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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ROMANIA**

-- 2010 --

*This report is submitted by Romania to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 29-30 June 2011.*

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## Executive Summary

1. This report addresses the activities undertaken by the Romanian Competition Council (hereinafter referred to as "RCC") and the competition law and policy developments in Romania from January 1, 2010 to December 31, 2010. Where appropriate, later developments have been included and reported on.

2. In 2010, the activity of the RCC has been influenced by a series of important changes as regards the specific legal framework and the internal organisation of the institution. In its modified form, the Competition Law and the secondary legislation newly adopted is offering the necessary tools for the Competition Council to take more efficient actions so as to ensure a competition-based functioning of the markets. For example, now RCC has the possibility of accepting commitments from the undertakings involved in competition cases, designed to eliminate the competition concerns relating to the competitive environment, it adopted a new test for analysing the economic concentrations and it can fine the public administrations for refusing to supply information.

3. The adjustment of the internal structure of the Competition Council resulted in the creation of a new directorate specialised in the detection and sanctioning of bid rigging in public procurement. In 2010, 3 investigations on this type of anticompetitive practices have been initiated. In accordance with the *OECD good practices* in the field of bid rigging, the Competition Council has elaborated a *Guide for the detection of bid rigging*, following to be widely disseminated among the Romanian public contracting authorities, at central and local level. In order to create a formal cooperation framework between all the public institutions with attributions in the field of public tenders, Cooperation protocols have been concluded with the National Authority for the Regulation and Monitoring of Public Acquisitions (ANRMAP), the National Council for Solving Complaints (CNSC), the Unit for the Coordination and Verification of Public Acquisitions (UCVAP) under the authority of the Ministry of Public Finances, the Control Body of the Prime Minister and with the Romanian Court of Accounts. Moreover, the Bid Rigging Module has been established, which is a tool facilitating the information exchange between the experts of the experts with attributions in the area of public procurement.

4. The Competition Council has been the subject of a functional analysis performed in 2010 by the World Bank. The final report of the analysis confirms that the institution is making efforts for increasing its performance. At the same time, the report identifies a series of measures aiming at improving the results and at increasing the visibility of the Competition Council. These measures have been included in a 2011 Structural Action Plan, which has been approved by the Romanian Government.

5. The measures taken in the Romanian public sector, as a result of the present economic and financial crisis Romania is currently facing, have put a mark also at the level of the Competition Council. In spite of all these, RCC succeeded to manage efficiently its allocated resources and to maintain the most precious resource of the institution, the staff.

6. In the field of competition, RCC finalised a record number of investigations. For the first time RCC concluded cases where the infringements have affected the trade between the EU Member States. Another novelty was the sanctioning of a cartel through the leniency policy: two companies which have collaborated with the competition authority have benefited from full-fine immunity, respectively from a 50% fine reduction and the creation of an website dedicated to the Leniency Module ([www.clementa.ro](http://www.clementa.ro)), containing all relevant information related to the application of the leniency policy.

7. Moreover, in 2010, the RCC has given the largest fines ever, in terms of the percentage level apply on the turnover and in terms of absolute value in the case of the cartel concluded within The Body of

Expert and Licensed Accountants of Romania and the abuse of the dominant position of Romanian Poste National Company.

8. The results of the Competition Council's actions have started to be reflected directly at the level of consumers. In the context of transposing Directive 2008/48/EC, the elimination of the early reimbursement fee is such an example, which has led to the increase of the mobility of the customers so as to benefit from the most advantageous loan refinancing.

9. In line with *OECD best practices*, RCC introduced the "*competition filter*" in the grounding note of the normative acts following to be adopted by the Government (emergency ordinances and decisions). This mechanism allows a rapid identification of the regulations expected to affect the competition in the market, as well as a better understanding of the competition policy objectives.

10. The administrative capacity of RCC was further strengthened through training activities especially relating to the use of economic and econometric analysis in antitrust cases, activities aiming at optimizing the internal management system and the staff's career and performance based on accomplishment of individual objectives.

11. At the international level, the Competition Council has consolidated its position, becoming supplier of expertise in the State aid field and leader of a Twinning Project having as beneficiary the National Agency for the Protection of Competition of the Republic of Moldova. Moreover, RCC initiated a fruitful exchange of experience with the other national competition authorities of the Black Sea- Caspian Sea region (Armenia, Azerbaijan, Georgia, Ukraine, Uzbekistan, Bulgaria, Turkey, Russia, Republic of Moldova, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Romania). This initiative resulted as a spontaneous fruition of its already successful bilateral relations with NCAs from the Russian Federation, Bulgaria, Turkey, Armenia or Ukraine.

12. In 2011, the efforts of the competition authority are focused on the improvement of the competition legislation, mainly by concentrating the analysis on the hard core law infringements and by finalising the investigations on-going for more than three years, on intensifying the cooperation with the institutions involved in the field of State aid, as well as on implementing certain measures designed to develop the administrative capacity of the institution.

## **1. Changes to competition laws and policies, proposed or adopted**

### ***1.1 Legislative amendments towards flexibility and efficiency***

13. Competition Law no.21/1996, republished has been amended through Emergency Government Ordinance no.75/2010. Important changes refer to the abolishing of the notification system and to the increased convergence with Articles 101 and 102 of the Treaty on the Functioning of the European Union (hereinafter referred to as TFEU) and, respectively, with the EC Regulation no. 1/2003. Regarding the regime of the Block Exemption Regulations, the amendments to the Romanian competition law make reference to the conditions and criteria set by the Community regulations, for both the national and Community agreements.

14. The RCC has acquired new tools for solving competition cases, similar to the ones of the other competition authorities of the EU Member States, at the same time harmonising the manner of analysing competition cases.

15. For example, based on the new form of the law, the competition authority can accept commitments from the undertakings involved in competition cases that are meant to eliminate any competition concerns as regards the affectation of the competitive environment, when the Competition

Council does not aim at imposing fines. In addition, in emergency cases, the RCC may also impose interim measures when it finds following a first evaluation, the existence of a deed of an anticompetitive nature expressly prohibited by the law that needs to be eliminated without any delay.

16. In case of offences for the violation of the provisions of Articles 5 and 6 of the national law and their equivalents, i.e. Articles 101 and 102 of the TFEU, after receiving the investigation report and after having exercised its right of access to the file, or during the hearing, if the undertaking expressly admits having committed the anticompetitive deed, this fact shall be retained as a mitigating circumstance in the form of cooperation during the administrative procedure and will lead to a reduction of fine by 10% to 25% of its basic level. In addition, the new provisions introduced the concept of legal professional privilege in the competition procedures.

17. Another legislative amendment adopted allows the Romanian Competition Council (RCC) to apply sanctions to public authorities from central or local administration for refusal to provide all necessary information or for supplying incorrect, incomplete or misleading information. The fines imposed in such cases will be determined between € 1 250 and € 10 000.

18. In order to ensure a dissuasive cartel policy, the new law provides that a company manager found to be involved with fraudulent intent and in a decisive way to the conceiving, organization or the performance of a cartel could be personally punished too. More specifically, the executive officer of a company could be fined or convicted to jail from 6 months to 4 years and would be disqualified by a court decision from his managerial duties in case he made use of his position to commit the offence, under the terms provided by the Criminal Code. However, since Competition Council's proceedings are administrative by nature and not criminal, Competition Council only notifies the prosecutors in regard with the potential criminal offences discovered during an investigation.

19. The national competition law presumes now until proven otherwise, that one or more firms are not dominant, where the combined relevant market share or shares shall not exceed 40%.

20. As regards the powers of investigation, in order to carry out its legal attributions, RCC may interview any natural or legal person that gives its consent to be interviewed in order to obtain information on the subject of the investigation.

21. Notably, amendments to the part on merger control, in particular, closely follow the equivalent provisions of the European Union Merger Regulation such as the notion of control, notification obligation, standstill obligation, derogations from this obligation and last but not the least the introduction of the Substantial Impediment to Effective Competition test or SIEC test instead of the so far applied dominance test in merger control.

22. The amendment of the legislation also focused on certain procedural aspects. For example, in order to avoid the large duration of the trials having as object the contestation of the sanctions applied by the Competition Council, a new provision has been introduced, according to which a decision of the Competition Council can be suspended at the Bucharest Court of Appeal only if a warrant is paid amounting at 30% of the fine established through the contested decision. In this way, the litigations will be resolved more rapidly by the real and effective involvement of the undertakings that have already paid the warranty in the course of the trial.

23. A series of clarifications were brought as well with regards to access to file, including provisions that exclude from access to the file the ECN network internal documents. Also, more coherence in the judicial review of various types of administrative acts issued by the RCC was ensured by bringing all the actions against RCC's acts under the jurisdiction of the Court of Appeal Bucharest, as a first instance court.

24. In the field of economic concentrations, the calculation of the authorising tax has been modified, by taking into account the total turnover of the parties involved in such operations and by its levelling at a certain threshold. This amendment simplifies the calculation of the tax and helps the involved undertakings, taking into account that the old calculation formula required these undertakings to identify the turnover registered on the relevant market of the operation.

25. The new provisions allow the Competition Council to be more flexible and to intervene quicker and more efficient every time it's necessary, so as the consumers to benefit from the best products and services at competitive prices.

26. After the entering into force of the amendments brought to the Competition Law, the secondary legislation had been adopted, so that to be in accordance with the new competition provisions

## 2. Enforcement of competition laws and policies

### 2.1 *Actions against anticompetitive practices, including agreements, abuses of dominant positions and mergers*

#### 2.1.1 *Decisions adopted in 2010*

27. In 2010, RCC issued 59 decisions, as shown in **Table 1** below:

**Table 1. Decisions issued in 2010 and their classification on different types of infringements**

Type of the decision	Total
<b>Decisions issued, out of which:</b>	<b>59</b>
<b>A. Economic concentrations</b>	<b>45</b>
<i>a) Decisions following notifications, out of which:</i>	<i>40</i>
- non-objection decisions	5
- non-intervention decisions	5
<i>b) Other decisions on economic concentrations, out of which:</i>	<i>5</i>
- recalculation of the authorising tax	4
- derogation from the suspension of implementing an economic concentration	1
<b>B. Rejection of complaints, out of which:</b>	<b>2</b>
- abuse of dominant position	1
- abuse of dominant position and anticompetitive agreements	1
<b>C. Sanctioning decisions, out of which:</b>	<b>7</b>
- înțelegeri anticoncurențiale	4
- înțelegeri anticoncurențiale și acțiuni ale administrației publice	2
- abuz de poziție dominantă	1
<b>D. Anticompetitive acts of the public administration</b>	<b>2</b>
<b>F. Other decisions, out of which:</b>	<b>3</b>
- granting access to confidential information	2
- closing an investigation	1

28. The majority of RCC's decisions (65%) envisaged economic concentrations. 12% have been sanctioning decisions.

#### 2.1.2 *Sanctioning decisions in 2010*

29. In 2010, RCC applied total fines of 132.5 million Lei (€ 31.49 million Euro<sup>1</sup>). In total, 49 undertakings and one professional body were sanctioned in 2010 for their involvement in anticompetitive

<sup>1</sup> An average exchange rate of 4.2 Lei /1 Euro was used to convert figures from national currency into Euros.

practices, and 1 undertaking for the supply of inaccurate information. Compared to 2009, the value of the fines has increased by almost 14 times.

### 2.1.3 *Investigations opened in 2010*

30. 26 investigations were initiated, out of which 21 on the possible infringement of the competition legislation, 2 concerning the analysis of economic concentrations and 3 regarding certain economic sectors (sector inquires).

31. The number of the investigations initiated in 2010 but for the those on the analysis of economic concentrations (initiated following the notification) compared to that recorded in 2009, fell down by 22% in the case of the investigations on the possible infringement of the competition law and by 40% for the sector inquires. This evolution essentially shows that in 2010 the competition authority has accentuated its efforts on finalising the on-going cases.

32. Compared to 2008, there was a significant increase of the number of total investigations initiated in 2009, as well as in 2010, demonstrating an obvious intensification of the investigative activity of the institution in the last two years.

33. Around 80% of the 21 investigations on the possible infringement of the competition legislation initiated in 2010 are ex-officio procedures. The markets where these investigations were opened are important from the economic perspective, as well as regards the direct effects of the possible anticompetitive practices for consumers. Out of these markets, we are mentioning the following ones: the distribution and commercialisation of liquefied gas, the works concerning the natural gas installations, the distribution of the heating units and of the related accessories, the production and commercialisation of bread and bakery products, the cigarettes market.

34. 187 headquarters/working points of undertakings have been down raided within the investigations in progress during 2010, almost 4 times more compared to 2009.

### 2.1.4 *Market studies*

35. Along the year 2010, on the basis of the attributions conferred by Competition Law no.21/1996, RCC continued to make use of another important enforcement tool, market studies. Thus, 3 sector inquiries were initiated in 2010 (compared to 5 in 2009, two in 2008 and to only one in 2007) on the following markets:

- construction of road and motorways
- the production, transport, distribution and supply of heating energy in Bucharest
- the local persons transport services through regulated county routes in the South-East Region of Romania.

36. For the competition authority, this type of investigation represents a pro-active market monitoring instrument, namely a complex analysis used to evaluate at a certain point in time the competition on a national market or on an activity sector. Following such investigations, Competition Council can establish to what extent the identified problems have as source anticompetitive practices and what their impact is over these markets.

37. Two of five sector inquiries instigated in 2009 were concluded in 2010. The markets under review were shipping services and milk marketing in the producer-processor economic stage. Thus, in the

case of the sector inquiry regarding milk marketing in the producer – processor economic stage, RCC found that the functioning of the producer - processor segment of the milk market in Romania is constrained by statutory rules, regulations which are to a large extent related to the European Union policies in the field. Romanian producers of milk are in a disadvantageous position in terms of bargaining power, given that delivery contracts are written individually and they do not hold shares in the processing companies. Competition law fully applies to the milk market in Romania (there are no legal exceptions for agricultural or agro-food sector).

38. The Shipping services sector inquiry, revealed that due to the specificity of Romanian maritime ports (transit ports, the low volume of goods, lack of established ship-owners, etc.), the shipping market in Romania is characterized by opacity and information asymmetry. Another specific issue is the dependence of the Romanian maritime ports’ freights and tariffs of external factors such as freights in the region and tariff policies adopted in the major shipping companies in the world, due to lack of a competitive national commercial fleet and ultimately, a local freights markets. The study revealed a number of possible disruptions to the maritime ports, related to interfacing or ancillary activities related to maritime transport. For pilotage of ships, safety service, it is found that in the ports of Constanța, Midia and Mangalia there are distinct legal regimes for the same service. There are such areas where the service is contracted to a single operator, but also areas where the service is performed in competition. This situation creates confusion among beneficiaries of the pilot service and an abnormal functioning of the market, a standardization of this regime being desirable.

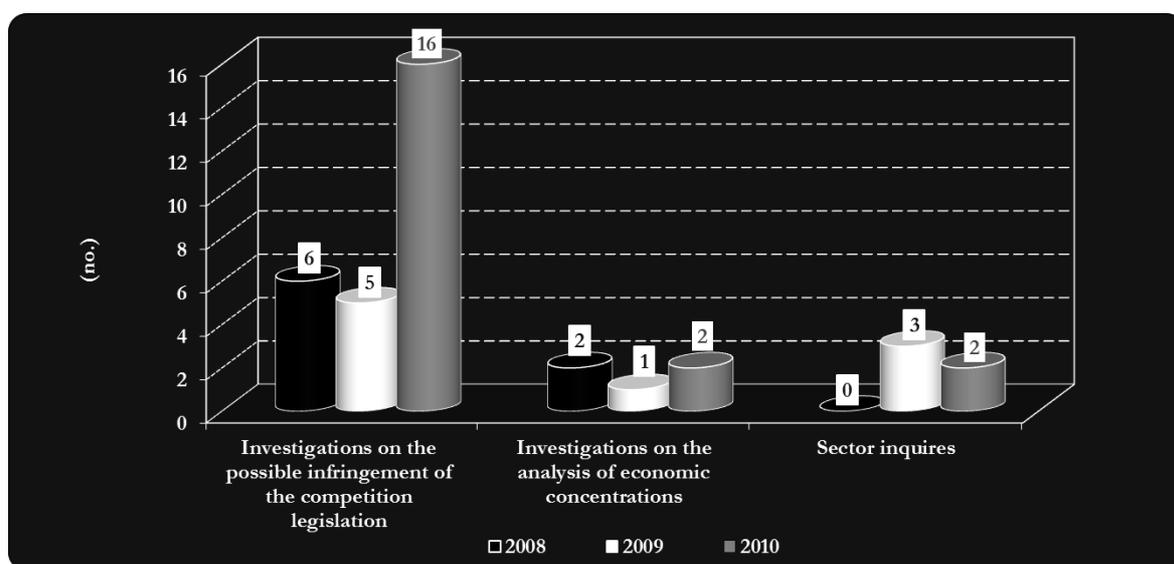
39. At the level of service charge and discharge vessels, fewer port operators who specialize in handling certain categories of goods and large quantities of goods (over 70% or 90%) handled some of them may suggest the existence of dominant or even monopoly positions in the markets of these services.

40. The conclusions of the finalized sector inquiries allowed the formulation of recommendations to the responsible factors involved in surveying the analysed markets.

#### 2.1.5 Investigations finalized in 2010

41. 20 investigations have been concluded, out of which 16 on the possible infringement of the competition legislation, 2 concerning the analysis of economic concentrations and 2 sector inquiries.

**Graph 1. Evolution of the number of investigations concluded during 2008-2010**



42. In 2010, the Competition Council concluded a record number of investigations on the alleged infringement of the competition legislation. Compared to 2008, their number increased by 2.7 times, and by 3.2 times compared to 2009.

43. The number of the sector inquiries concluded in 2010 has decreased by around 33% compared to 2009, mainly because of the high number of such procedures on-going during 2010 (8) and because the Competition Council has focused its resources towards concluding the investigations on the possible infringement of the competition law.

44. Around 20% of the concluded investigations on the possible infringement of the competition rules have envisaged the national, as well as the Community legislation. 2010 is the first year when the Competition Council has finalised competition cases affecting the trade between the EU Member States. 7 of the investigations on possible anticompetitive practices have been concluded with sanctions, out of which 4 have had as object horizontal agreements, 2 horizontal agreements and anticompetitive actions of the public administration and one an abuse of dominant position.

45. The average duration of the investigations on the possible infringement of the competition legislation concluded in 2010 was of 49.7 months, the investigations on the analysis of economic concentrations have been finalised averagely in 3.1 months and the sector inquiries in 16.7 months. The following graph shows the evolution in 2010 compared to 2009.

#### 2.1.6 *On-going investigations at the end of 2010*

46. At the end of 2010, 60 investigations on the possible infringement of the competition legislation, out of which 10 older than 3 years, and 6 sector inquiries were on-going.

47. The number of the on-going investigations on the possible infringement of the competition legislation at the end of 2010 has increased by 100% compared to the end of 2008 and by 18% compared to the end of 2009. This evolution is mainly the result of the fact that the number of investigations initiated during these years was larger than the number of the concluded ones, as well as because some of these investigations have been divided in several distinct procedures.

#### 2.1.7 *Description of significant cases*

- **Customer sharing cartel on the management market of mandatory private pension funds**

The investigation initiated by the Competition Council on the management market of mandatory private pension funds (II Pillar) in Romania, in December 2007, found the existence of a cartel for sharing customers among 14 of the 18 operators who have entered this market.

The anticompetitive agreement aimed at participants registered as “duplicates” in the procedure for initial assignment to private pension funds (participants who were registered at the same time to two pension funds). Under the legislation, “duplicates” were to be checked and then reported to the National House of Pensions and Other Social Insurance Rights, which would then be randomly assigned (by “lottery”). Pension fund managers have performed a bilateral sharing of participants registered at the same time to two pension funds, after the 50% - 50% rule.

By Decision no. 39/2010, the Competition Council decided to apply fines for contraventions totalling 5,214,490 Lei (equivalent to about 1,226,000 Euro) for the 14 economic agents participating in anticompetitive agreement of customer sharing on the management market of mandatory private pension funds (II Pillar) in Romania.

This is the first case analyzed by the Competition Council when violations of both national and Community law were established.

This investigation of the Competition Council is still ongoing, looking also into alleged concerted practices for management fee fixing.

- Cartel on a liberal professions market – services provided by authorized accountants and expert accountants

In late February 2009, the Competition Council initiated ex officio an investigation regarding an alleged fixing of fees in the professional accountants association.

The investigation found that, by internal regulation the Body of Expert and Licensed Accountants of Romania (CECCAR) set minimum and maximum fees in the accounting profession since 2001, although it had been warned in 2000 by the Competition Council not to adopt such an act. A similar regulation was also adopted in 2004.

In 2009, the CECCAR governing bodies have adopted a new regulation setting the fees in the profession and decided to publish it in the Official Journal of Romania, to be applied on a wider scale by its members.

The publication in the Official Journal of Romania was only a part of the efforts to extend the enforcement of this regulation to all members. CECCAR members were also checked by auditors specifically appointed for this purpose by the governing bodies, with regard to the application of the internal rule concerning the fixing of fees through the quality audit.

By Decision no. 47/02.11.2010 of the Competition Council, CECCAR was fined in the amount of 4,056,264 Lei (about 950,000 Euro), which is over 9% of CECCAR revenues in 2009. This is the largest fine, in terms of percentage of turnover, that the Competition Council has ever given as well as the largest penalty imposed on associations. It is due to the gravity of the offence, which is similar to a cartel, its high duration (9 years - the longer duration of facts found by the Competition Council) and the retaining of the aggravating circumstances (continued infringement after the start of the investigation and ignoring warnings about the anti-competitive nature of the Regulation setting the fees in the profession).

In addition, the Competition Council imposed CECCAR to cease the anti-competitive practice and to abolish the impugned Regulation within three months of official notification of the decision. In case of breach of the Competition Council decision, CECCAR risk a comminatory fine amounting to 5% of average daily income of the financial year prior to the date of the sanction, for each day of delay.

Based on internal estimates of the Competition Council, after eliminating the anticompetitive practices, business (accounting service consumers) will benefit from annual cost savings of between 70 and 200 million Lei. This saving is the estimated aggregate cost which accounting services consuming firms will no longer pay above market prices.

- Abuse of the dominant position on the postal market consisting of preferential treatment and discriminatory tariff reductions

During 2005 - 2009, the Competition Council initiated a series of investigations, later joined in a single procedure, which aimed at analyzing several actions of the Romanian Post National Company SA (CNPR), which could constitute forms of abuse: the imposition of increased tariffs for a range of postal services and a new scheme of tariff reductions, preferential treatment of one of its trading partners (Infopress Group SA) and discriminatingly granting tariff reductions to

intermediaries in certain postal markets. Intermediaries are companies engaged in mail preparation (mail, mail advertising, etc.).

The analysis undertaken showed that CNPR holds a de facto monopoly in the relevant markets, a position protected by the existence of structural and legal barriers. CNPR is an unavoidable trading partner in terms of the relevant market services, not least because of the lack of viable economic substitutes.

The practices used by CNPR are the result of a strong negotiation power, of disproportionate size in the bilateral trade relations between the company and its trading partners.

By Decision no. 52 of 16.12.2010, the Competition Council found that CNPR infringed national and Community competition regulation, by having abused its dominant position in relevant markets. The Competition Council sanctioned CNPR with a fine amounting to **103,373,320 Lei**, representing 7.2% of total turnover in 2009.

By the same decision, the Competition Council ordered a series of corrective measures to ensure the restoration of a normal competitive environment: it was ordered that anticompetitive practices must be ceased and CNPR was required to satisfy certain obligations of non-discrimination and transparency. Also, a series of recommendations were formulated to CNPR concerning the implementation of internal compliance programs that would bring to the attention of its decision-making staff the national and Community legislation in the field of competition and the consequences of their breach. Recommendations were made also to the authority of sector regulation, the National Authority for Management and Regulation in Communication, on taking measures to comply with the rules of competition in postal services.

### **3. Judicial review of RCC decisions in 2010**

48. In 2010, RCC had locus standing, active or passive, in 142 court files. Out of the total of 142 court files, 118 court files regarded administrative acts issued by the competition authority in the antitrust field, 15 of them already finalized in courts by the end of 2010 as follows:

- 12 files were irrevocably solved by the High Court of Cassation and Justice in the favour of the Competition Council;
- 3 files were irrevocably solved against the decisions issued by the Competition Council;

#### **3.1 Judicial review of the *Kronospan Sepal SA Sebeş* case**

49. The Competition Council sanctioned (Decision no. 329/2004) the abuse of dominant position of SC Kronospan Sepal SA Sebeş (hereinafter Kronospan Sepal) under the form of price imposing and refusing to deal with certain clients. After being taken over by Kronospan group, Kronospan Sepal has acquired a dominant position. It has abused this position by increasing the prices of its products by up to 50%, while this was not justified by the need to ensure the profitability of the company.

50. In Romania, in 2004, the market share of Kronospan Sepal was of 40% on the plain chipboard market and of 18% on the market of laminated chipboard. In the same year, S.C. Kronospan Trading LLC Brasov, another company of the group, had a market share of 19% on the plain chipboard market and of 56% on the laminated chipboard market.

51. Kronospan Sepal filed an appeal for the annulment of the Competition Council's decision. The Bucharest Court of Appeal admitted the legal action. The Court stated that merely the market shares held by the company cannot demonstrate the existence of a dominant position and that an analysis of all existing

barriers in the relevant market is required. The Court also stated that the anticompetitive behavior sanctioned by the decision was wrongly considered as an abuse of dominant position under the form of price imposition and of refusal to deal with certain clients, because, in fact, the analysis of the competition authority should have been focused on a potential abuse of dominant position by charging excessive prices.

52. The Competition Council filed an appeal, which was admitted by the High Court of Cassation and Justice. The Court stated that the dominant position of the Kronospan group has facilitated the abuse of ronospan Sepal in terms of “group effect”, the dominant position being finally attributed to Kronospan Sepal.

53. The High Court of Cassation and Justice has concluded that the inequity of the price imposition was demonstrated by the competition authority through its decision, stating that Kronospan Sepal has abused its dominant position by increasing substantially the price of its products for no justifiable economic reasons. Kronospan Sepal has imposed this increase to its beneficiaries as a result of the financial pressure exercised over them. Thereby, the negotiation was excluded and proven by the refusal to deal with the beneficiaries.

54. For these reasons, the High Court of Cassation and Justice has concluded that, in the light of the analysis conducted by the Competition Council through the challenged decision, the first Court has reached a wrong conclusion in respect to classification of the offense.

#### **4. The role of RCC in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies**

55. RCC, based on the competences conferred by the law, surveys the prevalence of the competition law over other normative acts for the benefit of the competitive environment.

56. Its advocacy tools include activities within the framework of cooperation protocols and legislative interventions made ex-officio or at the request of various bodies. A RCC representative participates in preparatory governmental meetings at technical level in order to identify potential anticompetitive effects unforeseen by the legislator and most adequate solutions to correct or eliminate such effects. For the same objective, a competition inspector takes part in Advisory Committees of regulatory authorities.

57. In 2010, 8 new collaboration protocols were concluded with The National Authority for the Regulation and Monitoring of Public Procurements, the National Council for Solving Complaints, the Unit for Coordination and Verification of Public Procurements within the Ministry of Public Finances, the Inspection Body of the Prime Minister, the Court of Accounts, the Ministry of Communications and Information Society, “Alexandru Ioan Cuza” Police Academy and the Institute for Economic Forecasting.

#### **4.1 Legislative interventions**

##### *4.1.1 Binding opinions issued for draft normative acts*

- Binding opinion on the draft Government Emergency Ordinance for the amendment and completion of Pharmacy Law no.266/2008;
- Binding opinion on the legal proposal for the amendment of art. 206<sup>65</sup> of Law no.571 of 22 December 2003 on the Fiscal Code (republished);

- Binding opinion on the draft Government Emergency Ordinance on certain measures to fight tax evasion;
- Binding opinion on the draft Law on the organisation and exertion of the geodesist profession and on the establishment of the Romanian Geodesists Order;
- Binding opinion on the draft Decision of the General Council of the Bucharest Municipality no.173/2009;
- Binding opinion on the draft Government Emergency Ordinance concerning the credit agreements for consumers;
- Binding opinion on the draft Government Decision for the approval of the national system of national health insurance cards;
- Binding opinion on the draft Government Ordinance for the amendment and completion of Law no.64/2008 concerning the functioning in safety conditions of the installations under presser, of the lifting installations and of the fuel consuming machineries;
- Binding opinion on the draft Decision for the amendment and completion of the Government Decision no.1844/2005 regarding the promotion of bio fuels and other renewable fuels for transport;

#### 4.1.2 *Points of view issued by RCC*

- Point of view requested by the Romanian Association for the Private Managed Pensions concerning certain legislative amendments carried out by the Commission for the Supervision of the Private Pension System;
- Point of view concerning the draft Government Emergency Ordinance regarding the credit agreements for consumers;
- Point of view concerning the selling of the phone number 118931 (information services on subscribers) by SC II Numero Italia SRL to SC Infoclick SA;
- Point of view on the proposal of the Romanian Government for amending the draft Law regarding the regime of the infrastructure of the electronic communication networks;
- Point of view on the draft Government Decision for the approval of the 2010 additional acts to the 2008-2011 public services contract and of the public services contracts of the passenger rail transport operators newly entered on the transport market within the period of validity of the public services contract;
- Point of view on the definition of the relevant market susceptible of being regulated *ex-ante* concerning the access services to infrastructure elements and the broadband access services and regarding the analysis of the competition on the these identified markets;
- Point of view concerning the definition of the relevant markets susceptible of being regulated *ex-ante* regarding the rented line services – the terminal segments and regarding the analysis of the competition on these identified markets, according to the national and European framework in force;

- Point of view regarding the draft Decision for the approval of the development and implementation of the National Online Electronic Payment System of the Taxes;
- Point of view on the draft Government Decision concerning certain measures for the reorganisation of certain electric energy suppliers under the authority of the Ministry of Economy, Commerce and Business Environment by the establishment of the undertaking Electrica Furnizare SA;
- Point of view concerning the draft Government Decision for the amendment and completion of Law no. 64/2008 on the functioning in safety conditions of the installations under pressure, of the lifting installations and of the fuel consuming machineries;
- 2 points of view on the draft Government Emergency Ordinance for the amendment and completion of Pharmacy Law no.266/2008;
- Observations on the Holding Law;
- Opinion concerning the legislative proposal on the repeal of art.36 of Law no.21/1996;
- Opinion concerning the legislative proposal on the repeal of art.17 of Law no.21/1996;
- Opinion on the draft Decision for the approval of the Framework Contract concerning the medical assistance delivered in 2010 within the health social insurances;

#### 4.1.3 *Interventions for the amendment of certain anticompetitive normative acts in force*

- Intervention for the amendment of the Order of the Minister of transports and Infrastructure no.1172/2009 for the amendment and completion of the Norms on the organisation and delivering of the road transports and the related activities, approved by Order of the Minister of transports and Infrastructure no.1892/2006;
- Intervention for the amendment of the Order of the President of the National Sanitary Veterinary and Food Safety Authority no. 20/2008 for the approval of the sanitary veterinary and food safety norm regarding the authorisation of the laboratories controlled from the sanitary veterinary and food safety perspective.

## 5. **Resources**

### 5.1 *Budgetary allocations*

58. The consolidation of the administrative capacity was for RCC a permanent activity, aiming at increasing the efficiency of the institution in fulfilling its legal attributions.

59. In 2010, the RCC received funds from the State budget amounting to 36.6 mil. Lei, out of which 86.4% were personnel expenses, 11.6% - goods and services and 2% - non-financial assets. During 2005-2010, the budget of the institutions has increased by 64%. On the other hand, compared to 2008 and 2009, the budget was reduced by 22.7% and 12.5% respectively. The decrease of the budget allocated during 2008-2010 results from the constraints due to the economic and financial crisis affecting Romania.

60. About 37% of the budget of the Competition Council for 2010 has been allocated for projects.

61. The purpose of the projects consisted mainly of an effective allocation of the financial resources within the institution budget, other than staff expenses. The destination and effectiveness of these expenses are verified on a regular basis by the State institutions authorized for this purpose.

62. The 27 specific projects were classified as follows:

- Projects aiming to support the basic activity of the institution;
- Projects aiming to render the institution efficient;
- Projects aiming to achieve the logistic development of the institution;
- Projects increasing the visibility of the institution;
- Projects aiming to promote the institution.

63. The overall degree of budget execution amounted to the level registered in 2009, of 99.4%. Compared to 2005, the degree of budget execution has increased by 0.1 percentage points.

## **5.2 Human Resources**

64. In 2010, the staff of the RCC consisted of public officers in proportion of 85.4% and contractual personnel in proportion of 14.6%.

65. The overall number of personnel of the competition authority has increased by 13.5% during 2005-2010, but it has decreased by 2.1% and 1.3% compared to 2008 and 2009 respectively. This is the consequence of retirements and voluntary withdrawal from the institution, corroborated with the specific measures taken within the personnel policy and applied at the level of the entire State sector.

66. From the point of view of the age classification of the personnel, in 2010, the highest rate was registered by employees aged between 30 and 40 (37.6%) and those aged over 50 (35.6%). By types of education (economists, lawyers, other personnel), the economists have the highest rate (62.4%), while the lawyers only account for 15.9%. From the point of view of the level of education, 92.2% of the personnel have Bachelor's degree, 27.5% have a master's degree and 2.7% have a PhD.

## **5.3 Professional training**

67. In 2010, the Competition Council organized 17 training courses, attended by almost 50% of the institution's personnel.

68. The subjects of these courses included:

- economic and econometric analysis;
- project management - Structural funds;
- training abilities for translating and reviewing legal texts;
- accounting and preventive financial control;
- human resources management;
- enforcement of wage law for budgetary personnel.

69. The employees of the Competition Council have also gained specific knowledge by participating in several training activities that took place abroad. These have included:

**6. Summaries of references to new reports and studies on competition policy issues**

70. RCC continued in 2010 to raise awareness of the role of competition in general terms. Through public speeches and by making presentations at conferences, members of the RCC Plenum and RCC staff participated in the advocacy campaign and continued to draw attention to identified specific problem areas.

71. For enhancing the visibility and credibility of the Competition Council among all stakeholders at national and international level, on 14 October 2010, the Competition Council released to public debate the report entitled *The Challenges of Single Market and the Competition within Sensitive Sectors*, drafted with the support of the experts within the Romanian Centre for Economic Policies (CEROPE) and the Romanian Academic Society (SAR).

72. Out of the sectors analysed within the report, two subjects of interest in the context of the economic crisis were chosen to be discussed within the event: *Competition and effective regulating measures within key sectors of the Romanian economy* and *Incentive measures for a competitive environment along the agricultural food products chain*.

73. The event was attended by Mr. Dacian Cioloş, the European Commissioner for Agriculture, who delivered a speech during the opening of the event and by two representatives of the Directorate-General for Competition within the European Commission.

74. The conference works have resulted in a constructive dialogue between the interested factors, as well as in identifying optimal solutions in order to improve the legislative framework and to increase the competition degree within very important sectors so as to ensure the welfare of the final consumer.

75. This event had a real positive impact on the audiences, as the presentations of the lecturers have pointed out many problems specific to the agricultural food products sector and to the regulated sectors. Other publications issued in 2010 included a quarterly activity bulletin, RCC Competition Policy Magazine, RCC's annual report (2008), "*Competition - studies and researches*" bulletin of the RCC territorial offices etc.