: <ol style="list-style-type: none"> (a) the undertaking cooperates fully, on a continuous basis and expeditiously throughout the Competition Council's administrative procedure and provides it with all evidence that comes into its possession or is available to it relating to the suspected infringement; (b) the undertaking ends its involvement in the suspected infringement no later than the time at which it submits evidence; (c) the undertaking did not take steps to coerce other undertakings to participate in the infringement.
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</p>	<p>In order to be granted a reduction of a fine, an undertaking that does not meet the conditions in order to qualify for full immunity must cumulatively fulfil the following conditions:</p> <ol style="list-style-type: none"> a. it must provide the Competition Council with evidence relating to the alleged infringement of the law, which represents significant added value with respect to the information already

	<p>in the Competition Council's possession;and</p> <p>b. it must end its involvement in the suspected illegal infringement no later than the date at which it submits the evidence to the Competition Council.</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted:</p>	<p>After the acceptance of leniency application, the beneficiary must:</p> <p>(a) cooperate fully, continuously and expeditiously throughout the administrative procedure and provide it with all evidence that comes into its possession or is available to it relating to the suspected infringement;</p> <p>(b) the undertaking ends its involvement in the suspected infringement no later than the time at which it submits evidence.</p>
<p>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</p>	<p>A leniency application must be made in writing.</p>
<p>J. Are there distinct procedural steps within the leniency program?</p>	<p>Within the leniency program there are distinct procedural steps for the immunity case, as well as for the reduction of fine case. Thus, in the case of an application for immunity of fine:</p> <ul style="list-style-type: none"> - the Competition Council grants in a first stage conditional immunity, in writing; - the final leniency decision is issued at the end of investigation through the decision of the Competition Council's plenum. <p>For a reduction of fine application, the Competition Council will undertake the following procedural steps:</p> <ul style="list-style-type: none"> - the Competition Council will inform the undertaking, in writing, no later than the date on which the investigation report is notified to the parties, regarding to the possibility of reducing the fine; - the Competition Council will specify for each undertaking in part the reduction level of the fine in the decision issued at the end of the investigation procedure.
<p>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</p>	<p>The applicant is given certainty with respect to its eligibility for leniency through the administrative act granting conditional immunity. Thus, the conditional immunity from fines represents the recognition by the Competition Council of the undertaking's eligibility so that immunity from fines to be granted.</p> <p>As for the reduction of fine, when the Competition Council comes to the preliminary conclusion that the evidence submitted by the undertaking represents a significant added value, it will inform the undertaking, in writing, no later than the date on which the investigation report is notified to the parties, with regard to the possibility of fine reduction.</p>

<p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</p>	<p>The legal basis for granting conditional immunity consists in the guidelines regarding the conditions and application criteria of a leniency policy pursuant to the provisions of the art. 51(2) of the Competition Law no. 21/1996 republished.</p> <p>The conditional leniency is granted through an administrative act (unilateral act issued by the Competition Council) and the effective immunity through the plenum's decision. Within the authority, a commission of three officials in charge to decide on the leniency application is appointed.</p>
<p>M. Does your legislation have a marker system? If yes, please describe it.</p>	<p>The Romanian leniency program does not use a marker system.</p>
<p>N. Does the system provide for any extra credit⁴ for disclosing additional violations?</p>	<p>The guidelines do not provide for extra credit for disclosing additional violations.</p>
<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>Yes, it is.</p> <p>In accordance with the provisions of the Competition Law and of the leniency guidelines, any written statement, submitted by an undertaking to the Competition Council becomes part of the Competition Council's file. It may not be disclosed or used for any other purposes than the enforcement of the Competition Law. In addition, any person who uses or discloses documents or information having business secret character, received or acknowledged during work or work-related duties, for other purposes than those stipulated in the law will be held liable according to the criminal law, and may be forced to remedy the damages caused.</p>
<p>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</p>	<p>In accordance with the provisions of the Contentious - Administrative Law no 554/2004, the administrative act rejecting the leniency application can be appealed.</p>
<p>Q. Contact point where a leniency application can be lodged:</p>	<p>A leniency application can be lodged at the Competition Council's headquarter (Piata Presei Libere, nr. 1, corp D1, Sector 1, 013701, Bucharest, Romania) or through the following fax number: 40 21 318 26 12.</p>
<p>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	<p>The leniency policy does not set out the possibility for leniency to be revoked.</p>

⁴ Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

<p>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p>	<p>The Competition Council may approach potential applicants for leniency, applying thus “affirmative leniency”, since the Competition Law and the leniency guidelines do not set out any provisions which would forbid it.</p>
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7. Investigative powers of the enforcing institution(s)⁵

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>According to Article 36 of the Competition Law republished, in order to investigate violations of this law, the competition inspectors are empowered to make inspections, with the exception of beginners, and shall have the following powers to inspect:</p> <ul style="list-style-type: none"> a) to enter premises, grounds or vehicles of business use which belong to undertakings or associations of undertakings; b) to review documents, account books, financial, accounting and commercial documents or other evidence related to the business of the undertakings or associations of undertakings, regardless of the location they are stored in; c) to request statements from representatives and employees of the undertaking or the association of undertakings pertaining to facts or documents which are deemed relevant; d) to issue or obtain, in any form, copies or excerpts from documents, account books, financial, accounting and commercial documents or other evidence related to the business of the undertaking or the association of undertakings; e) to apply seals on business locations of the undertaking or the association of undertakings and on documents, account books, financial, accounting and commercial documents or other evidence related to the business of the undertakings or the association of undertakings. <p>However, the competition inspectors having powers to inspect shall proceed to inspection if there are indices that documents may be found or information may be obtained which are deemed necessary to fulfill their task, and the results thereof shall be registered in a fact-finding and inventorying minutes.</p> <p>Competition inspectors having powers to inspect may make unannounced inspections, and may request any information or justifications related to the fulfillment of their task, either on the spot, or upon summoning at the Competition Council headquarter.</p> <p>The exercise of the powers of inspections shall be done in accordance with the Regulation on the setting-up, functioning and procedure of the Competition Council.</p>
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⁵ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

⁶ “Searches/raids” means all types of search, raid or inspection measures.

<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>Yes, private locations can be subject to searches, raids and inspections only on the base of an order issued by the President of the Competition Council and provided that they have a judicial ruling granted by the president of district court having jurisprudence over the premises to be controlled, or by a judge mandated by the court president. See also Article 37 and 38 of the Competition Law (republished).</p>
<p>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	<p>No.</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>No.</p>

8. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases:</p>	<p>According to the Article 42 of the republished Competition Law, whenever, after an investigation has been commenced, it is found out that it did not lead to reasonable evidence that the law was violated, able to justify remedies or sanctions to be imposed by the Competition Council, the latter, by Order of the President, may close the investigation and will inform the parties involved immediately. Except for the case when an investigation was triggered by a complaint, closing an investigation does not require hearings before the Competition Council plenary session.</p> <p>Except for the situation mentioned above, any investigation procedure requires hearings for the undertakings participating in the agreement, the decision of the association of undertakings under investigation. The hearing will be ordered by the President of the Competition Council.</p> <p>The absence from or renouncing the hearing, as well as refusal to testify or submit statements, will not prevent the investigation procedure from going on.</p> <p>With at least 30 days prior to the hearings, a copy of the report will be sent, at the request and if the President of the Competition Council considers it helpful for the investigation,</p>
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	<p>for the information of persons whose hearing had been ordered and admitted.</p> <p>The President of the Competition Council may allow the parties involved to study the case file at the Competition Council secretariat, and to get copies and excerpts of the investigation papers on their own cost.</p> <p>No documents, data and information from the case file, classified as state secret or confidential character, are available for study, duplication or taking excerpts, without the President's decision.</p> <p>See also the provisions of the Articles 43 and 44.</p>
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation?</p>	

9. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?</p>	<p>The limitation period is of 5 years (art. 58(1) of the Competition Law).</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</p>	<p>There is not the case.</p>
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?</p>	<p>The deadlines for challenging either the commencement or completion of an investigation or the decision regarding sanctions is of 30 days since its communication to parties involved.</p>

10. Types of decisions

<p>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</p>	<p>The following types of decisions can be made in cartel cases:</p> <ul style="list-style-type: none"> - decision stipulating to stop the found anticompetitive practices, to make recommendations, to impose special conditions and other obligations, to fine the undertakings (Article 45 of the republished Competition Law); - decisions on interim measures stipulating to suspend or forbid the found anticompetitive practices, obligatory provisions to revert to previous situation (Article 47 of the republished Competition Law).
<p>B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).</p>	<p>-</p>
<p>C. Can interim measures⁷ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁸.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>Yes, according to Article 47 of the republished Competition Law such measures may be made during the proceedings in cartel cases.</p> <p>The Law does not stipulate special measures in case of hard core cartels.</p> <p>The Plenum of the Romanian Competition Council is authorised to make such decisions as well as the final decisions.</p>

11. Sanctions for procedural breaches (non-compliance with procedural obligations)⁹

A. Grounds for the

⁷ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

⁸ Only for agencies which answered “yes” to question 2.C. above

⁹ In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.

imposition of procedural sanctions / fines:	The grounds for the imposition of procedural fines relates to: a) submission of incorrect or incomplete information following a request for individual exemption; b) submission of incorrect information or of incomplete documents, or failure to submit information and documents as requested in carrying out investigations; c) submission of incomplete information, documents, business records and books during inspections; d) the refusal to accept an inspection. Article 50 letters b) – e) and article 54 of the Competition Law.
B. Type and nature of the sanction (civil, administrative, criminal, combined):	The sanction is of administrative nature.
C. On whom can procedural sanctions be imposed?	The sanctions can be imposed on undertakings and associations of undertakings.
D. Criteria for determining the sanction / fine:	The criteria on the basis of which the sanctions are determined are: the seriousness and the duration of the deed and its consequences on competition (art. 52 of the Competition Law).
E. Are there maximum and / or minimum sanctions / fines?	The maximum sanction is of 1% of the aggregate turnover of the financial year prior to the sanctioning of the deeds stipulated in Article 50 of the Competition Law.

12. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): On whom can sanctions be imposed?	The sanctions are of administrative nature. According to the provisions of Article 60(2) of the republished Competition Law, the Competition Council only notifies to the court the criminal action. The administrative sanctions are imposed on undertakings, as legal or natural persons, and associations of undertakings.
B. Criteria for determining the sanction / fine:	The criteria on the basis of which the sanctions are determined are: the seriousness and the duration of the deed and its consequences on competition (art. 52 of the Competition Law) as well as the criteria stipulated in the Guidelines on the individualization of sanctions. According to the Article 55(6) of the Competition Law “on the basis of the Competition Council’s decision, the returns or, as the case may be, the supplementary incomes achieved by the undertakings as a consequence of perpetrating the offences stipulated and sanctioned by this law shall be disgorged and deposited to the state budget.”

C. Are there maximum and / or minimum sanctions / fines?	Yes, there is a maximum sanction of 10% of the aggregate turnover of the financial year prior to the sanctioning according to article 51 of the Competition Law.
D. Guideline(s) on calculation of fines:	GUIDELINES on the individualization of sanctions for the offences stipulated under Article 56 of Competition Law no.21/1996 with further modifications and completions. See point 1C.
E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?	The suspension is made at request. The Competition Law does not set criteria necessary to apply for suspension.

13. Possibilities of appeal

A. Does your law provide for an appeal from a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?	Yes, it does according to the Article 47(4) on substance and procedural grounds.
B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]	This challenge should be made before the Court of Appeal Bucharest – Contentious Administrative and Fiscal Section