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# *Romania**

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Romania[1] is located at South Eastern Europe bordering the Black Sea between Bulgaria and Ukraine. Communists dominated the Government until 1996, when they were swept out of power by a fractious coalition of centrist parties.

In 2000, the centre-left Social Democratic Party (PSD) became Romania's leading party, governing with the support of the Democratic Union of Hungarians in Romania (UDMR). The opposition centre-right alliance formed by the National Liberal Party (PNL) and the Democratic Party (PD) scored a surprise victory over the ruling PSD in December 2004 presidential elections. The PNL-PD alliance maintains a parliamentary majority with the support of the UDMR, the Humanist Party (PUR), and various ethnic minority groups.

Although Romania completed accession talks with the EU in December 2004, it must continue to address rampant corruption – while invigorating lagging economic and democratic reforms – before it can achieve its hope of joining the EU, tentatively set for 2007. Romania joined NATO in March of 2004.

**Economy**

After Romania's Communist regime was overthrown in late 1989, the country experienced a decade of economic instability and decline, led in part by an obsolete industrial base as well as a lack of structural reform. Starting from 2000, however, the economy was transformed into one of relative macreconomic stability, high growth, low unemployment and increasing foreign investment, and is currently among the most developed in Southeastern Europe. Economic growth since 2000 has averaged 4-5 percent, rising to 8.3 percent in 2004. This has characterised Romania as a boom economy and one of the fastest growing in Europe.

| PROFILE | |
|---|---|
| Population: | 21.7 million*** |
| GDP (Current US$): | 57 billion*** |
| Per Capita Income: (Current US$) | 2,260 (Atlas method)***<br>6,560 (at PPP.)** |
| Surface Area: | 238.4 thousand sq. km |
| Life Expectancy: | 70.5 years** |
| Literacy (%): | 97.3 (of ages 15 and above)** |
| HDI Rank: | 69*** |

*Sources:*
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

Romania was granted in October 2004 the much desired 'functional market economy' status by EU officials, and is expected to join the EU in January 2007.

Strong aspects of Romania are the technologically advanced market economy with substantial government participation. Having its own natural resources, Romania has intensively developed its agricultural and industrial sectors over the past 20 years. Romania is largely self-sufficient in food production. Clothing and textiles, industrial machinery, electrical and electronic equipment, metallurgic products, raw materials, cars, military equipment, software, pharmaceuticals, fine chemicals, and agricultural products (fruits, vegetables, and flowers) are leading exports. The majority of Romania's trade is oriented towards the countries of the EU.

Since the late 1990s, there have been several economic reforms, spurred on by the country's bid to join the EU, including the liquida tion of large energy-intensive

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1 http://cia.gov/cia/publications/factbook/geos/ro.html

industries and major reforms in the agricultural and financial sectors. In comparison to its neighbours, Romania has a high number of SMEs. Foreign investment has increased significantly since 2003, reaching •5.1bn in 2004.

An IMF standby agreement, signed in 2001, has been accompanied by slow but palpable gains in privatisation, deficit reduction, and the curbing of inflation. The IMF Board approved Romania's completion of the standby agreement in October 2003, the first time Romania successfully concluded an IMF agreement since the 1989 revolution. In July 2004, the executive board of the IMF approved a 24-month standby agreement for US$367mn. The Romanian authorities do not intend to draw on this agreement, and are viewing it as a contingency step. Meanwhile, recent macroeconomic gains have done little to address Romania's widespread poverty, while corruption and red tape continue to handicap the business environment.

**Competition Law: Evolution and Environment**

Like that of most of the Central and East European countries intending to join the EU, Romania's Law on Competition No. 21 of 1996, effective since February 01, 1997, was modelled on EC Treaty Articles 81 and 82.

The alignment to the EU legislation in the field of competition and state aid was realised mainly through:

- The Competition Law, modified and amended by the Government Emergency Ordinance no.121/2003 approved by the Law no.184/2004; and
- The State Aid Law modified and amended by the Law no.603/2003.

Romania, as a candidate country to the EU enlargement process, promised to adopt and to enforce the *acquis communautaire* in the field of competition before the date of its accession to the EU; this is an important aspect in preparing the economy to cope with the competitive pressures of the European internal market.

The scope of the law is to protect, maintain and stimulate competition and a normal competitive environment, with a view towards promoting consumers' interests. The competition law sets forth broad substantive principles. It prohibits agreements in restraint of trade and the abuse of a dominant market position in all economic sectors except for the labour market. Its provisions do not, however, apply to agreements of minor importance because these are not capable of appreciably restricting competition by design or effect. Unless they lead to price fixing, market segmentation or bid rigging, agreements below a de minimus threshold – i.e. the aggregate turnover of the parties in the preceding business year does not exceed approximately US$600,000 and their market share is below five percent – do not fall within the scope of the competition law.

Romania's main regulatory and enforcement agency for competition, the Romanian Competition Council, recently confirmed through applicable guidelines that antitrust prohibitions would apply only to joint actions of two or more independent entities and do not cover intra-group arrangements and concerted practices.

The scope of the regulations in the Competition Law, explicitly stated in Art. 1, is to protect, maintain and stimulate competition with a view towards promoting consumers' interests.

The experience of the countries with developed market economy demonstrated that, in order to protect and develop competition and, consequently, consumers' interests, it is necessary to observe specific regulations; these aims at ensuring the freedom and the morality of the economic activity for all economic players.

To put it differently, the fight against anticompetitive practices and the control of economic concentrations protects mainly the existence of competition, while the fight against unfair competition protects especially the quality of competition. As these issues cross to a great extent, analysis of the facts is made, by taking into account both the aimed objective and the type of the methods used.

This explains the provision in the Law no.11/1991 concerning the prevention of unfair competition stipulating "the unfair competition cases that significantly affect the functioning of competition […] will be solved according to the provisions of the Competition Law no. 21/1996".

The Competition Law is the general legal framework governing the setting of prices and tariffs. According to this Law, the general rule for setting prices and tariffs is that they shall be determined freely, through competition, based on demand and supply. The prices and tariffs charged for natural-monopoly activities or for certain economic activities mentioned in the Law shall be established in accordance with the Ministry of Finances' advisory opinion, apart from those that fall under different competencies established by special laws.

In the economic sectors or markets where competition is precluded or substantially restricted by law or by the existence of a monopolistic situation, the Government may institute appropriate forms of price control for periods not exceeding three years, which may be successively extended for periods not exceeding one year, if the circumstances that justified the adoption of the respective decision continue.

For specific economic sectors and in exceptional circumstances, such as: crisis situations, major imbalance between demand and supply and obvious market malfunctioning, the Government may enforce temporary measures to prevent or even block the excessive price increases. These measures may be adopted by decision

for a period of six months, which may be successively extended for periods not exceeding three months, as long as the circumstances that justified the decision continue.

For the above-mentioned situations, the Government intervention shall be made with Competition Council's advisory opinion.

The analysis of all cases within the realm of competition law involves the definition of the relevant market(s). The concept of 'relevant market' is defined through Competition Council's guidelines and refers to a product or a group of products (*the product market*) and to the geographic area (the *geographical market*) where these are produced and/or traded.

The identification of the relevant product market involves an analysis that considers specific factors, such as, substitutability, price and cross-elasticity of the product demand in comparison with other products' prices etc.

The geographical relevant market refers to the area where the undertakings involved in supplying the products included in the product market are located, the area in which the competition conditions are homogeneous enough and can be individualised among neighbouring geographical areas, especially due to certain significantly different competitive conditions.

**Anticompetitive Business Practices**

The Competition Law prohibits the following:

- *Anticompetitive practices* that include monopolistic behaviour, respectively: "*Any express or tacit agreements between undertakings or associations of undertakings and any partnership decisions or concerted practices which have as their object or may have as their effect the restriction, prevention or distortion of competition in the Romanian market or on a part of it the abuse of a dominant position held by one or more undertakings on the Romanian market or on a substantial part of it*". (Art. 5 of the Law similar to Art. 81 of the Amsterdam Treaty); and
- "*The abuse of a dominant position held by one or more undertakings on the Romanian market or on a substantial part of it, by resorting to anticompetitive deeds, which have as their object or may have as their effect the distortion of commerce or the prejudice of consumers"*. (Art. 6 of the Law similar to Art. 82 of the Amsterdam Treaty).

Both the theory and the practice in the competition field generally divide anticompetitive practices into agreements between undertakings and abuse of dominant position. Agreements between undertakings may be divided into *horizontal agreements* (between competitors acting in the same market) *and vertical agreements* (between undertakings in a buyer-seller relationship).

From the viewpoint of enforcing legislation concerning competition, agreements between undertakings and concerted practices are, in a way, considered differently. Thus, some of them are generally *per se* prohibited (as they are, by definition). This refers to horizontal agreements, between competitors. This means that their anticompetitive effects are so evident they do not need to be demonstrated anymore, the only proof necessary in these cases being the fact that they indeed occurred and had an anticompetitive object even if they did not produce such an effect.

The *per se* prohibition is reinforced by the provisions of Art. 8 par. (2) in Competition Law, according to which anticompetitive practices related to prices, tariffs, market division agreements auctions are not subject to the limits imposed by the Law concerning turnover and market share level and are consequently not exempted from the law.

If a company holds a dominant position, the anticompetitive effects are much more probable, and the specific legislation is more strictly enforced.

*The dominant position* occurs when an undertaking is able, to a significant extent, to behave independently towards its suppliers, customers and competitors on the market. One of the most important elements considered when evaluating the existence of a dominant position is how easy a producer or a supplier can enter the respective market.

***Exempted Cases***

As the general economic interest has priority, the Competition Law provides exemptions by comparing the anticompetitive effects to the positive one for consumers and the national economy both in cases of agreements and economic concentrations.

Not all agreements or concerted practices are illegal or generate harm; some of them may benefit from exemptions from the general rule because they may contribute to the enhancing of production or distribution; the promotion of technical progress; the enhancing of products' quality and their competitiveness in the domestic and external market; the strengthening of SMEs' competitive position.

Agreements, partnership decisions and concerted practices falling under one of the exempted categories defined in the regulations adopted by the Competition Council are deemed legal and *there is no obligation to notify them or to obtain any decision accepted* from the authority; undertakings claiming for the categories exemption benefit have to prove that they fulfil the conditions and criteria provided by the law and regulations.

All the same, it is not prohibited to hold a dominant position on the Romanian market. Undertakings holding a dominant position in the relevant market fall under the scope of Law

only if they use this position abusively by indulging in anticompetitive deeds.

Economic concentrations realised through mergers or direct or indirect acquisitions of the control upon one or more undertakings *are prohibited only if,* by creating or consolidating dominant positions, it leads or may lead to the distortion of competition in the Romanian market or in a part of it.

Provisions concerning economic concentrations do not apply "*when the aggregate turnover of the involved undertakings does not exceed the equivalent in ROL of • 10mn and there are not at least two undertakings involved in the operation realising each of them a turnover exceeding the equivalent in ROL of • 4mn in Romania".* The President of the Competition Council periodically updates the threshold based on the evolution of general price index but not more frequently than every six months.

Two agencies, the Council and the Competition Office, share responsibility for enforcing the Competition Law and promoting competition in the Romanian market. The primary authority, the Council, comprises 10 members appointed by Parliament and reviews and clears mergers, initiates investigations, imposes administrative sanctions and makes final decisions on anticompetitive agreements and conduct. Besides the Council, the Competition Office, a separate agency within the Government, has certain powers for conducting investigations of anti-competitive practices and agreements.

Both agencies have wide powers of investigation. They may require information from any company when investigating an anticompetitive agreement or conduct. In the course of such investigations, agency officials may enter the premises of the investigated companies, search for 'smoking gun' evidence and examine business records and make copies of relevant documents. The officials may seal offices, cabinets, or documents to preserve evidence. The officials may also search the homes of managers, administrators, directors or officers of the investigated company. Agency officials must obtain a search warrant or permission before entering business premises or homes.

Penalties under the Competition Law can be severe. The Council may impose fines of up to 10 percent of the annual turnover in Romania of a company if by agreement or conduct the infringing parties restricted, hindered or distorted competition in the Romanian market or in part of it. A person who participates in conceiving, organising or implementing prohibited anticompetitive agreements or abuses of a dominant position may be imprisoned for six months to four years and/or fined. Besides administrative and criminal penalties, a company violating the Competition Law may be civilly sued by injured third parties and may be held liable for damages and attorneys' fees.

**Box 91.1: Cement Cartel Hit with Largest Fine**

The Romanian Competition Council fined three cement producers •27mn for price-fixing – the largest cumulative fine the authority has ever imposed.

Lafarge Romcim, a subsidiary of French company Lafarge, the world's biggest cement producer and the alleged ring-leader, was fined •10.4mn. Swiss firm Holcim producer of concrete, cement and aggregates such as gravel and stone was fined •8mn for cartel activity and a further •1.4mn for breaking the conditions of a deal to buy a cement plant in 1999. The third company, Carpatcement, subsidiary of Heidelberg Cement, one of the world's biggest cement producers, was fined •8.7mn.

The fines constituted approximately six percent of the companies' annual turnover. The investigation, which began in 2001 but remained dormant for two years, based its conclusions on market data rather than directly incriminating evidence.

The three companies shared 98 per cent of Romania's cement market. The probe found they had inflated the price of cement by as much as 38 percent.

*Source: Global Competition Review, June 2005*

The Council's fines to date have not generally been heavy, but one can anticipate that in the near future the fines will become more substantial as the Council grows and becomes more sophisticated with experience. Voluntary reporting of violations or potential violations is not a practice in Romania yet, and the Council does not have a leniency programme for this.

On a case-by-case basis, the Council may order the involved parties to stop the anticompetitive practices, make recommendations, and impose special conditions or obligations upon the involved parties. Further, the Council may impose penalties of US$25 for each day of non-compliance with the Competition Law. In addition, the Council may decide that the proceeds earned by the parties as a consequence of their breach be confiscated and paid into the treasury.

If there are several infringing economic agents (i.e. undertakings), the Competition Law states that sanctions must be applied to each of these economic agents. Sanctions are always subject to judicial review.

Despite the existence of such wide investigative powers, to date the enforcement record in the antitrust field has been relatively weak. In 1998 the Council imposed a fine of approximately US$225,000 for price fixing, while in 1999 it issued five sanctioning decisions for bid rigging, market segmentation, price fixing, and entry barriers. It is observed by many that the amount of fines imposed by the Council in these 1999 decisions was not significant. However, in a case where an independent shareholder registry company was involved, the fines amounted to approximately US$130,000. The Council also ordered the confiscation of profits.

There were two other sanctioning decisions issued in 2000, one in the pharmaceutical products market, where the professional association of pharmacists unduly imposed market barriers, and another in connection with the privatisation process, where the former State Ownership Fund had preferential arrangements with one of the bidders. In 2001, the Council fined a water company approximately US$435,000 for price fixing, and another company approximately US$30,000 for bid rigging during the privatisation process.

**Sectoral Regulation**

***Energy Sector***[2]

The Government of Romania's energy policy over the years has encouraged an efficient and sustainable development, focused on liberalisation in order to form an electricity sector that is appropriate to a market-orientated economy, with an associated need for restructuring of commercial arrangements supporting market transactions for the provision of electricity and ancillary services.

The progress made by Romania in the last years in the transition towards a liberalised electricity sector is significant. The key elements leading to such achievements are the development of the national legislation in accordance with the applicable EU legislation, and the setting up of a regulatory authority that independently makes decisions within the competencies granted by the law. Subsequently, the National Agency for Regulation of Electricity (ANRE) was established in March 1999.

A gas regulatory body, the National Regulatory Authority in the Natural Gas Field (ANRGN) has also been created. The current activity of ANRGN covers the whole scope of regulation in the natural gas sector.

***Telecommunications Sector***[3]

Romania is the second largest telecommunications market in Central and Eastern Europe and offers significant growth potential in the fixed, mobile and Internet sectors in the medium to long term as a competitive market becomes established. The telecom market has progressed significantly since 2001, closing gaps in the EU accession and establishing a new independent regulatory body in September 2002.

Since the market was fully liberalised at the beginning of 2003, some 670 providers have registered with the regulatory authority, National Regulatory Authority in Communications (NRAC) to offer a range of telecommunications services. However, very few of these companies have valid business plans and can actually be expected to enter the market. The head of parliament's IT Commission foresees no more than 10 real players operating in the market in the future.

Other than the incumbent RomTelecom and the country's existing mobile operators, there are bigger players, such as cable operator Atlas, the telecom arm of the state electricity utility, Transelectrica (which will benefit from its own fibre-optic network), and ISPs such as pan-regional Euro web.

During 2002, the Council issued 12 sanctions. Most notably, apart from fines amounting to approximately US$140,000, the Council imposed its heaviest fines ever on the national fixed-line telephone operator RomTelecom for undertaking non-compete obligations with Global One Communications Holding BV Holland in the Romanian market.

**Interface between Competition Authority and Sectoral Regulators**[4]

In principle, both the competition authority and regulatory agencies are focused on protecting the public interest against monopolistic power, but the instruments used are different. The competition authority has an important role within the reform process of regulated sectors, as part of the privatisation process, by its vocation to impose measures of breaking the existing monopolies, of controlling or prohibiting economic concentrations that threaten the market structure.

The Competition Council concluded cooperation protocols with the National Authority of Regulation in Communications, National Authority in the Field of Natural Gas and National Authority in the Field of Electricity in July 2004. These aim at strengthening the cooperation based on an active partnership, promotion and achievement of the objectives, implementation of the strategy and policy in the field of competition.

2 http://www.worldenergy.org/wec-geis/publications/default/tech_papers/17th_congress/1_4_21.asp
3 http://www.osec.doc.gov/obl/romaniabulgariatrademission/Romania%20Telecommunications.htm
4 The Relationship between Competition Authorities and Sectoral Regulators, Contribution from Romania, OECD Global Forum on Competition, 2005

**Box 91.2: The Rom Telecom Case**

In 2002, the Council concluded an investigation that was launched in 1999 into RomTelecom, the national dominant fixed-line telephone operator, and Global One Communications for undertaking non-compete obligations in the data transmission market (X25, Frame Relay, TCP/IP, ATM) and ISP (Internet Service Protocol) services market.

These companies entered into a joint venture in the form of a Romanian company, Global One Communications Romania (GOCR), whose articles of association prevented the parties from creating or participating in any way, directly or indirectly, in Romanian companies competing with GOCR, and from competing with GOCR, directly or indirectly, as long as they had an interest in GOCR, and for a period of five years from the date when they ceased to be shareholders.

The Council analysed the relevant markets, the market share held by the undertakings involved, the duration of the anticompetitive practice in question, and its structural and possible effects on the market. Although in effect for eight years (1993-2001), it was admitted that the non-compete clause produced harmful effects only during the years 1999 and 2000, when GOCR had a leading 78 percent market position in the data transmission market, and RomTelecom had the financial and logistical means to enter this market.

As GOCR was considered to have only 7.04 percent of a highly competitive ISP market throughout these years, the Council further concluded that the non-compete clause affected only the data transmission market (with only two competitors in 1999, i.e. GOCR and Logic Telecom).

The Council took the view that the non-compete clause affected the competition environment by artificially creating market barriers and appointed a committee to impose sanctions. Based on guidelines issued by the Council on determining the amount of fines (similar to the EC guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No. 17/1962 and Article 65(5) of the ECSC Treaty (98/C9/03)), the appointed committee factored into its decision the duration of the infringement (medium-term), its gravity (very serious), the economic and financial situation of the infringing parties, their position on the market and their ability to influence it, the attitude of the infringing parties toward their conduct and its consequences, i.e. whether or not the behaviour had been committed with intent to breach the law, and the scope and the frequency of it.

As a mitigating circumstance, the Council noted that the non-compete clause was entered into when the Competition Law was not in force, and therefore, the parties had no intention of breaching any legal provisions. Also, the Council took consideration of two other mitigating circumstances:

- RomTelecom itself voluntarily informed the Council as the new owner following privatisation wished to withdraw from the joint venture; and
- RomTelecom finally withdrew from the joint venture.

However, the Council ultimately imposed fines on RomTelecom of approximately US$24.5mn, representing 3.3 percent of its 2001 annual turnover. Global One Communications got off more lightly: a fine of approximately US$480,000 was levied.

In the telecom sector, for instance, the Competition Council participates, on regular basis, at the NRAC's Consultative Committee meetings. The Consultative Committee has the role to support the harmonisation of different parties' interests, and to assess the impact of NRAC's regulations on the market. Furthermore, the Competition Council gives mandatory opinion on the draft acts to be adopted by NRAC that may have anticompetitive impact. In this respect, the Competition Council gave its opinion on the following normative acts adopted by NRAC:

- regulation on identifying the relevant markets from electronic communications sector; and
- regulation on carrying out market analysis and on determining significant market power.

At the same time, the Romanian Competition Council has prepared *Guidelines on the application of competition rules to access agreements in the telecommunications sector*. In this respect, the Competition Council had asked for the NRAC's opinion on these guidelines. Thus, the cooperation between the competition authority and regulatory agencies is reciprocal in nature.

Whenever the Competition Council investigates an alleged infringement of the Competition law by companies acting on a regulated market, the NRAC is asked to participate in the procedure. Also, whenever the behaviour of the companies acting on these markets has the characteristics of an anticompetitive practice prohibited by the Competition Law, the Romanian Competition Council can intervene and impose the sanctions provided for by the Competition law.

In sum, the cooperation between Competition Council and Regulatory Authorities is oriented to:

- preventing and discouraging anticompetitive practices in these markets;
- market monitoring activities;

- disseminating and informing undertakings about measures taken in case of infringement of Competition Law no. 21/1996; and
- mutual consultation about sensible competition problems.

**Consumer Protection**[5]

Since the first consumer association was formed in Romania back in 1990, and the issue of a governmental ordinance on consumer protection issued in 1992, things have somehow improved. The 1992 Consumer Protection Act laid down the main rules and created the Consumer Protection Office (CPO).

The media does not confuse 'consumer' with 'buyer' anymore, which in Romanian sound very close. The people are aware of the validity of terms found on food packs and have even begun making complaints to the relevant bodies. The sad news is that there is a trend to understand consumer protection only as penalties applied by enforcement inspectors; it offers hot news for the media. However, the other side, prevention by education, has been quite neglected.

**Concluding Observations and Future Scenario**

Romania is currently negotiating the Competition Law chapter in view of accession to the EU. Romanian competition legislation, especially the bulk of antitrust and merger control rules, is considered to be broadly in line with the EU *acquis communautaire* provisions. However, the EU has indicated in its Regular Report on Romania's Progress Towards Accession dated October 09, 2002 that issues remain to be addressed relating, in particular, to the enforcement of Romanian competition rules.

Although the EU remains concerned about the enforcement capabilities of the Council, there is growing pressure in Romania on the competition bodies to harmonise their regulations and enforcement procedures with EU practices as part of the Government's general policy of complying with EU accession requirements.

Given Romania's aim of joining the EU by 2007, the Romanian Government is trying to close the chapter on competition as quickly as possible. To that end, it adopted on July 10, 2003 and sent to the Parliament for debate a draft law to amend the Competition Law. Its most important features are:

- Merger of the Council and the Competition Office into one regulatory and enforcement agency, the National Competition Agency;

- Abolition of the notification system. As noted earlier, agreements and concerted practices deemed to restrict competition within the meaning of the Competition Law must be notified to the Council for either exemption under the block exemption rules or individual clearance. Under the new system, companies will not be required to notify agreements that are drafted so as to fall within the terms of a group exemption conferring an automatic exemption;

- Expansion of the investigative powers of the Council, notably by empowering Council officials to question company employees about factual matters when conducting investigations;

- Substantial increase in the level of fines that the Council may impose in respect of procedural matters (e.g. obstruction of investigations, providing false information, failure to comply with orders of the Council), while maintaining the existing provisions concerning fines for infringements. The maximum fine for substantive infringements remains unchanged, at 10 percent of turnover in Romania in the preceding business year. The maximum fine for giving false or incomplete information in response to written requests for information or during inspections is fixed at one percent of turnover in Romania in the preceding business year. Under the proposed draft law, the Council may impose periodic penalty payments to a maximum amount per day of five percent of average daily turnover in Romania during the previous business year in order to compel a company to comply with a decision ordering it to terminate an infringement, to supply information requested or to submit to an inspection; and

- It confirms in clear language the power of the Council to order interim measures to prevent imminent serious damage to the competition environment.

5 www.norden.org/nicemail/issues/four/romania.htm

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