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## **OECD Global Forum on Competition**

**HOW ENFORCEMENT AGAINST PRIVATE ANTICOMPETITIVE CONDUCT  
HAS CONTRIBUTED TO ECONOMIC DEVELOPMENT**

**-- CONTRIBUTION FROM ROMANIA --**

**Session IV**

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## **HOW ENFORCEMENT AGAINST PRIVATE ANTI COMPETITIVE CONDUCT HAS CONTRIBUTED TO ECONOMIC DEVELOPMENT**

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1. Understanding the importance of competition law and policy, as a result of both the economic development and the restructuring of the whole Romanian economy, has become a necessity to attain the objectives of a market economy. Competition law normally prohibits:

- a firm from obtaining monopoly power;
- the abuse of dominance;
- the cartel arrangements in which two or more firms agree to act jointly as a monopolist.

2. Competition policy is a broader concept that includes aspects of regulatory reform, demonopolisation and privatisation, and seeks to halt the harm to society that is caused by a broader range of anti-competitive actions and policies. In the context of accelerating transition, the concept of competition culture is of key importance. With a view to promoting the principles of the competition culture, we have to take into account a range of activities that contributes to an increase in the transparency of the competition environment. Precisely, these instruments can be summarised as follows:

- mass media: internet, publications (magazines, annual reports, press releases);
- seminars and conferences organised in order to promote competition policy;
- co-operation with regulators within the process of privatisation and deregulation;
- consultancy offered by experts;
- policy of setting fines that carries greater deterrence and prevents serious distortions of competition.

3. In the Romanian emerging market economy, the emphasis is on competition advocacy, including use of communication strategies that help educate economic agents. As regards the policy of penalising infringements of the competition rules, the national decision – making authority, the Competition Council, issued a number of 43 decisions<sup>1</sup> setting fines for anti-competitive behaviour (agreements between undertakings that distort competition). It is a significant increase as compared with the previous year, when 12 decisions that implement sanctions were issued. Also, 57 decisions applying sanctions were given for failing to notify the concentrations (mergers or acquisitions). This record, registered at the end of October 2003, is a progress in comparison with the last year result: a number of 30 decisions issued in this field.

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<sup>1</sup> The number was recorded at the end of October 2003

Anti-competitive conduct negatively affects or eliminates the benefits of effective competition, like static and dynamic efficiency and consumer surplus gains. Therefore, competition law enforcement that effectively sanctions and deters such conduct should lead to economic development.

4. International business activity can introduce increased competition into markets previously monopolised by domestic firms, leading to an improvement in economic welfare. However, it is also likely to promote cross border trade and investment. Alongside the surge in cross – border mergers and acquisitions there is concern that concentrated market power of transnational corporations will threaten competition in developing countries by cramping domestic production and investment. This is the case of the Romanian cement market, when cement manufacturers have got into the act of trying to shore up cement prices.

## Romanian Competition Council

### Case Study on Cement Market

#### 1. General Survey

5. For a better understanding of the market, a brief presentation of the Romanian cement industry is needed. Before 1989, the Romanian cement sector was one of the most developed, the cement plants having been built with very big installed capacities which aimed at supplying the building materials needed for a great investment program. The cement plants were placed near the raw material sources, facilitating the building in accordance with the principles of a planned economy. Nevertheless, there was the possibility to deliver cement to users located all over the country, at comparable transportation costs. This landscape was changed between 1997 and 1999 when the cement sector was completely privatised and the main world-wide cement producers entered into the Romanian market, by acquiring control over the local producers.

6. At this moment, three cement companies operate on the market. In order to keep the confidentiality of the information presented, the three economic agents will be defined as the company A, company B and company C.

7. Each of them controls three cement plants, placed uniformly, throughout the country and holds a market share of 30%. Different criteria, such as: production capacity, nominal production and turnover, are taken into account when estimating the market shares. The calculation based on the turnover was considered the most relevant and appropriate. This evidence shows the existence of an oligopoly on the Romanian cement market. The cement demand represented by individuals and companies, providing building and construction services, is the downstream sector. The requested quantities of cement can be provided to the consumers by three different suppliers, in terms of profitability. These elements lead to the idea that, generally speaking, the Romanian cement market is competitive. However, in some north-east counties, consumers have no alternative in choosing the supplier because there is only one cement plant, controlled by company C. The lack of competition is not a problem because there is a poor demand in the region. A similar situation can be found in the south-east of the country, where the demand is fulfilled by a cement plant controlled by the company A. In addition, company B controls two cement plants: Alesd and Turda, located in the north-west.

8. Further on, we will present 2 case studies in order to illustrate how law enforcement has halted restrictive behaviour and the subsequent effects on economic development regarding the cement market.

## **2. Negative Clearance on Slag Market – Case Study**

9. A negative clearance request was notified to the Romanian Competition Council by the parties to the contract, at the end of February 2003.

10. The business partners were company A, company B and company C, on the one hand, and company X, on the other. In carrying out the contract, the supplier – company X - took the responsibility to deliver slag to the beneficiaries -company A, company B and company C. With a view to analysing the effects on competition, the experts asked for information and accounting documents, stating the legal basis and the purpose of the request.

### **2.1 The Relevant Market**

11. The relevant product market included the granulated slag of furnace and its alternative products, while the relevant geographic market was defined as the whole country. The supply is restricted to the domestic market because there are no imports for this product. The demand comes from the cement producers and represents approximately 90% of company X' slag production. It may be noted that company X has a dominant position on the relevant market. The beneficiaries prefer to contract the slag from this supplier, taking into account the properties of this product, the fact that company X is the only supplier who delivers the product at high standards of quality and the importance of the granulated slag of furnace in the cement production process.

12. A close examination of the contract raised two problems:

- the abuse of dominant position held by company X on the Romanian slag market, by imposing inequitable contractual clauses on customers,
- the agreement between beneficiaries which may affect the competition on the Romanian cement market as a result of the supply sources allocation according to territorial criteria or sales-and-purchase volume criteria.

### **2.2 Conclusions**

13. The information provided by the parties, regarding the clauses of the contract, was not accepted as a conclusive proof. Therefore, the representative agents of the parties were invited to participate in discussions with a view to deciding on contract clauses that should be eliminated in order to support effective competition.

14. The inspectors of competition, responsible with this case, concluded that the contract in question was not in compliance with the provisions of the competition law and solicited the voidness of the contract. Separate contracts between company X and each of the beneficiaries were allowed to be settled on amiable basis. The parties concerned should submit a document to the Competition Council, confirming the voidness of the contract. Otherwise, the parties would be sanctioned drastically.

### **2.3 Effects on Competition Environment**

15. The slag is a dangerous type of waste in compliance with the Government Decision no. 856/2002. It has been generally recognised in a number of preambles that it is worthy to protect the environment because of its economic importance. Over the decades, this rationale has become mainstream within international environmental law. Under these circumstances, the collection and storage of waste need financial resources that should be invested in the protection of the environment. The separate concluded agreements between company X and each of the beneficiaries might increase the competition on

the market and remove the barriers to entry. Taking into account the responsibilities assumed by the beneficiaries, the slag collection would be facilitated, having positive effects on environmental protection. The restrictive clauses of the agreement were eliminated and the Competition Council had to grant negative clearances for each agreement concluded. Therefore, the measure proposed by the competition inspectors contributed to effective competition.

#### **2.4 Measures Taken Against Anticompetitive Conduct**

16. Secret cartels between enterprises aimed at fixing prices, production or sales quotas, sharing markets or banning imports or exports are among the most serious restrictions of competition encountered. Such practices ultimately result in increased prices and reduced choice for consumers.

17. In 2001, the Competition Council issued an investigation order as a result of prohibiting the provisions of the competition law regarding the correlated price increase on cement market. As a result of starting the investigation because of doubts concerning compatibility with a normal competitive environment, the cement manufacturers cut down the prices. However, the investigation has not been finalised.

18. Nevertheless, we have to mention that, during the current year, the competition inspectors have focussed on the Leniency Note on the non-imposition or reduction of fines in cartel cases.

### **3. The Authorisation under Conditions – Case Study**

#### **3.1 Case History**

19. The present case study concerns a merger, made on the cement market and analysed by the Romanian Competition Council in the year 2000. According to the Letter of Intention, signed by the parties and presented to the Council, a subsidiary of the company A intended to sell one of its own branches – the cement plant Alcim – to the Breitenburger Auslands Beteiligungs (BAB) Company.<sup>2</sup> The involved parties explained, in the notification form, that the purpose of the operation was to grow the efficiency, to modernise and to make their activities more flexible. At the time of notification, the company B was controlling another cement producer in Romania, called Cimentul Turda, and intended to take control over a second cement plant. Taking into account the dominant position held by the company B on the relevant market, the Council decided that a further investigation would be necessary.

#### **3.2 The Relevant Market**

20. In the case of cement, the transportation costs are very high and, therefore, the 200 –km represents the maximum distance wherein the beneficiaries can afford to pay the transportation costs without being forced to look for another supplier. As a rule, the cement plants sell cement product on “ex-works” terms. In the jurisprudence of the Romanian Competition Council it is considered that, in the case of cement, the market “allocated” to each cement plant consists in a circular area with a 200 – km radius. Regarding the above mentioned issues, the geographic market was defined as the north – western region of Romania. There are no foreseeable substitute products for cement, in terms of characteristics, intended use and price. This is the reason why the product market was defined as the cement market. It was noticed that, within the defined geographic market, there were some counties where Alcim and Cimentul were the only suppliers. This means that, after the closure of the notified procedure, the company C was to become the only cement supplier. The territory of the three counties: Satu – Mare, Salaj and Maramures was considered the affected relevant market by this merger.

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<sup>2</sup> The Breitenburger Auslands Beteiligungs (BAB) is the Romanian subsidiary of the company B.

### **3.3 *Impact upon Competition***

21. As a consequence of the acquisition, the number of the independent cement suppliers would decrease. Moreover, in the countries included in the affected relevant market, Holderbank would have remained the only supplier. In this respect, the decision imposed conditions and obligations aiming at impeding the abuse of dominance on the affected relevant market.

22. These conditions are summarised below:

- company C' s obligation to make investments of within Alcim;
- company C would not sell cement of the same quality from its Alcim plant and Cimentul plant to different consumers at different prices;
- In order to allow the Competition Council to verify the compliance with these conditions, the company C would place at Competition Council's disposal the delivery price lists of plants located in Alesd and Turda, for a five years period.

23. The merger authorisation under conditions enhanced efficiency by facilitating the scale economies which were not attainable under the pre-merger market structure. Also, the benefits of reduced costs might be passed on to consumers promoting economic efficiency and progressiveness.

### **4. Efficiency Considerations – Competition and Consumer Rights**

24. It is important to mention that the “de minimis” threshold of the aggregate turnover of the undertakings participating in mergers and acquisitions will be increased with a view to allowing only those cases that actually cause concerns from a competition point of view. Amendments to the Competition Law are in the process of adoption in order to have a legislation in line with the aquis. The Council's decision to adopt the Leniency Note, which sets out the conditions under which enterprises cooperating with the Romanian Competition Council might be exempted from fines, is an important aspect of its endeavours to achieve the objective of combating cartels. Without effective policies and structures, restrictive business practices can damage consumer rights and social welfare. Competitive markets favour consumers by encouraging efficiency and innovation among suppliers, ensuring that both producers and consumers share the benefits. By promoting the most efficient use of economic resources, competition policy contributes to economic growth.

25. Generally speaking, greater competition achieved through regulatory reform, demonopolisation and privatisation contributes to a general deconcentration of economic power, giving more people an opportunity to apply and develop the entrepreneurial and managerial skills that are needed to sustain the economic development.