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COMPETITION AND POVERTY REDUCTION

Contribution from Romania

-- Session I --

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COMPETITION AND POVERTY REDUCTION

-- Romania --

1. Competition has a direct relationship to poverty reduction. When competition leads to lower prices for the basic necessities of life, the greatest benefits may accrue to the least well off, as their access to necessities improves and, potentially, resources are freed up for discretionary spending that can allow them to invest in improvements to their lives.

2. Where competition policy is part of an open and well-regulated economy, it can help encourage both domestic and foreign investment, because it encourages investor confidence by setting a consistent framework within which the business sector operates. An effective competition policy allows innovative new entrants an important role in the development process, and promotes growth. More effective competition reduces opportunities for corruption and rent seeking, and creates more space for entrepreneurs and small and medium sized-enterprises.

3. Developing countries and economies in transition tend to be more vulnerable to anti-competitive practices. This scenario may be attributed to high entry barriers, less diversified and smaller markets, rather asymmetric firms, and in general conditions that allow dominant firms to abuse their position.

1. Areas of intervention of competition authorities

4. Barriers to competition are pervasive and harm innovation, productivity and growth – in developing countries. Fair competition matters, both for economic growth and for reducing poverty. Helping markets to work better, by removing unnecessary distortions to competition, can lead to significant reforms of the business environment. These factors make competition policy and law a priority area for reform in developing countries. There is a need for a wider understanding at policy levels in government, in the business sector and by consumers, of the beneficial impact of effective competition and of competition policy on an economy.

5. Further, by addressing governmentally-imposed measures that prevent the benefits of competition from reaching the poor, they allow the potential of free markets to enable the poor to lift themselves from poverty.

6. By focusing on anticompetitive conduct that increases costs to disadvantaged individuals, competition agencies may directly improve the lives of their countries' poorest citizens. That is why detecting cartels is a key issue for anti-trust authorities in developed countries, since cartels can cause welfare losses for consumers and purchasers of productive inputs. In developing countries cartels may be even more harmful, because the higher prices they generate can drastically affect the real income of the poor.

2. Advocacy – general

7. Distortions to competition are not always obvious: “they have to be dug out in each market”. Governments can distort markets, and thus reduce welfare also through unwise regulation. But, given the prevalence and significant effects of barriers to competition in developing countries, it is important that policy makers are equipped with the appropriate operational tools to identify and assess their nature and impact.

8. In Romania the Romanian Competition Council (RCC) advocated the implementation of the OECD competition toolkit in the regulatory impact assessment process.

9. In 2010, the “competition filter”, part of the OECD Competition Assessment toolkit has been introduced in respect to the draft legislation subject to the approval by the Romanian Government. Therefore, competition assessment of proposed public policies is now an integrated component of policy making process in Romania at an early stage. When the government asks us, they normally take into account our opinion; the trick is whether they ask us or not.

10. In order to ensure that initiators of draft normative acts fill in the OECD competition filter in the grounding note of proposed public policies, an RCC expert attends on a regular basis the preparatory Governmental meetings, surveying and assisting law makers in carrying out the preliminary competition impact assessment as part of the Regulatory Impact assessment system. If the draft legislation is likely to have an anticompetitive impact as a result of the preliminary competition impact assessment performed by the initiators of draft normative acts, a thorough analysis of proposed public policies is carried out with RCC’s support in order to identify alternative and less anti-competitive policies.

3. Setting priorities – key sectors of the economy with outstanding impact on overall population

11. A productive way of finding where significant barriers to competition exist is by looking at the situation in key sectors of the economy. It is an approach that can help policy makers in developing country governments design a competition policy that meets their needs. Broadly, a sector should be both important to the economy or to consumers, and have characteristics suggesting the possibility of competition problems. The questions address the sector’s role in the economy, its importance for consumers, evidence of concern about prices or availability of the sector’s products, the record of the sector’s past performance, entry barriers and the level of market concentration in the sector.

12. Competition agencies need to be aware of the combined effect of all government policies that influence the level of competition in markets. Many factors influence the level of competition, and a holistic approach is needed to assess it. Barriers to competition stemming from inappropriate government policies or anti-competitive behavior by firms are common in developing countries. They diminish opportunities for innovation and growth, and make consumers worse off. Markets are often dominated by big business with close ties to government, and more effective competition reduces opportunities for corruption and creates more space for entrepreneurs and SMEs to grow. Competitive public procurement increases the effectiveness of expenditure on publicly provided services, such as education and infrastructure

13. Even before accession, in 2004, RCC identified 13 key sectors of the economy where preserving fair competition may be considered of utmost importance for Romania’s economy and for the benefit of consumers. These sectors have been identified based on the European Union liberalization policies and the Romanian Government economic programme. The sector list was obviously not exhaustive. Other sectors relevant for Romanian economy were included, as the list was reviewed regularly on a yearly basis. Later

on, RCC analyzed these sectors with the help of market studies and sector inquiries. The reports were made public and formulated policy advice on the effects of anti-competitive practices in these key markets.

14. The findings of these reports were also the starting point of a specific advocacy initiative or of several enforcement actions, or even a combination of both in certain sectors. To illustrate this, I would like to show you a few examples.

4. Banking sector

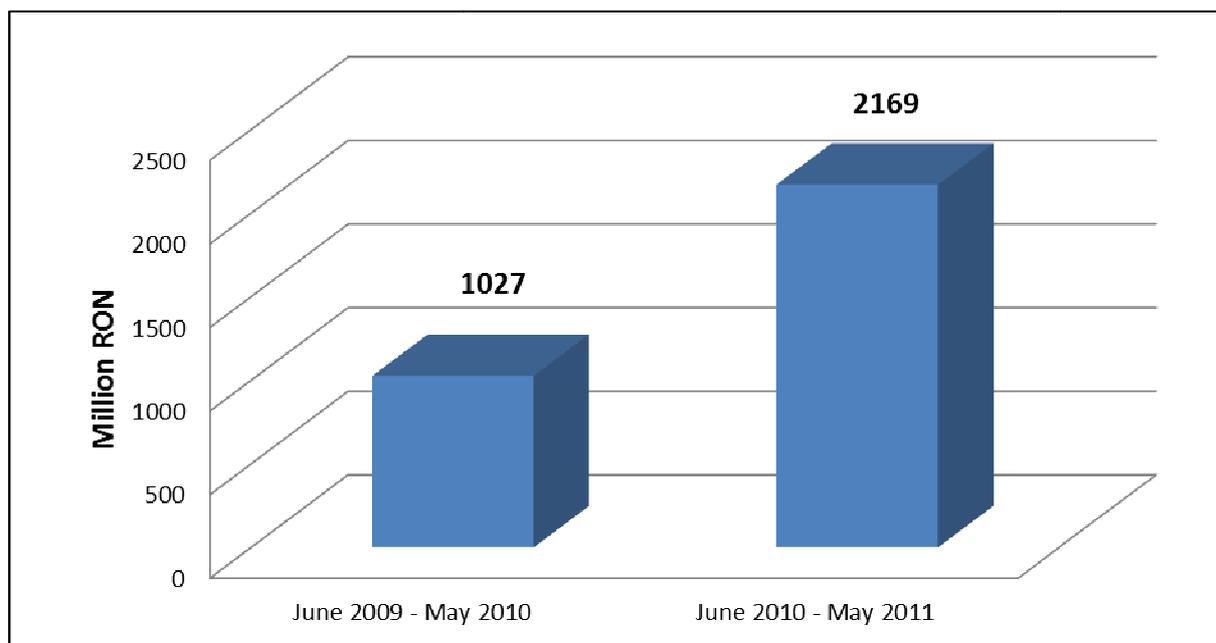
15. Together with the consumer protection agency, we convinced the government and the Parliament to eliminate the penalty for early reimbursement for all bank consumer loans, ahead of the rest of EU.

16. RCC proposed to the National Authority for Consumer Protection to extend the elimination/reduction of the early reimbursement fee to all types of consumer loans, including on-going loans. Our proposal was supported by the NAPC and also intensively lobbied to the Parliament and the Romanian Government. Finally, it was implemented via Governmental Ordinance.

17. The measure has generated increased client mobility, lower switching costs and, implicitly, higher competition on the retail banking market. This allowed consumers to refinance or re-negotiate their loans (see graph to be projected), thus lowering the burden on low-income consumers heavily stricken by the post-2008 financial crisis.

18. The graph presents a comparison between the cumulated volume of the refinancing loans granted in RON during June 2009 – May 2010 (RON 1,027 million), and the one granted during June 2010 – May 2011 (RON 2,169 million). During 12 months after the adoption of the Ordinance, the total volume of the refinancing loans has doubled compared to the corresponding previous period.

**Cumulated volumes of refinancing loans
- before and after Ordinance -**



5. Public procurement

19. Setting public procurement as a priority for our competition authority meant first an internal restructuring process that was finalized in 2010 with the creation of a special unit within RCC (Romanian Competition Council) for the specific purpose of fighting bid rigging in public procurement. An important early goal of the unit was to establish a close working relationship between officials within RCC and key officials within other parts of the Romanian government with attributions in public procurement.

20. The second step was to conclude Memoranda of Understanding with all governmental bodies in the public procurement sector: the national sector regulator on public procurement (ANRMAP), the National Council for Solving Complaints (CNCS), the Ministry of Finance unit in charge with coordinating and supervising public procurement (UCVAP). A cooperation protocol was also concluded with the National Anticorruption Body.

21. The provisions of these cooperation protocols instituted a Bid Rigging Module, a working tool designed to ensure rapid and efficient exchanges of information between experts of the above mentioned institutions. The Romanian Court of Accounts is also involved in the activities of the Module. The Module is coordinated by the RCC.

22. One important initiative taken by RCC in order to increase the awareness of collusion in public procurement consisted in sending official letters signed by the president of RCC to all contracting authorities with the purpose of disseminating the Guidelines for Fighting Bid Rigging which were approved by the OECD Competition Committee in February 2009. The main objective followed by RCC with that occasion was to get procurement officials more engaged in detecting bid rigging, to help them better understand what evidence to look for, and what steps they might take to prevent bid rigging from occurring. The key message RCC sent through this dissemination activity was that contracting authorities should watch for anticompetitive practices such as collusive tendering and any evidence of suspected collusion in tendering should be brought to the attention of RCC. The Checklist is now placed on RCC's website portal.

23. An additional notable example of successful advocacy initiatives of the RCC is the introduction by the National Authority for Monitoring Public Procurement, in 2010, of the mandatory Certificate of Independent Bid Determination, at the proposal of the RCC.

24. All these measures increased by three times the number of investigations on anticompetitive agreements in public tenders launched by RCC in 2011 and 2012 relative to 2009. Also, the cooperation with the National Anticorruption Body brought in 2011 the first big investigation of RCC alleging suspected bid rigging in public procurement, which was concluded two weeks ago, with fines totaling approx. EUR 5.6 million.

6. Liberal professions

25. We are involved in a fight to keep liberal professions open: we have fined self-regulatory bodies of dental technicians (2008), accountants (2010) and bailiffs (2012) for establishing barriers to entry and/or minimum prices, and are fighting in Parliament to liberalise the notary profession, and to oppose re-regulation of cab drivers.

26. Successful advocacy interventions were made also in other areas of the liberal professions: minimum and/or maximum fee limits were eliminated for accountants, architects, lawyers, veterinarians and geodesists; geographical and demographic barriers to entry were removed in the case of dentists and should be removed soon for pharmacists;

27. Current competition issues in the notary profession: fixed minimum fees, demographic barriers to entry and advertising restrictions. To address some of these issues, the Competition Council signed a Memorandum with the Ministry of Justice and the respective professional body (UNNPR) that sets up a pilot project. The goal of the project is to eliminate regulatory interventions on fees for a certain part of notary procedures, for a set period of time. At the end of the respective time period, the three institutions will make an analysis of the effects of the project on the market and decide on future steps to deregulate the notary profession. The legislative act that creates the framework for the project comes into force in January 1st, 2013.

28. As a result of our intervention, minimum tariff levels for taxi services were eliminated in 2007. In 2012 a draft law on public transportation, including taxi services, was presented to the Parliament, which proposes to re-regulate the sector either by reinstating minimum tariff levels or by setting fixed tariffs. Our opinion in this respect that was sent to the Parliament clearly stated that setting fixed or minimum tariff levels for taxi services, with the consultation of professional taxi associations can only have an anticompetitive effect, by facilitating cartelization in the market.

7. Food retail sector

29. In an increasingly competitive economic environment, trade relations between producers active in the food industry, distributors and consumers are evolving by means of complex models. Against this background, sector inquiries have been launched by RCC to give a comprehensive image over the food sector while entailing to study the market mechanism. One example is offered by the sector inquiry into the milk market.

30. RCC published the Final Report of its sector inquiry in the milk sector in February 2011. RCC had launched the sector inquiry in February 2009, aimed at analyzing the market structure in the milk sector (supply and demand), the specific market mechanisms (i.e. quota mechanism, state intervention), the participants' behavior and the competition level on the market. The objectives pursued were set in order to identify the factors that influence milk price composition/formation on this market, as well as the economic conditions having the potential to distort competition.

31. In the sector inquiry report, specific aspects of the milk production sector in Romania were presented to illustrate the fragmentation of producers (Romania has the largest number of cow milk sites in Europe), the large share of family sites (about 90% of all sites comprise only 1 or 2 cows), the seasonality of the milk production collected for processing (with higher values during the summer time and with approx. 30% lower during the winter time) and the milk quota allocated to direct sales to consumers, which is higher than that allocated to deliveries to collectors or processors.

32. Due to the structure of the Romanian farms, the national milk production is divided as follows: 40% for own consumption, 36% for direct sale and 22% for processing. Specifically, the production fragmentation leads to a lower bargaining power of farmers, who are forced to accept the price offered by processors. According to the Report, two aspects strengthen the asymmetry in the bargaining power: the raw milk, as a perishable product, with limited possibility of stocking and the production quota system that limits the potential number of undertakings (processors, independent buyers, etc) that could be approved by the Agency for Payments and Interventions in Agriculture. The conclusions of the Sector Inquiry Report reflect the impact of the EU agricultural policy on the functioning of the milk sector in Romania. Subsequently, the report concludes on the relevant factors having an impact on the sector, i.e. the asymmetry of the bargaining power among parties, the role of contracts and the price transparency.

33. As regards the asymmetry on bargaining power, the report highlights the difference existing between Romania and other EU member states, where milk producers are also in many cases shareholders

in processors' firms, being vertically integrated. This situation largely avoids conflict among producers and processors. In Romania, this structure is difficult to implement as the processors are private companies having a sole or controlling shareholder.

34. The issue of imbalances of bargaining power is subject to discussions at EU level. In this context, the Report recalls that in the framework of the ECN Joint Working on Milk, the national competition authorities have not opposed to the adoption of codes of conduct / best practices by undertakings in the milk sector. Such codes could provide certain technical criteria for the conclusion of contracts between producers and buyers/processors, but they should not lead to the standardization of the content of the contracts, thereby limiting the freedom of contract, nor constitute an additional barrier for the free negotiation between parties. In its assessment of the price transparency, a high degree of price transparency may lead to price alignment at the lowest level (reference price), having anticompetitive effects in the detriment of producers.

35. The recommendations made in the Sector Inquiry report refer to the legislative framework (in order to complement the national law on the types of associations in the agricultural sector with national competition rules applicable to this sector), market mechanisms (i.e. milk quota, milk traceability and state intervention) and correction of the asymmetry on bargaining power (i.e. framework contract).

8. Conclusions

36. Having a good law is not enough. The introduction of a competition law needs appropriate supporting policies, and effective enforcement. Governments must show support for market economies and must recognize adequately the impact of other legislation and regulations on competition. To be fully effective, a competition policy must be supported by a „culture of competition“, where the objectives of competition are widely understood and form a natural part of the background to decisions by government, firms and consumers. Civil society and a vigorous consumer movement in particular, can play a constructive and valuable role in the development of a culture of competition. Vested interests that oppose reforms and fair competition have to be overcome. An open media and an informed judiciary are needed if competition policy and law are to be fully effective. Above all, politicians must be committed to wanting to make markets work well, to ensuring that the government's responsibilities to markets are well understood and to help build the technical capacity needed for this task.