[RO] Appeal Court Waives UPC Fines

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On 17 November 2009, the *Curtea de Apel Bucureşti* (Bucharest Appeal Court) overturned decision no. 237/2006 of the *Consiliul Concurenţei* (Competition Council), imposing two fines totalling approximately RON 7.1 million (EUR 2.1 million) against the cable provider UPC România.

According to information given by the Romanian Competition Council on 12 December 2006, the competition authority, as a result of investigations conducted over several years, suspected the two cable TV companies UPC and Hi-Fi Quadral of reaching a cartel-like agreement in 2001 with the aim of sharing between themselves the cable TV market in and around the city of Timisoara. By doing so, according to decision no. 237/2006, they had violated the provisions of the *Legea concurenţei nr. 21/1996* (Competition Act no. 21/1996). In particular, they had breached Art. 5(1), which "prohibits any express or tacit agreement between companies or any agreed practice which could result in the restriction, obstruction or distortion of competition in the Romanian market". Art. 5(1)(c) also prohibits "the sharing out of markets or sources of supply according to geographical or other criteria, as well as arrangements concerning the sharing out of sales and acquisition volumes". As well as UPC, the cable provider RCS&RDS - the successor to Hi-Fi Quadral - was fined around EUR 235,000. RCS&RDS and UPC are currently the two main players in the Romanian cable TV market.

The *Curtea de Apel* also cancelled an additional fine of EUR 5 million imposed on UPC România under decision no. 237/2006. This had been based on the abuse of a dominant market position in the municipality of Bucharest by the companies Astral Telecom and Cablevision of Romania, which had subsequently been bought by UPC. The two companies had been accused of raising their prices even though they had not suffered any actual rise in costs. According to UPC's representative, the Appeal Court decided that the price increase in the field of rebroadcasting of television programmes via cable should not be interpreted as an abuse of a dominant market position, since the provider was entitled to raise specific tariffs as long as the increase was reflected elsewhere within the pricing structure.

An appeal against the Appeal Court's decision may be taken to the *Înalta Curte de Casaţie şi Justiţie* (Court of Cassation).

Ştire privind sentinţa Curţii de Apel Bucureşti din 17 noiembrie 2009

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http://www.e-juridic.ro/stiri/curtea-de-apel-bucuresti-a-anulat-amenda-data-upc-de-consiliul-concurentei-4737.html

Report on the decision of the Bucharest Appeal Court of 17 November 2009

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