

Romanian authorities tighten controls over companies in the wake of COVID-19 crisis

Following the state of emergency declared in Romania on 16 March 2020 and the escalation of security measures which were recently enforced through additional military ordinances, Romanian authorities tighten control over companies still active on the market as they continue to supply basic and essential products to consumers during the COVID-19 crisis.

Following a military ordinance in Romania effective as of 22 March 2020, malls, shopping centres and any other activity of retail supply of products and services (except for food, veterinary, pharmaceuticals and cleaning, (delivery-based sale of) electronics and house appliances as well as the sale of optical equipment and services), were suspended and the freedom of movement of persons outside their homes was restricted.

These measures are likely to result in increased online sales and courier/transport services. Consequently, it is expected that companies active in the food retail sectors and basic products for consumers (in particular cash & carry stores, supermarkets, grocery stores), as well as online market places and transport services will be under strict scrutiny by both the Romanian Competition Council and the Romanian Authority for Consumer Protection (ANPC).

ANPC has recently investigated large retailers in Romania, namely Metro, Selgros, Carrefour, Profi, Kaufland, Lidl and Mega Image in order to verify whether these companies have implemented appropriate security measures to prevent the spread of COVID-19. While ANPC did not issue statements on any irregularities found during these inspections, it did reiterate that it intends to carry out similar controls throughout the country and it will increase surveillance of the market during this difficult period in order to verify how companies implement security measures requested by the authorities to protect the health and life of consumers against spread of the COVID-19 virus. ANPC noted in a recent press release issued following these controls that the investigated retailers had taken relevant security measures for protection of consumers, as follows:

- daily disinfection of shopping carts, several times per day;
- supply of disposable gloves and disinfection materials to consumers;
- plexiglass cubicles for cashiers;
- verification of temperature of consumers before entering the store;
- provision of sanitation and protection materials (masks, glasses, disinfection solutions) to employees;
- cancelation of promotional advertising and drawing up lists of products in high demand for consumers in order to ensure their ongoing availability.

Although there have been increased allegations from consumers on significant price increases or price differentials for certain basic products, no sanctions have been enforced by Romanian authorities so far. Nevertheless, it is expected that where these allegations are confirmed, authorities will take appropriate measures. We note that the ANPC previously recommended that prices for basic products which are strictly necessary to consumers should be capped for a limited period of time in order to protect consumers from sudden price hikes due to high demand and scarcity of certain products – these recommendations would be intended to cover products in the monthly minimum consumption basket for the Romanian consumer.

ANPC also recommended that food retailers should limit (within reasonable limits) the quantities of a given product purchased by the same person in order to avoid shortage of essential products for other consumers.

Consumers are encouraged to report to ANPC any situation of non-compliance and incorrect commercial practices which they see in stores, including price difference between shelf products and the products invoiced at cashiers' desks, inadvertence between reference prices and advertised prices during promotional campaigns, as well as other practices.

Similarly, the RCC reiterated that it continues to monitor companies' conduct on the market and their compliance with antitrust rules. The RCC stressed that companies must ensure that their products are available at competitive prices on the market. In view of this, according to the RCC, online platform administrators can take measures to limit unjustified price increases for basic products and services. Moreover, the RCC encourages producers to avail themselves of the rights afforded by the antitrust legislation and to establish maximum price thresholds for their products, which could prevent abusive price increase for products by distributors or retailers.

While the RCC acknowledges the social and economic consequences triggered by the COVID-19 outbreak in Romania and that this extraordinary situation may trigger the need for companies to cooperate in order to ensure the supply and fair distribution of scarce products to all consumers, the RCC also made it clear that it will continue monitoring companies' conduct on the market and warned that it will not hesitate to take action against companies taking advantage of the current situation by engaging in excessive pricing, cartels or otherwise abusing their market power.

It follows that RCC is unlikely to intervene against coordinated conduct of companies which is necessary and temporary in order to avoid a shortage of supply and that such measures are unlikely to be problematic, since they would either not amount to a restriction of competition or generate efficiencies that would most likely outweigh any such restriction. As such, the RCC understands that retailers may coordinate in relation to transport of merchandise in order to ensure the supply of essential products in all fields, as well as delivery of products to persons confined to their homes. Products considered essential to protect the health of consumers in the current situation include healthcare products, such as face masks and sanitising gel, but extend to basic products as well (such as food products). However, these types of coordination cannot be unduly extended and must be strictly proportionate with the envisaged scope, i.e. ensuring availability of essential products on the market for consumers at fair prices.

As the COVID-19 crisis continues and Romanian authorities increase their monitoring powers over market operators, it will be interesting to see the consequences of current market practices unfolding, particularly when the outbreak will end and authorities may take further steps in time to investigate current allegations.

For more information please contact **Cristina Popescu**, **Ana-Maria Nistor** or **Laura Capata**.