ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ROMANIA
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This report is submitted by Romania to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 16-18 June 2015.
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1. **Executive Summary**

1. The Romanian Competition Council (hereinafter referred as RCC) has successfully managed all the challenges in 2014. It has intensified the efforts for ensuring a normal competitive environment by using the tools for detecting and sanctioning Competition law infringement, as well as by proactive actions.

2. Major investigations were completed in 2014. 44% of these targeted the most harmful anticompetitive practices, i.e. cartels. In one of these investigations, the RCC applied the leniency policy. Among the completed cases regarding vertical anticompetitive agreements, a relevant example is the one concerning the food retail market.

3. The fines applied, of around EUR 41.5 million, prove the strengthening of the sanctioning policy in respect to anticompetitive practices. Whenever a quick and efficient reestablishment of the effective competition is possible, RCC accepts commitments. The RCC is entitled to apply fines for non-compliance of the commitments, as it has done, for the first time, in 2014, in the cases involving prepaid mobile phone cards and retransmission rights of football events.

4. Following the completion of the energy sector inquiry and the life insurance study, RCC has proposed a series of measures aimed at improving the functioning of these sectors, measures that have been subject to public debate involving all stakeholders - companies, sector regulators and other decision making factors.

5. After a complex process of public consultation, RCC succeeded in promoting a new legislative framework on unfair competition, which modernizes specific provisions and the way they are enforced. The State aid national procedures have been also changed aligning them to the new Community rules. They create the necessary framework for Romania to fulfil its obligations for accessing European funds between 2014 and 2020 and sets out how national public and European funds are used in the benefit of business environment.

6. RCC joined forces with the Ministry of Finance in order to amend the law regarding modern payment systems, mainly aiming at capping the interchange fees for card transactions. The pursued objective was to adapt the legal framework to the competition rules.

7. Regarding case reviews in courts, the percentage of irrevocable decisions favourable to the Competition Council was 96% in 2014.

8. A notable success achieved by the institution at international level was the granting by the Organisation for Economic Cooperation and Development (OECD) to Romania of the status of associate in the Competition Committee and its working parties. This achievement is subsequent to the favourable outcome of the OECD Peer-Review exercise on competition law and policy developments in Romania to which RCC voluntarily submitted in the period 2013-2014. In addition, a project aiming at assessing the competitive impact of existing regulations in three sectors of the Romanian economy with significant share in the GDP namely the processing of agricultural products, transports and constructions has been initiated. This project will be implemented by RCC in partnership with the Prime Minister’s Chancellery, the Ministry of Finance and the OECD. At the same time, in 2014, the RCC was appointed board member of the EU Member States working group on implementing the new rules on State aid.

9. A major goal for the RCC in 2014 was to improve the collaboration with other institutions, as well as its capacity to respond to requests from citizens, business environment and public administration. An interoperable integrated information system was set up through a European-funded project, ensuring the monitoring of the competitive environment. The system will provide the necessary infrastructure for delivering online services and interconnection with a series of public institutions. Through another
European-funded project, started in 2014, RCC aims at designing, developing and exploiting a single interactive database of State aid and de minimis measures in Romania.

2. Changes to competition laws and policies, proposed or adopted

2.1 Summary of new legal provisions of competition law and related legislation

2.1.1 Modifications of the related primary legislation


2.2 Other relevant measures, including new guidelines

- Regulation of 5 June 2014 for modification of the Regulation on the establishment of the tariffs for the procedures and services provided by Competition Law 21/1996 and the regulations issued for its application;

- Regulation amending the Regulation concerning the establishment of offences and the application of fines by the RCC;

- Guidelines for amending the Guidelines on the rules for access to the file in cases concerning Articles 5, 6 and 9 of the Competition Law 21/1996, Articles 101 and 102 of the Treaty on the functioning of the European Union and in merger cases;

- Guidelines of 30 September 2014 amending point 35 of the Guidelines on the conditions, terms and the procedure for accepting and assessing the commitments, in case of anti-competitive practices;

- Regulation on the amendment of the Merger Regulation;

- Regulation of 24 November 2014 on the procedure of finding and sanctioning unfair competition practices.

3. Enforcement of competition laws and policies

3.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

3.1.1 Summary of activities

3.1.1.1 New investigations

10. RCC has opened 12 investigations in 2014, out of which 9 investigations on possible infringements of the competition law, one procedure for non-compliance with commitments and 2 sector inquiries.
11. Most of the investigations concerning possible competition law infringements initiated in 2014 are focused on horizontal and vertical agreements.

Chart 2. Structure of the investigations on possible infringements of the Competition law initiated in 2014, according to the investigated practice

12. Four of the investigations initiated in 2014 target possible infringement of the national competition legislation, as well as of the Community one.

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1 Including the investigations for which procedures for non-compliance with commitments were initiated and the studies.
As regards the method of initiation, 56% of these investigations were opened ex-officio, following the analysis conducted by the competition authority, and 44% following complaints.

The two sector inquiries initiated in 2014 concern:

- the energy and agricultural irrigation sector (water management) and
- the airport services sector (catering and related handling services on Henri-Coandă International Airport).

13.1.1.2 Concluded investigations

In 2014, the competition authority has completed 21 investigations and similar activities related to the application of competition rules, out of which 16 investigations on possible infringements of the competition law, 2 procedures for non-compliance with commitments, 2 sector inquiries and 1 study.

Most part of the investigations on possible infringements of the competition law completed in 2014 represented horizontal and vertical anticompetitive agreements (please see chart below).

Including the investigations for which the procedures for non-compliance with commitments were initiated and the studies.
Chart 4. Structure of the investigations on possible infringements of the competition law completed in 2014, based on the investigated practice

The average time span of the investigations on possible infringement of the competition law completed in 2014 was 3.7 years and the median duration of 3.5 years.

Chart 5. The average time span of the investigations on possible infringement of the competition law completed, 2010-2014

18. The two sector inquiries completed in 2014 envisage:
   - electric energy market and
   - local public transport of passengers by regular trips at county level in South-East of Romania

19. The life insurance study was as well finalized in 2014.

3.1.1.3 Investigation in progress at the end of 2014

20. At the end of 2014, 56 investigations on possible infringement of competition law were ongoing and 11 sector inquiries.

3 Out of which 30 investigations are older than 3 years.
21. Over the last 3 years, the total number of the ongoing investigations at the end of the year continuously dropped.

3.1.1.4 Dawn raids

22. Within the dawn raids performed in 2014, 62 headquarters/working locations belonging to 42 undertakings were inspected within 9 investigations.

3.1.1.5 Fines

23. The value of the fines applied by RCC in 2014 was of EUR 41.5 million. That means a considerable increase of the level of the fines relative to the previous years (2.12 times higher than in 2013 and 6.11 times higher than in 2012). The fines were applied in the case of four horizontal agreements (57%), a vertical agreement (14%) and two decisions on non-observance of commitments.

3.1.1.6 Decisions

24. The number of decisions initiated by the Competition Council in 2014 was of 60.

3.1.2 Description of significant cases, including those with international implications

3.1.2.1 Vertical anti-competitive agreements on the food retailing market

25. Following the performance of a sector inquiry on commercialization of food products, investigation closed in September 2009, RCC decided to ex-officio open four more investigations concerning a possible infringement of Competition Law.

26. The investigated parties were 4 traders of food products (Mega Image, Metro Cash&Carry Romania, Real Hypermarket Romania and Selgros Cash&Carry Romania) and their 21 suppliers.

27. Following the analysis, RCC noted that in the period 2005-2009, a series of anti-competitive agreements were concluded among the all four retail chains and the 21 suppliers. Through these agreements they have restricted each other the market behavior and jointly set-up fixed or minimum levels of selling price and / or resale price. Price restriction was achieved through contracts and certain forms of promotion and targeted two levels:

- Resale price maintenance

28. Certain forms of promotion concluded between suppliers and retailers included a fixed or minimum price for the products to be sold to the customers of the retail shopping chains within the promotion. These minimum or fixed resale prices constitute a restriction on the freedom of the trader to establish the resale price, i.e. resale price maintenance by the supplier. This practice has affected the final consumer through the application by the retailer of higher prices during the promotion campaign compared to those that could have been applied in the absence of such restrictions.

- Promo clause

29. Various contractual documents concluded between retailers and suppliers included a clause according to which the supplier committed himself not to perform promotions in other shopping chains, in the same time with the promotions performed in the respective shopping chain.

30. The observed practice made impossible for the involved retailer to be competed, through price, by other retailers, concerning the product of the promotion campaign. The supplier committed itself not to
promote the respective products in the rival store chains at least during the performance of the promotion campaign in the respective store chain.

31. These practices of promotions restriction between the supplier and the retailer affected the final consumers that could have benefited from lower prices from just buying from the store chains that had the promo clause.

32. The RCC concluded that the decision to perform or not promotions should independently belong to the suppliers. All 25 companies involved in the price restriction agreements were sanctioned with fines totaling 154,029,538 RON (approx. 35 million EUR).

3.1.2.2 Anti-competitive agreements on the market of oil and gas drilling services in Romania – market sharing

33. In 2014, RCC sanctioned four companies for the division of market services of oil and gas drilling in Romania.

34. The sanctioned anti-competitive behavior targeted the drilling services taken through public auction organized by S.N.G.N ROMGAZ S.A.

35. RCC noted that the parties involved had discussions with the purpose of dividing the drilling works prior to organization by S.N.G.N ROMGAZ S.A of public tenders, pre-establishing both the winners and the way they would bid and ensuring thus the winning of the auctions by those who were part in the cartel. Following the anti-competitive discussions the companies involved submitted their bids in the tender according to the previously agreed terms by cartel members. This coordination of the behavior at the auctions for drilling services transformed the bids in the opposite of the operation of a real competition among the undertakings involved. In this way the companies illicitly cooperated at the auctions by adopting a common plan concerning the division of the drilling market in order to remove the risk that competition involves.

36. The sanctioned anti-competitive behavior took place in the period 2 June 2008-12 October 2009 and targeted various procedures of public auctions.

37. The applied fines amounted to approx. EUR 2.89 million.

38. The investigation started in 2010 came as a result of a leniency application made by FOSERCO S.A. The company admitted its participation in an agreement with the competitors with a view to divide the market of drilling services among themselves and provided information and documents that helped the RCC to start the investigation. Thus, FOSERCO S.A. received immunity from fine.

3.1.2.3 Tacit agreements /Concerted practice on tariff fixing of taxi public transport services

39. In 2012, RCC started an ex-officio investigation concerning an alleged infringement of Competition Law by the companies operating on the market of taxi public transport in Bucuresti municipality and Ilfov county.

40. The object of the investigation was price fixing of the taxi services in the municipality of Bucharest and its surroundings.

41. Following the investigation report, the RCC sanctioned 8 companies operating on this market with fines amounting to 505,021 EUR.
The sanctioned companies agreed to align their tariff policy to a unique tariff for taxi public transport. In compensation, the companies committed to do certain undertakings concerning the amendment of the law on taxi public services that would allow the access in Bucharest of those taxi drivers authorized only in Ilfov. This action meant an increase of the tariff for an important part of the existent players on the market. Afterwards, over 90% of market aligned tariffs to the unique tariff set up by the main players in the market. Almost any form of competition by price among the companies was eliminated by this agreement.

Besides the fines imposed, the competition authority made certain recommendations to the authorities responsible with authorization and regulation of taxi public transports services. These recommendations concerned the organization and management of the taxi public transport services in Bucharest and Ilfov.

The decisions of the above-mentioned cases will be found at: [http://www.competition.ro/official documents/competition/decisions](http://www.competition.ro/official documents/competition/decisions)

### 3.2 Mergers and acquisitions

#### 3.2.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws

In the merger control policy, the main areas where the RCC has reviewed and approved such operations in 2014 are the food sector, the banking sector, the energy sector and the sector of rental services of properties/spaces.

The RCC authorized, upon notification, 42 merger transactions, out of which 2 after the acceptance of commitments. Half of the merger cases were analysed by simplified procedure.

The average length of the merger cases completed in 2014 was 1.81 months, 23% less than that the one recorded in 2013.

**Chart 6. The average/median length of a merger analysis between 2010 and 2014 (months)**
3.2.2 Summary of significant cases

3.2.2.1 Mergers

The taking over of the control by Agrana Zucker GmbH over the assets of the undertakings SC Zaharul Liesti SA and SC Lemarco Cristal SRL

48. In January 2014, Agrana Zucker GmbH took control over all the assets of the factories of Zaharul Liesti S.A. and Lemarco Cristal S.R.L (target companies) and over the office building owned by Lemarco S.A. Agrana Group and the acquired companies, respectively Lemarco Cristal and Zaharul Liesti operate in white sugar production and trade market on the industrial and retail segments. The position of the merging parties on the market was analyzed before and after the merger both as a whole and on those two segments, namely industrial and retail.

49. The anticipated competitive concern following the implementation of the merger was a possible increase of the white sugar retail price, due to the consolidation of the dominant position of Agrana on the white sugar market. After the merger Agrana would have the possibility to restrict the access of the competitors to a low price raw material by limiting the access to import licenses of CXL raw sugar. Implicitly, the cost bared by the competitors on the upstream market would have increased, by making hard for them to find raw sugar at the same price and conditions in place before merger.

50. Agrana submitted to RCC two commitments. By first commitment assumed until 30.09.2017, Agrana offers to transfer to the raw sugar processors authorized and that operate sugar production units in Romania the rights to import with preferential taxes having the origin “any third country” that they might get on the basis of the Liesti and Urziceni factories’ refinery status with permanent activity.

51. Actually, the CXL import licenses are the ones that had an important role in the consolidation of the dominant position of Agrana through the acquisition of Liesti and Lemarco factories.

52. By second commitment, Agrana committed not to buy other sugar factory from third market players for a five-year term following the merger clearance. This commitment also eliminates the possibility of its consolidation of the dominant position on the market.

53. Following the commitments assumed by Agrana, the RCC noted that the notified transaction would not lead to the restriction, elimination or significantly distortion of competition on the any of the identified relevant markets. Therefore, this transaction was conditionally authorized.

3.2.2.2 The taking over of control over several assets of SC Angst Retail SRL by SC Mega Image SRL

54. In July 2014, the RCC is notified that Mega Image acquires 20 retail stores of Angst.

55. Following the analysis of merger effects, the RCC found that the transaction may lead to the strengthening of the position of Mega Image on retail market, this reducing the consumer choices.

56. The results of the analysis indicated that this transaction does not raise competition problems relating to a substantial rise of the power of negotiation of the parties involved in their relation with the suppliers, nor to negative effects over the access of the rival companies in the supply market.

57. On the contrary, the analysis revealed several competition concerns on three retail geographic markets situated in the area of Angst Amzei, Angst Perla and Angst Academiei acquired stores.
58. The parties involved decided to give up on purchasing the Angst Perla store and to take structural commitments. The structural commitments consisted in the divestiture of the commercial activity of Angst Amzei and Angst Academiei stores or of other stores from the network situated near to these two.

59. The RCC’s analysis demonstrated that following the commitments the merger does not raise significant impediments to effective competition especially as a result of the creation or consolidation of a dominant position on the identified relevant markets. Thus, in November 2014 the merger was conditionally authorized.

60. The decisions of the above-mentioned cases will be found at: [http://www.competition.ro/official documents/competition/decisions](http://www.competition.ro/official documents/competition/decisions)

3.3 Sector investigations

3.3.1 Investigation of electricity sector in Romania

61. On the energy market, the RCC performed an extensive sectoral inquiry within which it required information from 70 companies that hold electricity production license, 180 companies holding electricity supply license and 8 companies holding electricity distribution license.

62. The study led to the opening of an investigation having as object the long term contracts concluded by SC Hidroelectrica SA on the electricity market in Romania.

63. The following markets were analyzed from competition perspective: (1) production and commercialization of electricity market, (2) system technological services market, balancing market and transport market and (3) electricity distribution market.

64. Following the analysis the RCC made several recommendations. First of all, the competition authority considers necessary the introduction of certain financial instruments specific to these markets (e.g.: contracts for the difference, contract with option). These instruments would help the undertaking to manage the possible financial risks generated by the discrepancies that may occur at a certain moment between the demand and the offer.

65. The RCC considers also that a higher flexibility in operation (mix of production/technologies sources) will bring benefits to the internal producers vis-à-vis the European competitors, in the perspective of a regional market and a consequent Community Single Market. The competition authority suggests to the undertakings in this field to invest in the diversification of electricity technologies production, in order to become more flexible in the delivery of energy and implicitly, more competitive.

66. The RCC finds necessary the delimitation between the role of shareholder and manager of the Ministry of Energy, Small and Medium Enterprises and Business Environment regarding the companies in the sector of electricity production.

67. Regarding the transport of electricity, the RCC finds that the current charge mechanism differentiated on geographic areas is affecting competition and does not bring benefits to the consumers or justifies itself by the security of the National Energetic System.

68. The RCC recommends thus an analysis that would change the electricity transport charging mechanism.
3.3.2 Study concerning life insurance sector

69. The RCC’s study concerning life insurance sector was launched in 2013. The study was triggered by two main reasons. First, in the last years this sector was characterized by mergers and acquisitions both at European and national level. Second, insurance act, in general and life insurance act, in particular were significantly affected by the start-up and the persistence of the economic crisis.

70. The study conducted by the RCC reveals that the life insurance sector in Romania is situated to a low level of development. Actually, the low degree of penetration of these complex financial products in our country is far behind other countries from Europe or even from the region.

71. Following the analysis, the RCC made a series of recommendations that concern the development of life insurance sector, as well as the promotion of the interests of Romanian consumers.

72. Thus, the competition authority recommends the development of online price comparators in this field that will help the consumers in the process of selection. This instrument can be used when the products are aught standardized. In the same time, financial education of Romanian clients regarding these complex products can alleviate the information asymmetry existing between the customers, on the one hand and insurers and insurance intermediaries, on the other hand. In this moment, there is a real risk of guiding uninformed customers towards sub-optimal insurance products that do not fully respond to their particular needs.

73. The RCC sustains the opening of this important channel of insurances distribution. It also encourages the adoption of rules that would facilitate customer choice in the case of life insurances associated to banking credits. When analyzing the distribution channels of life insurances, the competition authority noted that some insurers find it difficult to access the subordinated insurers’ channel (bank assurance operators). This happens especially in the case of those insurance companies that don’t belong to a financial group that includes also a commercial bank.

4. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

74. 2014 was a very important year in terms of the activity of making the legal framework compatible with competition rules.

75. Thus, the RCC issued 3 advisory opinions, 45 points of view and 78 opinions on normative acts initiated by the Government and legislative proposals initiated by the Parliament, concerning various industries of the national economy.

76. Regarding interventions for amending the existing legislation or the draft legislation with anticompetitive effects, it’s worth underlying four major actions of the Competition Council regarding the sanitation services, the community public services, the forestry services and the pharmaceutical services.

77. It deserves to be mentioned in this context that the RCC was the co-initiator of the Law for strengthening the financial discipline concerning the cash receipts and cash payments and for amending and completing Government Emergency Ordinance no.193/2002 on the introduction of modern payment, which provides, inter alia, capping interchange fees applied to card transactions.

78. The Law for strengthening the financial discipline on the cash receipt and cash payment transactions and amending and supplementing Emergency Government Ordinance no.193 / 2002 on the introduction of the modern payment systems.
79. The bill was initiated by the Ministry of Public Finance and the RCC. It contains two chapters. The intervention of the competition authority envisaged Chapter II of the bill namely the Amendment and the completion of the Government Emergency Ordinance no. 193/2002 concerning the introduction of modern payment systems.

80. The bill was approved by the Government (on 2 April 2014 with favorable opinions from the Legislative Council and National Bank of Romania) and the Senate (on 2 December 2014, with an amendment – The grace period was modified from 6 to 12 months). It was adopted by the Chamber of Deputies on March 11, 2015.

81. The amendment and completion of Emergency Government Ordinance no. 193/2002 concerning the introduction of modern payment systems, initiated by the RCC aims to regulate interchange fees on credit card transactions.

82. Both at the level of the European Commission and the EU Member States, a series of competition problems concerning payment cards, especially relating to interchanges fees were identified.

83. In Romania, the RCC dealt with a sector investigation to identify possible anticompetitive practices on the market of payment cards services and its potential distortions, affecting thus consumer welfare. The investigation revealed several significant competition issues on the national market of payment cards, including how to determine the level of interchange fees on cards market in Romania.

84. In accordance with the rules of international payment systems Visa and MasterCard, the member banks established through a multilateral agreement the level of applicable interchange fees on the national market.

85. According to the competition rules, the joint fixing of a level of the interchange fees constitutes an agreement between undertakings or a decision of an association of undertakings that might have as object or effect a possible restriction of competition.

86. The RCC initiated the discussions with the government authorities but also with the business environment representatives in order to find the best solution for these interchange fees to be reduced substantially. Discussions envisaged the adoption of a regulation for capping interchange fee levels. The conclusion was that the regulation would be beneficial for consumers by reducing selling prices (the pass-through to the consumers of the savings generated by the merchants by the reduction of the interchange fees).

87. The result of these actions was the drafting by the Ministry of Finance in cooperation with the RCC of this bill for strengthening the financial discipline on the cash receipts and cash payment transactions.

88. The provisions of Chapter II, "Modifying and supplementing Emergency Government Ordinance no. 193/2002 concerning the introduction of modern payment systems " in the bill are the following: - the capping of the interchange fees on credit card transactions; - the inclusion in the agreements between the accepting institutions and the payees of the following information: interchange fee, fee for the payment and processing system, the margin of the acceptant institution and the additional fees applied depending on the brand and category of the respective payment cards.
5. Judicial review of RCC decisions in 2013

89. The percentage of irrevocable decisions, favourable to RCC was 96%, meaning an increase by 3 p.p. relative to 2013. The percentage of the final decisions, favourable to RCC reached the level of 93%, meaning an increase by 11 p.p. relative to 2013. The fines irrevocably maintained represented 67% (an increase by 3 p.p. relative to 2013), while those definitely maintained represented 95% of the total fines imposed (an increase by 9 p.p. relative to 2013).

6. Resources of competition authorities

6.1 Resources overall (current numbers and change over previous year)

6.1.1 Annual budget

90. In 2014, the budget of RCC was of 62,077 thousands lei, by 37.5% higher than in 2013. This increase is a result of the state budget funds allocated for the three EU funded projects currently under implementation. The value of non-refundable external funds in 2014 was three times higher than in 2013, respectively 15,667 thousands lei (25% of total budget) in 2014 relative to 5,024 thousands lei (11% of total budget) in 2013.

91. The budgetary execution in 2014 was 99.26%, without taking into account the projects with non-refundable external financing.

6.1.2 Human resources

92. In 2014, the staff of the Romanian competition authority represented 308 employees, divided in directions, services and compartments.

93. The largest weight in the total number of staff is registered in the territorial directorate (28.9%), followed by the competition directorates and services (24.4 %) and the general secretariat with 14.6%.

94. The staff of Romanian competition authority is divided in civil servants, public managers and contractual staff.

95. The competition inspectors represent over 71 % of the total number of staff.

96. As regards the professional background of the competition inspectors, most of them are economists (62 %), followed by legal experts (21%).

97. In 2014, the RCC recruited on a prescribed period 13 people, most of them competition inspectors. Regarding the 11 departures from the institution, 5 of them occurred by stopping the service reports by consent (45.5%), 4 by completing the prescribed period (36.4%) and 2 by retirement (18.2%).

98. Continuous training is a core concern of the Competition Council. In 2014, the employees participated in 27 training courses (including by means of the project through which the competition authority receives World Bank assistance) in various fields such as: economic analysis in competition law enforcement, quantitative techniques used in economic analysis, public procurement, ethics and institutional integrity, investigative techniques and forensics analysis, corporate governance, project management, communication, etc. These courses benefited to a total number of 206 participants, a value two times higher than that recorded in the previous year and almost 3 times higher than in 2012.