

ROMANIAN ASSOCIATION FOR AUDIENCE

MEASUREMENT

- ARMA -

GUIDELINES ON COMPLIANCE WITH COMPETITION LAW

1. Introduction

- 1.1. *ARMA* is the Romanian Association for Audience Measurement.
- 1.2. A person in the following categories/groups of interest may become a member of *ARMA*:
 - 1.2.1. Mass media channels that have been allocated airtime to broadcast advertising messages, in Romania, according to the legal provisions;
 - 1.2.2. Advertising agencies and media agencies providing services involving the use of media for their clients;
 - 1.2.3. Clients, defined as companies using mass media solely to promote their own products and services;
 - 1.2.4. Individuals with professional and scientific achievements in the area of marketing and mass media research, upon the proposal of the Board of Directors and as approved by the General Assembly; and
 - 1.2.5. Legal entities, other than those provided above, who request to purchase the data in the National TV Audience Measurement System, upon their request and as approved by the General Assembly.
- 1.3. The scope of business of *ARMA* is to provide its members with unbiased, precise and objective information regarding the mass media audience in Romania, their features and performance, in compliance with competition rules.
- 1.4. Associations of undertakings, such as *ARMA*, together with their representatives and members, are a legal form of cooperation between competitors. However, associations may be deemed to face a higher risk of infringing competition rules than individual undertakings. Therefore, it was deemed necessary to re-evaluate the forms of lawful cooperation, as well as the unlawful actions which are forbidden between *ARMA* members. The guidelines enclosed represent a written collection of good practice principles put together based on the prior experience of *ARMA* and shall not be deemed to generate new rules.
- 1.5. Adherence to the rules included in the applicable law has always been the policy of *ARMA* and its members, including, without limitation, the applicable Competition Law. Compliance with Competition Law is not just a legal obligation, but is also in the legitimate interest of *ARMA* and its members. These guidelines address competition rules that are most relevant for *ARMA* and describe how *ARMA* ensures compliance thereto.
- 1.6. The purpose of this document is to provide guidelines and general advice to *ARMA* members regarding Competition Law issues which may occur during *ARMA* meetings from time to time.
- 1.7. *ARMA* and its members express their adherence to these Guidelines and agree to be bound by the provisions of these Guidelines. These Guidelines shall also be made available to *ARMA* personnel. The Guidelines will be easily accessible on the association's website to the benefit of any entity, either a member of *ARMA* or not.
- 1.8. *ARMA* and its members agree that the Guidelines are not exhaustive and may not cover all situations which may arise in practice. Whenever in doubt in relation to the lawful nature of a certain topic or course of action, we recommend all members and *ARMA* to seek legal advice from a legal professional experienced in competition matters.
- 1.9. All *ARMA* members shall be liable to comply with the provisions of the Competition Law, seeking their own legal advice. *ARMA* shall not be liable to ensure compliance by its members to the provisions of Competition Law, in their own activities. Failure to comply with the provisions of the

Competition Law or with these Guidelines may result in sanctions being imposed on the member concerned.

- 1.10. Competition Law aims to promote competition between competing undertakings in the benefit of consumers of products and services. Competitors will therefore not be entitled to collaborate in ways which may affect the competition process. Under the Competition Law, there are rules regarding the types of information and topics which may be legitimately addressed between competitors, without raising concerns of collusion. Item 2.3 below presents a list of examples of topics which may not be discussed during ARMA meetings.
- 1.11. A violation of the national or EU Competition Law may result in severe penalties, claims for indemnification by consumers or consumer associations and, in certain cases, in criminal liability. Moreover, all clauses agreed upon in breach of Competition Law are null and void. Each member undertakes to take all necessary steps to ensure compliance with the Competition Law, including by seeking specialised legal assistance. Also, in addition to ARMA members, ARMA itself may be sanctioned for non-compliance with the Competition Law.
- 1.12. These guidelines apply to all discussions, either formal or informal, which take place within ARMA and, without limitation, during meetings of the Board of Directors, committee meetings, General Assembly or meetings between participants. They also apply to any ARMA-related events/meetings (e.g. conferences organized by ARMA with the participation of its members) and to any communications on ARMA's website.
- 1.13. In order to ensure compliance with and implementation of the Competition Compliance Manual, the following individual shall act as person responsible for compliance with competition rules:
 - Mr. Costin Juncu, +40744677757, costin@arma.org.ro.

2. Rules of conduct

2.1. Membership

- 2.1.1. Any person in the categories/groups of interest provided in item 1.2 above may become a member of ARMA, after having submitted an application to the Board of Directors. Membership is entirely voluntary and no undertaking shall be penalized or sanctioned in any way for not applying to become a member.
- 2.1.2. Membership criteria are objective, transparent, non-discriminatory, precise and reasonably necessary for ARMA to be able to achieve its objectives and follow its mission.
- 2.1.3. Membership is not subject to an obligation of the candidate or member not to join or participate in other competing associations. If such an obligation is deemed necessary for ARMA to be able to carry out its mission adequately, ARMA should seek legal assistance from a Competition Law specialist.
- 2.1.4. Any refusal shall be objectively justified. A refusal or threat to exclude current members shall in no case rely on an obligation to adopt a specific business behaviour on the market, imposed by ARMA or its members.
- 2.1.5. No disproportionate restriction or restriction not justified by legitimate grounds shall be imposed on ARMA members. Proportionality and legitimate purpose shall be interpreted in the light of ARMA missions and the normal course of its activity.
- 2.1.6. Membership shall not affect the member's ability to independently determine its own business strategy.
- 2.1.7. All costs incurred in relation to ARMA operations shall be carefully calculated and divided according to a transparent methodology, which is applied in an objective and non-discriminatory manner.

2.2. Meetings

- 2.2.1. All ARMA meetings shall be preceded by a written agenda to be shared with all participating members in due and reasonable time, by the person responsible for compliance with competition rules. It is recommended that all members participating in the meeting verify the agenda beforehand and discuss the relevant topics with their Competition Lawyers. Where appropriate, members should object in writing to those issues which raise competition concerns and seek legal assistance specialised in competition matters.
 - 2.2.2. It is prudent to keep an agenda in order to ensure that members focus on pre-determined topics and in order to provide proof that meetings do not represent a forum for discussions carried out in breach of competition rules.
 - 2.2.3. During meetings, the person responsible for compliance with competition rules shall provide legal assistance to members whenever discussions deviate from acceptable topics. Depending on the topics, the presence of a lawyer specialised in Competition Law may be required during certain meetings.
 - 2.2.4. If, during a meeting, sensitive topics are touched upon, ARMA members shall proceed as follows:
 - *Make it clear that such issues cannot be discussed and request an immediate change of subject;*
 - *Publicly state that you will not consider such information;*
 - *If the subject does not change, leave the meeting immediately and ensure that your departure and its reason are recorded in the minutes of the meeting;*
 - *If there are no minutes, mention this in your own meeting notes; and*
 - *Immediately notify the in-house legal department and the person responsible for compliance with competition rules, if the latter did not attend the meeting.*
 - 2.2.5. The person responsible for compliance with competition rules shall draft meeting minutes reflecting the topics covered, which are to be subsequently circulated with members.
 - 2.2.6. Copies of these Guidelines shall be available on the occasion of all ARMA meetings.
 - 2.2.7. The mere presence in meetings during which such topics infringing competition rules are discussed may be sufficient to establish an infringement of Competition Law rules. Thus, if a member raises an issue which is expressly prohibited, the person responsible for compliance with competition rules shall warn such member and prohibit the discussion of that particular issue and, if necessary, to request that the meeting be adjourned. If members attending an ARMA meeting are unsure whether a particular agreement or exchange of information is permitted, prior specialised legal assistance in competition matters should be sought.
 - 2.2.8. ARMA undertakes to keep the agenda, minutes and attendance list for each meeting, in chronological order, for a period of at least 10 (ten) years. Access to such meeting documents shall be provided to any member of the Association, whether such member attended the meeting in question or not.
- 2.3. *Forbidden behaviours - The following types of information shall not be subject to discussion/notifications/exchanges of opinions/consultations within ARMA:*
- 2.3.1. **Pricing policy.** Do not discuss prices or price components or any pricing-related practices. Any information regarding any type of price, as well as any price components

(discounts, bonuses, rebates, profit margins, price increases or decreases, refusal to work with a certain undertaking on account of its pricing policies or business practices, etc.), whichever their nature. Never adopt or apply regulations which may result in price fixing, such as regulations preventing price promotions.

- 2.3.2. **Costs.** Any cost-related information for specific activities (broadcasting costs, employee costs, etc.), whichever their nature. Advertising space rental costs, or payment terms for a certain member (including targets etc.), shall not be discussed.
- 2.3.3. **Future information on clients/suppliers.** Any future information regarding potential clients/suppliers, strategies to attract new clients/suppliers or the proposed allocation of advertising space. Do not disclose any future information on suppliers and/or clients, or advertising space to be purchased.
- 2.3.4. **Other strategic information.** Any other information on any other aspects regarding the business strategy/commercial policy of each individual activity (such as entering a new market segment, new services or technologies). Do not disclose any information regarding recruitment/training strategies, training programs or methods employed to implement business strategies.
- 2.3.5. **Any type of discussions/notifications/exchanges of opinions/consultations** within the association, whichever their nature and chosen means of communication, shall be avoided if regarding the following (whichever the means of implementation of such actions and whether such actions are to be implemented or not):
 - X **Boycotts.** No schemes/agreements regarding the exclusion of a mass media channel/advertising agency/client from a deal shall be discussed, including, without limitation, preventing the acquisition of advertising space from certain mass media channels, whether such channels are members of ARMA or not.
 - X **Market sharing.** ARMA members are prohibited from allocating, directly or indirectly, future advertising space.
 - X **Creating "blacklists"** of media channels/advertising agencies/clients, in order to eliminate them from the market or to prevent them from entering the market.
 - X **Broadcast restrictions,** including, without limitation, "self-restrictions". It is therefore required that members do not discuss the reduction and/or cessation of broadcasting of certain products and/or the cancellation of investment programs during ARMA meetings.
 - X **Establishing standard contractual clauses.** The agreement to impose certain clauses in contracts concluded by each undertaking individually (without this agreement being previously checked with a lawyer specialised in competition matters). It is necessary that members refrain from discussing the language of clauses to be included in contracts that each member concluded with its business partners during ARMA meetings.
 - X **"Non-aggression pacts"** regarding certain categories of clients/suppliers/broadcasting spaces for the purpose of not attacking them, on grounds that they are "attributed" to a certain action.
 - X **Bid rigging.** Members shall not discuss fictitious and/or artificial means of association in relation to the participation in certain tenders (such as: independent participation in tenders, while later making collective decisions on who is to win the tender, so that the "winner" submits the best bid, while the other bidders submit a bid that is inadequate to the tender requirements).

X Creating cartels/alliances to act in a specific manner on the market, except when the law allows it (see Section 2.4 for this purpose).

2.4. *Permitted topics*

2.4.1. **Lobbying to obtain tax deductions/exemptions**, and other similar actions for specific activities of the industry.

2.4.2. **Market research (including any research issued by the supplier selected following a public tender)**, without excluding certain businesses, under the following conditions:

- No information related to prices/costs or other business sensitive information as mentioned in Section 2.3 shall be exchanged.
- No information that are current or future estimates shall be exchanged.
- The exchange of historical information (related to the past) regarding the market and competitors is acceptable if the information is older than one year.
- The data collected shall be distributed in aggregate form, which does not allow the identification of the source of information.
- There will be no exchanges of information between or among competitors (market participants).
- Any other information made available following the analysis/survey carried out by a third party shall be devoid of sensitive strategic information and shall meet the legitimate objective envisaged by the parties.
- The information disseminated shall not be accompanied by comments, analyses, observations or recommendations and shall not be discussed during meetings with competitors. Such actions could be interpreted as a recommendation to members to adopt a certain market strategy.

2.4.3. **Discussions on general issues related to legislation** on employment matters, for example on compliance with labour law.

2.4.4. **Legislative lobby** for new laws or amendments to existing laws.

2.4.5. **Collaboration protocols with similar international organizations.**

2.5. *Useful aspects regarding the application of competition rules*

2.5.1. Within the meaning of Competition Law, agreements are not limited to written contracts or express conversations during a meeting - such an agreement may even be in the form of a tacit agreement, including by doing "what is expected" or exercising pressure/responding to pressure. Competition rules also apply to the verbal or informal exchange of information, to *gentlemen's agreements* and even to non-binding agreements. Discussing sensitive competition matters may be perceived as circumstantial evidence of an unlawful agreement.

- 2.5.2. The same rigors apply to the decisions made by an association of undertakings. Furthermore, the category of "*decisions made by an association of undertakings*" may include, in addition to formal decisions made by ARMA according to its Statute, any recommendations/guidelines issued by ARMA. Therefore, a recommendation issued by ARMA, even when non-binding to its members, may be subject to competition rules, when it affects the business behaviour of its members in relation to factors affecting competition, such as: prices, discounts, profit margins, etc.
- 2.5.3. It may be useful to recall that a Competition Law infringement may occur even in the absence of effects on the competition. A potential effect on competition may be sufficient for the competent competition authority to intervene, even when such potential effect was not envisaged or desired by ARMA members. Moreover, good intentions of members may not be sufficient to remove concerns of restrictive competition practices.
- 2.5.4. During a potential dawn raid by the Competition Council, all documents may be seized, whether in physical or electronic format. The following documents may be collected during such an inspection: SMS messages, e-mails, personal diaries, calendars, agendas, minutes, letters or other documents. It is also important to be reminded that competition authorities employ computer programs which allow the recovery of deleted files. Moreover, personnel may be questioned regarding their statements or behaviour. A series of guidelines regarding ARMA behaviour during an ad-hoc inspection are available in **Appendix no. 1** to this Manual [*Appendix not published on the website*].
- 2.5.5. Any written document, either external or internal, shall be drafted with utmost care and it is recommended to avoid ambiguous or controversial wordings, in particular when related to the market behaviour of members. The same rigor applies to verbal communications.
- 2.6. *Actions for which members must seek specialised legal advice*
- 2.6.1. Before making any decision, a lawyer specialised in Competition Law shall confirm the compliance of such actions the law. Examples of actions which need to be reviewed by Competition Lawyers include:
- **Cooperation agreements** for research and development (R&D)/ technology transfer agreements and/or know-how transfer agreements/ specialization agreements/ other similar contracts.
 - **Development of rules of conduct** and other similar regulations for members of the organization as well as for the organization itself.
 - **Exchange of information** other than those mentioned in Section 2.3 above (which also refer to that information intended, for one reason or another, to be made public) or which creates historical databases. It is recommended to seek legal advise before collecting and/or disseminating such information.
 - **Elaboration of standardization agreements** such as industry standards, codes of good practices or standard terms and conditions.
- 2.7. *Obligations of members*
- 2.7.1. Members agree to act in good faith and according to the rules of good public conduct in carrying out their activities, in order to fulfil their social responsibilities.
- 2.7.2. Members agree to abide by all laws, these Guidelines, internal rules, and other regulations into force.

- 2.7.3. Members agree to decide in a fair and non-discriminatory manner on selecting their suppliers and clients and not to impose unfair business terms to profit from an existing negotiation position (if applicable), but carry out their activity with suppliers and clients in good faith and according to the applicable laws, regulations and contracts.
- 2.7.4. Members agree not to enter into cartels, participate in tenders with rigged bids, impose anti-competitive vertical restrictions or act in any other way in violation of Competition Laws and agree to be subject to fair and free competition rules.
- 2.7.5. Members shall ensure compliance with these Guidelines by their employees and representatives, in particular those appointed to participate in the meetings and events organized by ARMA.

3. Sanctions for Competition Law infringements

- 3.1.1. If the Competition Council finds that a Member has infringed competition rules, it may apply a **fine between 0.5% and 10% of the turnover generated by the Member** in the year prior to the issuance of the sanctioning decision.
 - 3.1.2. To date, the Competition Council has applied severe fines, in particular in cartel cases, with total amounts in excess of **EUR 200 million**. In terms of percentages, the Competition Council never applied the maximum percentage allowed by law (i.e. 10%), the record fine so far being approximately **9.4%** (the highest fine in Romania, as a percentage).
- 3.2. *Who bears the fine for Competition Law infringements?*
- 3.2.1. If a Member infringes the Competition Law, the fine may be determined in relation to the turnover generated by the Member or, in specific cases, it may be escalated to also consider the turnover of its parent company/group of undertakings.
 - 3.2.2. ARMA may also be sanctioned, either as organizer or initiator of a cartel or cartel-like practice, or as facilitator in the creation and operation thereof, independently and separately from any sanctions applied to the other participants to such agreements/practices.
- 3.3. *What is the level of fines which may be applied for Competition Law infringements?*
- 3.3.1. In general, depending on the gravity of infringement of the Competition Law, the basic level of fines determined in relation to the turnover of the relevant Member/parent company/group shall be established taking into account the following categories:
 - **0.6 - 2% for minor infringements:** generally, vertical restrictions (e.g. non-competition or exclusivity obligations, tying-in and grouping practices) which have a limited impact on the market;
 - **2 - 4% for medium infringements:** usually, horizontal or vertical restrictions, whose implementation is more complex and more rigorous than in the case of minor infringements and having a greater impact on the market, affecting large areas of the market;
 - **4 - 8% for serious infringements:** cartels or horizontal restrictions such as price fixing, market sharing/client allocation, limitation of production or other practices preventing the adequate operation of the market.
 - 3.3.2. The basic level of the fine established in relation to the gravity and duration of the infringement may also be influenced by mitigating or aggravating circumstances, which may apply to a given case.

3.4. *Other negative consequences*

3.4.1. In addition to the above-mentioned fines and sanctions, failure to comply with competition rules may also lead to the following negative consequences for the Company:

- **Private damages.** Individuals or legal entities may claim in court the reparation of the prejudice incurred following a violation of competition rules.
- **Negative publicity** and damage to reputation and brand name.
- Potential **interruption of activity.**
- **Confiscation of illicit profits** (the Competition Council applied this sanction in an older case in the pharmaceutical industry).
- **Exclusion of the Member from ARMA**, according to article 22, point 1, letter c) of the Statute.
- Competition Law provides that an action by any person acting as director, legal representative or other management positions in an undertaking to design or organize, intentionally, one of the practices forbidden by article 5 of the Competition Law is a **criminal offense** and is punished by imprisonment between six months and five years or by fine and the prohibition of certain rights.
- In addition, in accordance with the Member's internal policies, its employees and management may be subject to **disciplinary action** if found to be involved in Competition Law infringements.

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