

Executive summary of the Romanian Competition Council Decision no.79 of 11 December 2012 on accepting the commitments assumed by SC Depozitarul Central SA within the investigation opened by Order of the Competition council's President no.3/10.01.2011 and extended by Order of the Competition council's President no. 433/14.03.2011

The investigation concerning the alleged infringement of Article 6 (1) of the competition Law no.21/1996 and Article 102 of the Treaty regarding the functioning of the European Union by SC Depozitarul Central SA was opened based on a complaint submitted by SIF Transilvania. The complaint referred to the introduction of a new tariff by SC Depozitarul Central SA, a stock company set up on the national capital market, also a member of Bucharest Stock Exchange. SC Depozitarul Central insures the compensation and reimbursement of transactions with financial instruments as well as the evidence of holders registers. The main competition concern in this investigation was the possibility of SC Depozitarul Central to abuse its dominant position on the registry operations market for issuers of securities, by imposing tariffs that could potentially transform the users in captive clients, and also to prevent other competitors' access on the market.

The new tariff was due for the delivery of holders registry to the issuer or another entity, if the issuer has required the cancellation of the contract without the removal from trading of the financial instruments involved.

After starting the investigation procedures, the Competition Council identified another tariff claimed by SC Depozitarul Central SA which presented similar competitive concerns: tariff for delivering the holders registry to the issuer or to another entity, at the specific request of the issuer, with the removal from trading of the financial instruments of the issuer.

The relevant market of the investigation was defined as the market for registry operations services, for securities issuers, services provided by the central depository institutions of Romania.

The involved undertaking addressed to the Competition Council with the intention to enter discussions on commitments. After multiple meetings, revisals and having applied a market test, the competition authority accepted the behavioral commitments assumed by SC Depozitarul Central SA, in a common intention to eliminate the impediments that might discourage issuers to migrate to another entity offering registry services. Thus, the tariffs that raised anticompetitive concerns by preventing the transfer of issuers to another registry were eliminated. To guarantee that the issuers will be able to transfer without any cost, SC Depozitarul Central assumed also the obligation not to introduce any penalties for transfer, any tariffs for registry delivery or any other fees with equivalent effect, which would impose some payment obligations at expiration of contract. Another commitment assumed is that the increase of remaining tariffs will be calculated depending only on objective factors and using the formulas explicitly provided in the commitments. Also, the involved undertaking assumed the obligation to define and follow a transparent and facile procedure for registry delivery to another depository. The commitments were assumed for a period of four years or until the entry into force of the *Regulation of European Parliament and of Council improving the reimbursement of financial instruments and central depositories of financial instruments and amending Directive 98/26/EC*, whichever happens first.

The competition authority considered that the commitments proposed by SC Depozitarul Central remove competition concerns and at the same time contribute to the protection of competition due to the fact that in addition to the elimination of tariffs that led to the opening

of the investigation, the undertaking assumed the obligation that all future tariff increases will be made based on objective, transparent and predictable factors stated in the decision.