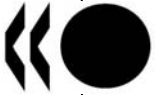


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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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Global Forum on Competition

**THE RELATIONSHIP BETWEEN COMPETITION AUTHORITIES
AND SECTORAL REGULATORS**

Contribution from Romania

-- Session II --

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THE RELATIONSHIP BETWEEN COMPETITION AUTHORITIES AND SECTORAL REGULATORS

1. In order to successfully cope with the economic globalisation and integration within the Single European Market, for meeting the exigencies imposed by the quality of future Member State of European Union, it is required a thorough knowledge of the competition rules, knowledge that can be achieved by an active competition advocacy. In achieving this goal, the national authority in the field - the Competition Council - has an important role.
2. Romania's integration objective is conditioned by European rules and practices in the competition field that must function even before the accession itself as an essential support for a viable and functional market economy.
3. The competition advocacy defines the capacity of authority involved and authorised in providing assistance, in influencing and participating at drafting and enforcing the Governmental economic policies, designated to a better promotion of structures and competition behaviour of companies, and to increase their performances and competitiveness on the market.
4. The objectives of the competition advocacy are of complex nature and have an essential importance for developing in Romania a functional market economy. The Competition Council approaches mainly activities focused on competition advocacy, respectively:
 1. **The activity of competition advocacy in relation with regulatory authorities of different sectors**
5. Within the process of strengthening the functional market economy, the Competition Council plays an active role in favour of liberalising the markets of public interest services. Therefore it is extremely necessary and useful for all the concerned factors to know the policy and the rules on competition, the legal framework and to promote them in a coherent and consequent way.
6. The competition promotion in public utilities sector, the way in which is established the coordination between the competition authority's actions and regulatory institutions on different sectors represents a real challenge of the present. The competition legislation and policy aim at limiting the anticompetitive behaviours of companies, and de-regulating is oriented to minimize the distortion of market functioning through governmental interventions.
7. In principle, both the competition authority and the regulatory institutions are focused on protecting the public interest against the monopolistic power, but the used instruments are different. The Competition Council has in view to guarantee for all companies the increase of efficiency as a result of competition, price reduction, in order to provide competitiveness and job creation. To these, there are added the consumer's benefits, obtained by reducing costs of concerned benefits services.
8. 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 close cooperation with regulatory institutions is motivated in these cases by the requirement to ensure the reforms efficiency.
9. Therewith, ensuring the performance of public interest services, in terms of quality and price, in order to meet the end users needs represents a common responsibility of competition authorities, of

regulatory authorities and of service suppliers. Far to be incompatible, the services of general interest and the principles of competition policy are complementary in reaching this objective.

10. Romanian Competition Council participates in a regulated framework at the Consultative Commissions of the regulatory authorities; in the context of the actions that regards the competition advocacy, Competition Council intensified its periodical meetings with the regulatory authorities.

11. The conclusion on July 14 of a Protocol with the National Authority of Regulation in Communications and on July 21, 2004 of two Protocols with the National Authority in the Field of Natural Gas and with the National Authority in the Field of Energy, aimed at strengthening the co-working and cooperation based on an active partnership, for the promotion and achievement of the objectives, of the implementation of the strategy and policy in the field of competition.

12. The main economic regulated sectors in Romania are: electrical energy, natural gases, electronic communications, and postal services, services of local interest and mineral resources and oil. The regulations of network industries take aim, especially: assuring transparency, assuring services in non-discriminatory conditions, accountancy delimitation, accessibility of third parties to network and price control.

1.1 Electrical Energy - development and expectations

13. Romania has the largest power sector of South Eastern Europe. There are over 22.2 gigawatts (GW) of installed electric-generating capacity. On July 2004, Italian company ENEL bought two out of eight distribution societies: SC Electrica Banat SA and SC Electrica Dobrogea SA. A similar sell-off strategy was approved for SC Electrica Oltenia SA and SC Electrica Moldova SA.

14. *National Authority in the Field of Energy* is called to harmonise the conflicting interests in the sector. Its mission is to create and implement a system of regulations with a view to ensuring the proper functioning of the electricity sector and market in terms of efficiency, competition, and transparency and consumer protection.

15. Course of the opening degree of electrical energy domestic market: 2004 - 40%, 2005 -55%, 2006 - 80%, Jan. 2007 - 100% for industrial consumers and July 2007 - 100% for all consumers.

1.2 Natural Gas - development and expectations

16. On October 2004, there have been privatised the two big distributors of natural gas SC Distrigaz Sud si SC Distrigaz Nord SA. The price of natural gas produced by domestic undertakings is going to grow gradually, reaching import price in 2007.

17. In 2000, Romania set up the *National Authority in the Field of Natural Gas*. Its main responsibilities include tariff setting, authorising and licensing companies, and protecting consumers, controlling natural gas sector companies, issuing technical norms and regulating access to the transmission and distribution grids.

18. Course of the opening degree of natural gas domestic market: 2003 - 30%, 2004 - 40%, 2005 - 50%, 2006 - 75%, 2007 - 100%.

1.3 *Electronic Communications*

1.3.1 *Fixed telephony*

19. The market was fully liberalised on January, the 1st, 2003.
20. Romtelecom, the national telephony operator, was privatised in 1998 (OTE Greece) and still holds a dominant position on fixed telephony market. Also, over 2000 companies have required a license for fixed telephony.
21. Romtelecom must permit access to network to the new entrants in non-discriminatory and equitable terms.
22. Romanian Competition Council has adopted Guidelines on the application of the competition rules to access agreements in the telecommunications sector - framework, relevant markets and principles.
23. *Mobile telephony* - there are 4 operators: Mobifon, Orange, Telemobil and Romtelecom (Cosmorom).
24. *Internet* - there are about 40 providers operating at national level and about 362 providers at local level.
25. *Cable TV* - there are 3 main operators: RCS, Astral Telecom and UPC.
26. The reform process ongoing in Romania is aimed at creating a competitive environment in the electronic communications sector. A close collaboration between the Competition Council and National Regulatory Authority in Communications (hereinafter referred as NRA) is a *sine qua non* condition of success.
27. The Competition Council participates, on regular basis, at the NRA's Consultative Committee meetings. This Consultative Committee has the role to support the harmonization of the different parties' interests, and to assess the NRA's regulations impact on the market. Also, the Consultative Committee makes proposals for improving the quality of the adopted regulations.
28. Furthermore, the Competition Council gives mandatory opinion on the draft normative acts to be adopted by the NRA's that may have anticompetitive impact, and proposes amendments to the legislation having such effects.
29. In this respect, the Competition Council gave its opinion on the following normative acts adopted by NRA:
 - regulation on identifying the relevant markets from electronic communications sector;
 - regulation on carrying out the market analysis and on determining the significant market power.
30. On the other hand, Romanian Competition Council has adopted *Guidelines on the application of the competition rules to access agreements in the telecommunications sector - framework, relevant markets and principles*.
31. In this respect, the Competition Council asked for the NRA's opinion on these guidelines.

32. The purpose of these guidelines is threefold:

- to set out access principles stemming from competition law, in order to create greater market certainty and more stable conditions for investment and commercial initiative in the telecoms and multimedia sectors;
- to define and clarify the relationship between competition law and sector specific legislation (in particular this relates to the relationship between competition rules and open network provision legislation);
- to explain how competition rules will be applied in a consistent way across the sectors involved in the provision of new services, and in particular to access issues and gateways in this context.

33. The Competition Council recognises that NRA has different tasks, and operates in a different legal framework from the Competition Council when the latter is applying the competition rules. The sector specific law, based as it is on considerations of telecommunications policy, may have objectives different to, but consistent with, the objectives of competition policy. The Competition Council will cooperate as far as possible with the NRA.

34. National Regulatory Authority regulates *ex ante* the conduct of the companies acting on the market, trying to prevent any anti-competitive agreements or abusive behaviours. Whenever the Competition Council investigates an alleged infringement of the Competition law by companies acting on a regulated market, the NRA is asked to participate in the procedure. Also, whenever the behaviour of the companies acting on these markets has the characteristics of an anti-competitive practice prohibited by the Competition law, the Romanian Competition Council can intervene and impose the sanctions provided for by the Competition law.

35. In conclusion, the cooperation between Competition Council and Regulatory Authorities is oriented to:

- preventing and discouraging anticompetitive practices on these markets;
- Market monitoring activities;
- disseminating and informing undertakings about measures taken in case of infringement of Competition Law no. 21/1996;
- mutual consultation about sensible competition problems.

2. The activity of competition advocacy in relation with the Government

36. This activity is based on coherent actions, as follows:

2.1 *Establishing and institutionalising a system of ex ante consultations and ensuring its functionality on a permanent base*

37. The sooner the consultancy process is engaged in elaborating the legislation, the more efficient the competition rules will be highlighted within those normative acts.

2.2 *Participation at the elaboration by the Government of the legislation concerning economic integration and reform*

38. The competition authority must be involved, even when elaborating proposals of legislative drafts, especially when promoting those normative acts with potentially negative impact on competition.

2.3 *Participation to actions concerning privatisation and its economic effects*

39. The intervention and the practical role of the Competition Council in this field are necessary to ensure the implementation of competition rules by actions in the previous stage as well as in post-privatisation stage.

2.4 *The Competition Council's involvement in the governmental activity, as habilitated observer, through its concerned representatives, especially entrusted in this scope*

40. Competition Council must be directly involved in the Governmental decisional activity, by issuing and sustaining its own point of view, on executive initiatives with direct or indirect impact on the competition field.

2.5 *Participation of Competition Council's representatives to international meetings and using efficiently the results within inter-ministerial group on competition issues*

41. Market globalisation and integration require an active presence at meetings with international and regional character and submitting proposals regarding harmonization and synchronisation of Competition Council's activity with international trends.

42. As an action method in this matter, was create an Inter-ministerial working Group on competition issues, with monthly reunions. The first meeting of the Inter-ministerial Group on competition was aimed at initiating the materialisation of the initiative of preventing the potential anti-competitive practices on the market in order to reach the goal represented by the well functioning of the mechanisms of a functional market. At this meeting the representatives of the Ministry of Economy and Trade, Ministry of Justice, Public Finance Ministry, Ministry of Communications and Information Technology, Ministry of Environment and Water Administration, Ministry of Health and Ministry of Education and Research have participated.

43. The competition advocacy is not necessarily an original, Romanian action, but represents an activity on which all competition authorities were focused. The international experience demonstrated in time that, by promoting the competition culture, the financial efforts are lower, unless the authorities are focused strictly on sanctioning the infringements of the law in this field.

44. Romania considers that a deeper, more intensive bilateral and multilateral cooperation among competition authorities can prove to be a very good response that is needed in terms of globalisation. In order to solve competition problems with regional dimension, the competition authorities of neighboring countries have to strengthen cooperation between them. That is why the Romanian Competition Council is confident in the establishment of the fruitful relationships with the competition authorities from the South East Europe.