

Brief note on Romanian Competition Council Resolution
65 issued on October, the 31/th, 2012

1. Parties:

- FORNETTI ROMANIA Ltd and
- Users of the FORNETTI franchise rights on Romanian territory.

2. The relevant market:

Selling pastry and bread like products on whole Romanian territory.

3. The implications of the articles 5 and 8 from Romanian Competition Act:

Romanian Competition Council has been presented with some real concerns related to the competition infringements resulting from the actions of FORNETTI franchise rights users, on whole Romanian territory, who were selling their final products at a market price, imposed by the franchise owner, without the will to analyze the characteristics of the implied demand, on that specific market, at a certain moment of time, nor the general development in the targeted market. Between November – December 2008, the FORNETTI franchise rights users were forced to put on the market their final products under a controlled price, based on the parties' contract and, starting with the year 2009, the control of the prices was done through other, more subtle, means, like monitoring the technical operations before sales of the regional or county sales representatives of the FORNETTI ROMANIA enterprise.

Controlling the resale prices by fixing them through inter alia agreements or collusions is a severe restriction of the targeted market, due to the fact that the main goal of such deeds was an express intention to indicate a fix resale price, being that resale price at a minimum level or forced on the final buyer.

According to the Romanian Competition Act, the national authority may accept some on personal behalf declarations, fulfilled by the franchise's users, that inside a very short period of time they will comply with the prerogatives of the Competition Act by ceasing to infringe the competition rules! Based on such Declarations, the bilateral commercial relations between FORNETTI ROMANIA Ltd. and the franchise rights users from Romania were supposed to be performed in a healthy competition environment, without to prevaricate the right of FORNETTI HOLDING KFT to establish and organize a dealer network, in order to promote his franchise in other member states of the European Union, taking in account the specific issues of the local markets and their oriented interest in pastry and bread products according to the national customs and having as guiding lines the competition rules, in action in the European Economical Area!

4. The competition concerns expressed in our case:

The competition concerns in the present case at law underline certain potential anti-competition collusions, present in the signed contracts by FORNETTI ROMANIA Ltd. and the franchise rights Romanian users, collusions

which are susceptible to fall under the interdiction named by the art. 5, (1) from Romanian Competition Act, due to the competition impediment, through their object, meaning that contractual stipulations had restricted the liberty of the franchise users from Romania to decide upon the market sale prices of their own final products, by abusively allowing to the franchise owner to impose them!

The competition concerns, identified at the beginning of the investigation, were materialized in the stipulation of anti-competitive practices through the parties' contract, such like fixing the resale price: monitoring the prices at all the county or regional vendors and maintaining a poor market competition between the franchise rights users or enterprises.

5. About personal behalf declarations accepted by the Romanian Competition authority:

5.1. Throughout the contracting and factual relation, established between FORNETTI ROMANIA Ltd. and the franchise rights users, it was obvious the fact that any of the users of the franchise rights didn't enjoy a true freedom to decide upon its own resale price;

5.2. FORNETTI ROMANIA Ltd. has taken a firm engagement towards eliminating any type of checking and/or control mechanism in regards to the retail resale prices;

5.3. In what concerns the obligation of not promoting competition against the owner of the franchise rights, obligation valid for two years after the contract ceasing, FORNETTI ROMANIA Ltd. assumed the promise to reduce that period of time to one (1) year!

6. Supervising the FORNETTI ROMANIA Ltd. to fulfill its assumed engagements:

The monitoring agent is supposed to develop supervising and checking activities for a three years period – October, the 31-st, 2012 until October, 31-st, 2015 – through asking the changing of the content of franchise use contracts, assuring that the Romanian franchise user has a full fledged liberty to decide upon its resale retail price at its sales points, and renouncing at any type of checking or controlling mechanism for the retail prices. The monitoring agent is fully responsible for the actions assumed by FORNETTI ROMANIA Ltd. when declared to comply with competition rules. For that reason and not only, the monitoring agent will periodically visit the enterprise, its sales points, will ask for information and documents and has the full liberty to take any measures finds suitable to help the supervised enterprise to comply with its assumed engagements.

On a regular basis, the monitoring agent sends to Romanian Competition authority reports which are detailing the taken measures in order to assure the complying with the assumed engagements and, any other supplementary information, through partial reports if Romanian Competition authority asks for them.