

ESSENTIALITIES CONCERNING THE COMPETITIVE ENVIRONMENT IN ROMANIA, IN THE PERIOD BETWEEN 2015 AND 2019

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Abstract: *The paper "Essentialities concerning the competitive environment in Romania, in the period between 2015 and 2019" emphasizes essential aspects of the activity carried out by the Competition Council during the analysed period. In the period between 2015 and 2019, the Competition Council monitored the smooth operation of the competition in the market, and therefore, it opened and finalized investigations on an annual basis, but it also gave fines to companies that were found to have carried out activities likely to affect the competitive environment.*

Key words: *abuse of a dominant position, investigation, competitive environment, economic concentration.*

INTRODUCTION

In a functioning market economy, companies compete with each other with the purpose of expanding their customer range. Competition itself is a mechanism used to stimulate economic operators carrying out their activity in the market; thus, they are encouraged to manufacture a volume of goods as large as possible, and to provide a larger quantity of products, at lower prices and with a higher quality, in order to be attractive for their potential customers. In this way, economic operators tend to reach their full potential. Competition supports the entry of new companies into the market, thus rewarding efficient companies and giving sanctions to those that are inefficient. [1]

In order to be able to hold a dominant position, companies must agree with other market participants, or be interested only in their own interests, with the aim of obtaining the majority of the market.

MATERIALS AND METHODS

This paper was drawn up based on the reports published by the Competition Council in relation to the analysed period.

In this paper, I presented a few aspects related to the activity of the Competition Council in the period from 2015 to 2019.

RESULTS AND DISCUSSIONS

In the period between 2015 and 2019, the Competition Council monitored the application of, and compliance with the competition rules, and consequently, due to the non-compliance with these rules, the Council found itself in the position to give fines and carry out investigations of the economic operators who were considered not to have complied with the measures imposed.

The year 2019 represented a year with very intense activity for the Competition Council, especially in terms of regulations, from the perspective of Government Emergency Ordinance no. 114/2018. At the same time, Romania's economic activity was growing and becoming very dynamic. This could be noticed in the activity of the Competition Council in terms of economic concentrations. Herein below, most of the cases brought to the attention of the Competition Council are related to cartels. Nevertheless, an increase was noticed in the anti-competitive actions of the public administration. Out of the 14 cases completed in 2019, in 93% of them, the violation of competition law was found and sanctioned or the companies involved undertook to quickly restore competition in the

market. The total value of the fines was 96 million lei, approximately 20 million EUR, more than 90% of these sanctions being applied for abuse of a dominant position. For comparison, the budget of the institution financed from public funds and non-reimbursable European funds in 2019 was 60.9 million lei (approximately 12.62 million EUR), to which own revenues amounting to 4.2 million lei (0.87 million EUR) are added. The Competition Council completed 5 sector inquiries and made recommendations (some already taken over) for the improvement of competition in the analysed areas and, at the same time, two more sector investigations were initiated, so that at the end of 2019, 5 sector investigations were in progress within the Competition Council. The number of authorized economic concentrations increased sharply, reaching 75 compared to 57 authorized in 2018. In situations where transactions generated suspicions of possible impact on the competition in certain markets, the authority imposed conditions and commitments to ensure the maintenance of a normal competitive environment [15]

In 2019, a number of 9 investigations were initiated in relation to potential violations of the competition law, out of which 5 were initiated *ex officio* by the Competition Council, and the remaining 4 were initiated following complaints. As in previous years, most investigations are aimed at potential horizontal agreements, in general this type of anti-competitive practice having the most harmful effects on competition. 8 of the 9 initiated investigations were related to the infringement of the national competition law, and one both the national and the Community law [15]

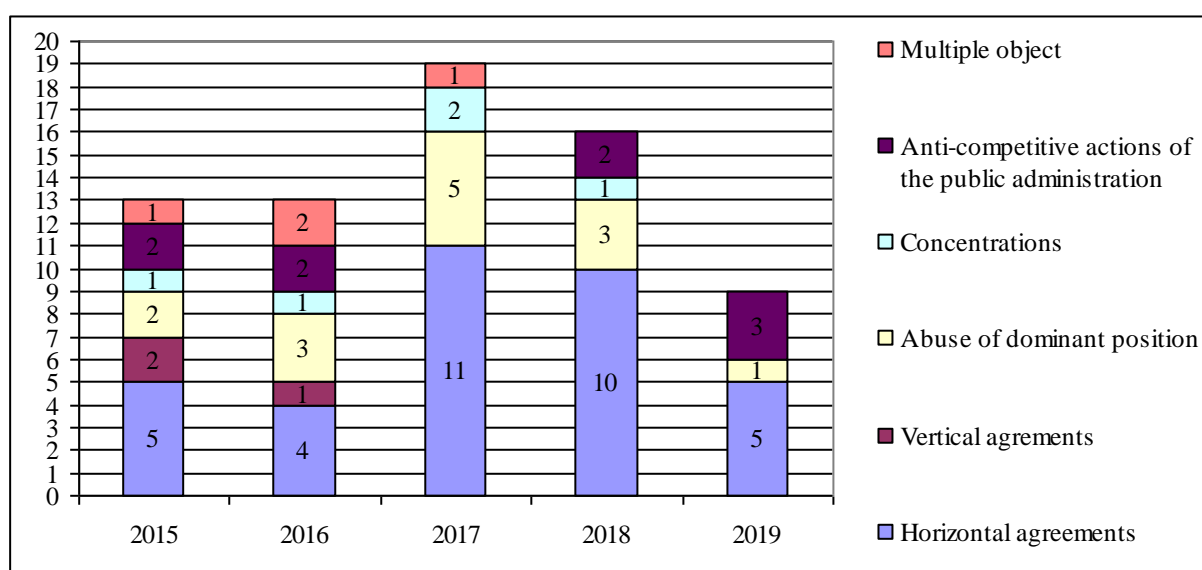


Figure 1. Investigations initiated in the period between 2015 and 2019

Source: Competition Council - 2019 Annual Report, page 16. [15]

From Figure 1 we can notice the following:

- the number of investigations initiated by the Competition Council was the same in the years 2015 and 2016, 13 investigations, respectively;
 - in 2017, there was an increase by approximately 31.58% in the number of investigations initiated, compared to 2015 and 2016;
 - in 2018, the number of investigations dropped compared to 2017, the decrease being approximately 18.75%, and with an increase by approximately 23.08% compared to the years 2015 and 2016.
- The structure of the investigations initiated in these 4 years is different, as follows:
- in 2015 and 2016, investigations were initiated in all the 6 investigated practices;

- in 2017, the Competition Council did not initiate investigations in relation to horizontal agreements and anti-competitive actions of the public administration;
- in 2018, no investigations were initiated for vertical agreements and multiple object.

Most of the initiated investigations are due to the referral by the Competition Council of the matter to itself, and to a lesser extent to complaints coming from other economic entities or natural persons.

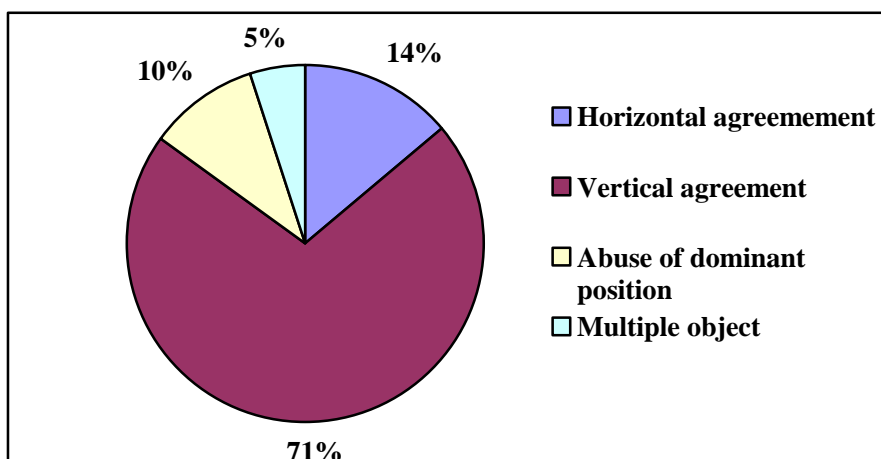


Figure 2. Investigations completed in 2015, according to the investigated practice
 Source: Competition Council - 2015 Annual Report, page 24. [10]

In Figure 2., we can notice that the object of most of the investigations that were closed in 2015 was that of vertical agreements. Out of all the investigations closed, 16 ended with imposing fines, and 5 by the acceptance of commitments.

Presentation of the investigations initiated and closed in 2016, according to the investigated practices:

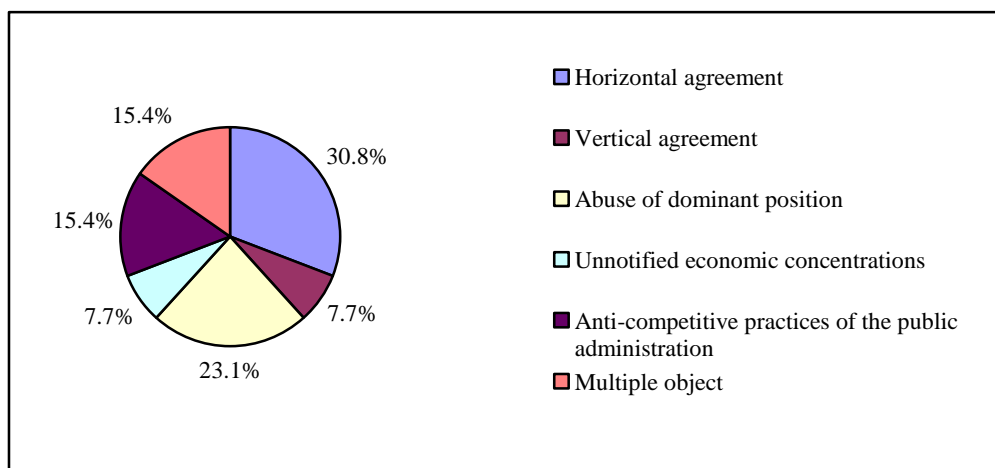


Figure 3. Structure of the investigations opened in 2015, according to the investigated practice
 Source: Competition Council - 2016 Annual Report, page 24. [11]

As we can see from Figure 3., most of the newly-opened investigations were based on horizontal agreements, as in the previous year, where the largest investigations opened for horizontal agreements also accounted for the largest percentage.

In 2016, investigations related to horizontal agreements dropped by approximately 9% compared to the previous year.[11]

Out of all the initiated investigations, 6 were based both on the violation of the international, as well as of the national laws, while 7 were initiated for the violation of the national law.

The investigations initiated throughout the year were opened both based on complaints, as well as *ex officio*, as follows: 46% were initiated due to complaints, while 54% by the referral by the Competition Council of the matter to itself.

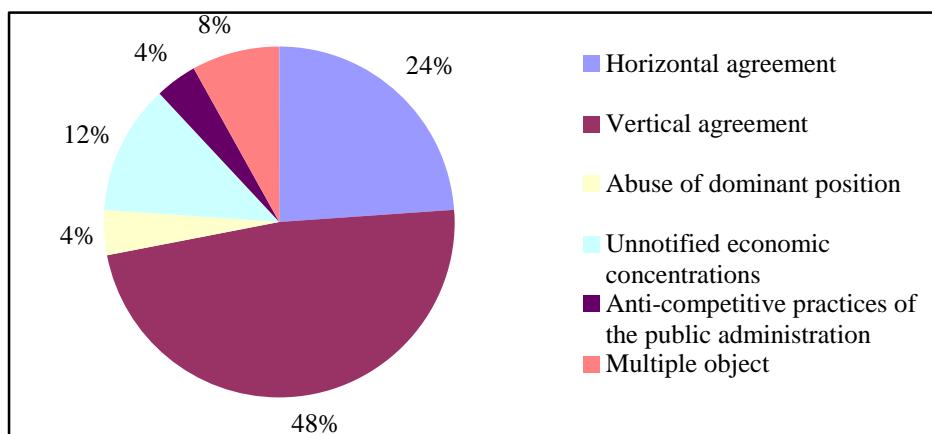


Figure 4. Investigations completed in 2016, according to the investigated practice

Source: Competition Council - 2016 Annual Report, page 26. [11]

From Figure 4., it can be inferred that most of the investigations completed in 2016 focused vertical agreements, which accounted for almost half of all investigations. The average length of these investigations was estimated to be of 4.4 years. In 16 cases, fines were applied, 3 investigations were closed based on the acceptance of commitments, while in the case of 6 investigations, no violation of the law was found.

In 2017, 19 investigations were initiated by the Competition Council, in relation to the potential violation of the laws, the object of 8 of them being the national and the international legislation.[12]

As in the previous years, most of the initiated investigations were the result of the referral by the Competition Council of the matter to itself.

The largest percentage within these investigations was represented by horizontal investigations, more specifically 57.9%. The percentage of this type of investigation almost doubled compared to the previous years, a potential cause of this increase being the fact that in 2017, the investigations initiated by the Competition Council grew by approximately 46.15%.[12]

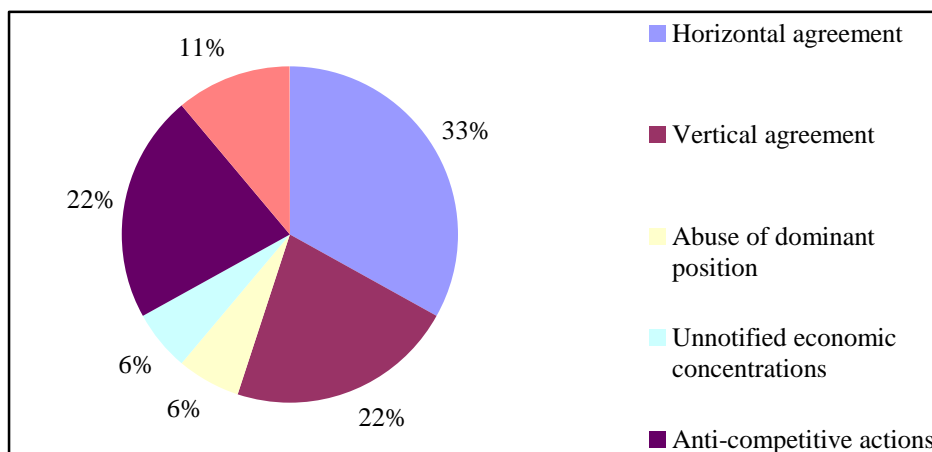


Figure 5. Structure of the investigations completed in 2017, according to the investigated practice

Source: Competition Council - 2017 Annual Report, page 28. [12]

As it can be inferred from Figure 5., most of the investigations completed in 2017 were based on horizontal agreements, as in the case of the investigations initiated this year.

Horizontal agreements represented most of the investigations that were closed, recording an increase by 9% compared to the year 2016, and an increase by 19% compared to the 2015 ones.

The structure of the investigations initiated and completed in 2018, according to the investigated practice:

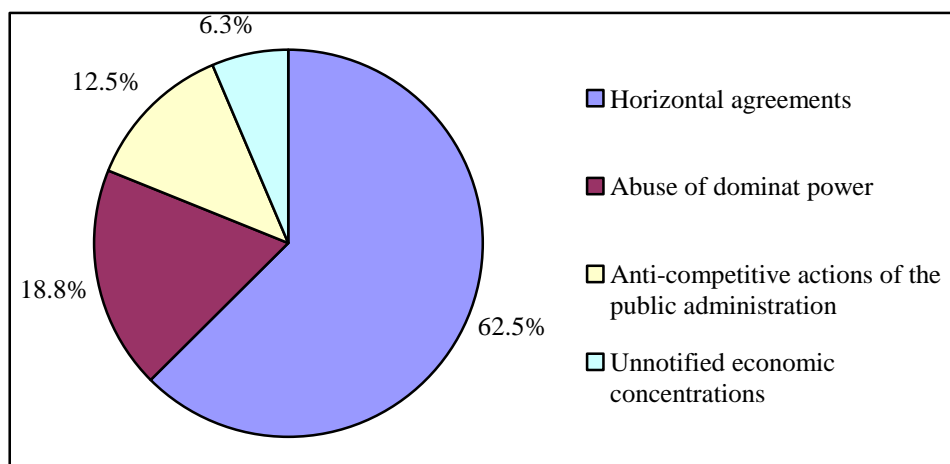


Figure 6. Structure of the investigations initiated in 2018, according to the investigated practice

Source: Competition Council - 2018 Annual Report, page 23. [9]

Figure 6 shows the structure of the investigations that were initiated by the Competition Council throughout 2018. As in the previous year, the largest percentage of these investigations is represented by horizontal agreements too, which exceeds half of all the initiated investigations.

Horizontal agreements accounted, this year, for the highest value in the past 4 years, with an increase by 4.6% compared to 2017, by 31,7% compared to 2016, and by 23.5%, respectively, compared to 2015.

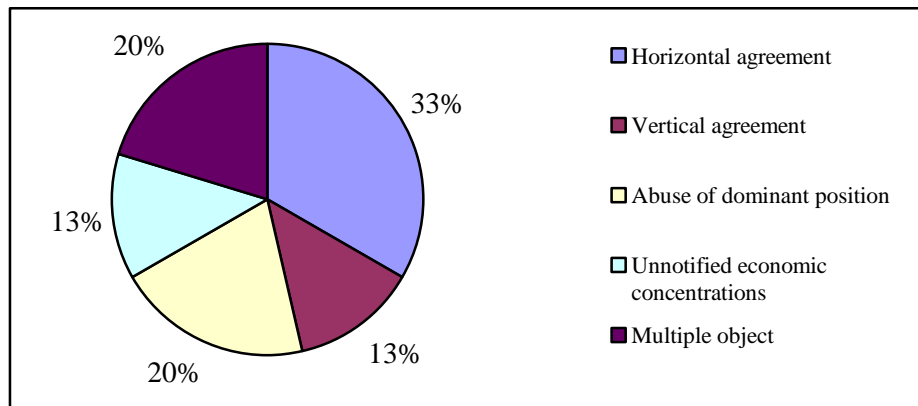


Figure 7. Structure of the investigations concluded in 2018, according to the investigated practice

Sursa: Consiliul Concurenței - Raport anual 2018, page 24 [9]

From Figure 7, we can see that most of the investigations concluded throughout this year were based on horizontal agreements, their percentage in the total number of investigations being equal to that from the previous year.

In 2018 15 investigations were completed, out of which 8 were based both on the violation of the national legislation, as well as on the violation of the international investigation. The 15 investigations had an average settlement duration of 2.4 years. The structure of the investigations is as follows: [9]

- the law had been violated within 12 investigations;
- commitments were accepted in one investigation;
- in 2 investigations it was ascertained that the law had not been violated.

Through the 12 in which the law had been violated, 74 companies were fined, out of which 30 admitted that they had committed anti-competitive practices, and therefore they benefited from leniency.

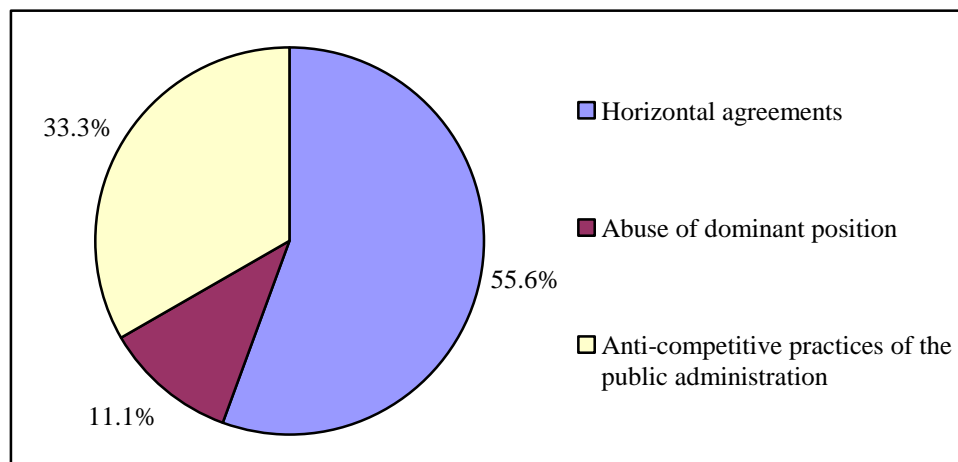


Figure 8. Structure of the investigations initiated in 2019, according to the investigated practice

Source: Competition Council - 2019 Annual Report, page 16. [15]

In Figure 8., we can see that within the structure of the investigations initiated in 2019, horizontal agreements account for the largest percentage, followed by anti-

competitive actions committed by the public administration, and the abuse of dominant position.

More than half of the investigations initiated in 2019 were related to potential anti-competitive practices such as horizontal agreements, while anti-competitive actions of the public administration represented a higher percentage in all the investigations initiated in the previous years.

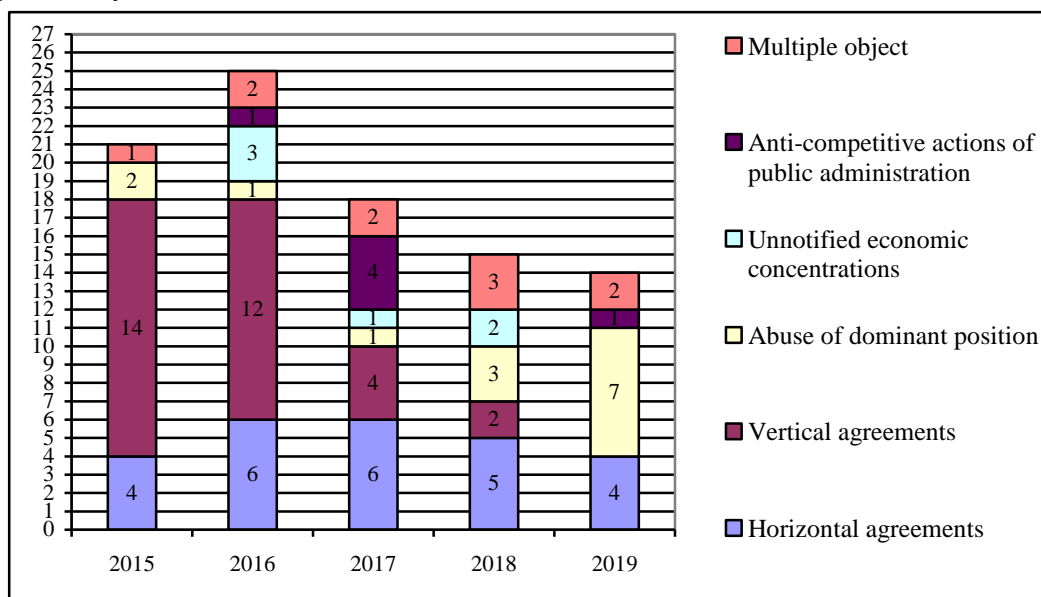


Figure 9. Investigations completed in the 2015-2019 period

Source: Competition Council - 2019 Annual Report, page 17. [15]

Figure 9 presents the structure of the investigations completed between 2015 and 2019, for example, it can be seen that in the last 2 years, a decrease was recorded in the investigations completed by the Competition Council.

Even though in the last three years, most of the initiated investigations were related to potential violations such as horizontal agreements, the year 2019 stands out due to the fact that most of the completed investigations represented abuses of dominant position (7 out of the 14 investigations completed).[15]

The structure of the investigations is different for each year:

- in 2015, no investigations based on economic concentrations and anti-competitive actions committed by the public administration were completed;
- in 2018, no investigations related to anti-competitive actions committed by the public administration were completed;
- in 2016 and in 2017, the investigations completed were based on all the 6 analysed practices;
- in 2019, no investigations were completed in relation to unnotified economic concentrations and vertical agreements.

CONCLUSIONS

In the 2015-2019 period, the Competition Council monitored the smooth operation of the competition in the market, and therefore, it initiated and completed investigations each year, but it also applied fines to companies discovered as having committed acts susceptible of affecting the competitive environment.

The value of the fines granted in these five years amounted to 970,792,264 RON. The fines applied did not have a steady increase or decrease, they fluctuated throughout

these five years as follows: in 2015 fines were applied in the amount of 239,680,544 RON; in 2016, a decrease was recorded by approximately 68%, fines being imposed in the amount of 76,802,672 RON; in 2017 an increase was recorded in fines compared to the previous year, their value being 123,114,190 RON, by approximately 60% higher; while in 2018, fines were imposed in the amount of 435,194,858 RON, in this year, an increase by more than 200% being recorded compared to the previous year, while in 2019, the value of the fines dropped approximately 4.5 times, compared to 2018.

We can see that the lowest value of the fines imposed by the Competition Council was in 2016, while the highest value was recorded in 2018.

The number of penalised companies is different from one year to another, in 2015 they were 202, in 2016 - 162 companies, in 2017 fines were imposed to 156 companies, in 2018, 74 companies were fined, while in 2019, only 16 companies were fined.

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