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## **OECD Global Forum on Competition**

**CHALLENGES/OBSTACLES FACED BY COMPETITION AUTHORITIES  
IN ACHIEVING GREATER ECONOMIC DEVELOPMENT THROUGH  
THE PROMOTION OF COMPETITION**

**CONTRIBUTION FROM ROMANIA**

-- Session II --

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**CHALLENGES/ OBSTACLES FACED BY COMPETITION AUTHORITIES  
IN ACHIEVING GREATER ECONOMIC DEVELOPMENT  
THROUGH THE PROMOTION OF COMPETITION**

*(by Theodor Valentin Purcărea, PhD.  
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*“The challenge is becoming an opportunity: an opportunity for more effective enforcement of competition policy in the benefit of the consumer; an opportunity to contribute through competition policy instruments to foster market oriented reforms and to improve the capabilities for sustainable growth.”<sup>1</sup> Mario Monti, European Commissioner for competition policy*

**1. The context – the first challenge**

1. Romania – developing country, building an efficient and real functioning market economy – is characterised by a fast changing economic environment (from a centralised system to market economy). Passing the Romanian economy to a market economy, compulsory condition for Accession to the European Union, has represented for our country the tandem enforcement of the privatisation and competition policy for the industrial sector.

2. Our efforts are focused on the creation of an appropriate correlation between the manifestation of private property, competition, market price establishment mechanism, economic and financial basic key factors, on one hand, and elaborated legislative norms, on the other hand. The market economy cannot assure the advantages it includes if a strict competition discipline is lacking, discipline which is not self creative, but which must be created and applied efficiently. The freedom of competition is a public freedom. The aim of the competition policy is to maintain and develop an effective state of competition, acting on the markets’ structures and actors’ behaviour. By requesting undertakings to compete each other, the innovation is supported, the production costs are reduced, the economic efficiency is growing and consequently the economic competitiveness is strengthened. Thus, it may be explained how undertakings are stimulated through competition to offer competitive products and services in terms of price and quality.

3. The strategy of the Competition Council, single autonomous administrative authority in Romania having the responsibility of Chapter 6 “Competition Policy” within the negotiations for the accession to the European Union focused on the fulfilment of Copenhagen criteria: the transposition of the EU acquis on competition and State aid field, the effective enforcement of the acquis and the strengthening of the administrative capacity. All these objectives are linked with the promotion of the competition through a direct and biunivocal relation:

- setting up the rules of the game through the legislative framework will be supported by, and will influence the development of the competition culture;
- the enforcement of the law is supported by and it is encouraging, in the same time, a mature competition culture;

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<sup>1</sup> Mario Monti, “EU competition policy after May 2004”, Fordham Annual Conference on International Antitrust Law and Policy, New York, 24 October 2003.

- a strong competition authority can function properly only framing a stable, mature competition environment.

4. To create an authority is only the starting point of building, on its own activity, its legitimacy: the recognition of its role on protecting, maintaining and stimulating the competition and a normal, competitive environment, with a view towards promoting consumers' interests.

5. The provisions of Article 134 (1) of the Law no. 429/23.10.2003 related to the revision of the Romanian Constitution underline that „Romania is a market economy, founded on free initiative and competition”, the private ownership being guaranteed and inviolable. This is an unequivocal restatement of the commitment to free and undistorted competition as an objective of the Romanian economic policy.

6. It is true that stipulating the role of the competition within the fundamental law of a State is not a compulsory condition in order to apply its rules, but it is the sign of a real political will. It is the guarantee that the competition principles are the roots of economic policies.

7. It is a unanimous thinking that a political decision not necessarily against the promotion of competition principles but establishing some rules that could permit anti-competitive behaviour of private or public economic agents represents a very serious obstacle for any competition authority. I wish to underline here that “*any governance mechanism can only be as strong as its weakest link*”, as recently concluded Mr. Philip Lowe, the General Director for Competition within the European Commission.

## **2. Obstacles or challenges? Transforming it in opportunities**

8. The approach of the competition advocacy has two components: the first one consists of activities targeting the authorities that have regulatory competencies, and the second one has in view all the components of the society (i.e. judicial system, undertakings, etc.) and is targeted toward their raising awareness on the benefits which could be brought by competition and on the role that competition policy might play in the promotion and protection of a normal competitive environment.

9. I think that it is more challenging to talk about challenges and about the response of the Competition Council of Romania to some of them.

10. As the main challenge I could note the mentalities, the attitude of those who expect to loose from economic and administrative change. It is reflected by all following challenges.

11. I could identify some environmental challenges (maturity of the public administration and maturity of the business environment) and also internal, intra-organisational challenges (lack of resources, lack of access to information).

### **2.1 Environmental challenges**

#### *2.1.1 Maturity of the public administration*

12. As a young body, emanated from the Romanian economic reforms process, the Competition Council had not to fight so much with internal evils, with refractory behaviours and opposite to the reforms. We have a lot of very young experts, open minded and preoccupied to increase their personal acknowledge and skills fast and seriously.

13. A real challenge was to create the proper relations with the other public authorities and to establish a real and constructive inter-institutional dialog. It was a permanent preoccupation of the Competition Council to develop and adapt the competition and state aid rules to the dynamic if economic

environment and to promote them. The inherent difficulties of the beginning have been surpassed and we could talk now about a network of experts on competition among the ministries which are members of the sectoral group for accession to the EU for Chapter 6 "Competition Policy" and also about lasting contact points among other ministries and agencies.

14. Through several actions (conferences, seminars, workshops organised in Romania or in the EU Member States within two twinning programmes) we aim to permanently improve knowledge and skills of the judges from the Bucharest Court of Appeal and the Supreme Court of Justice, in order to ensure a unitary approach of competition and state aid cases, according to EU standards.

15. Our actions on promoting the competition culture refer also to the representatives of the Parliament. Here it is a big challenge: to increase the awareness of the political environment on effective enforcement of the competition and state aid policy and on the rank of the competition authority within the economic institutional system.

16. We could note as a positive result the draft proposals for amending the Competition Law as regards the criteria for restructuring the Competition Council, free from any political influence.

17. From this point of view, 2003 was the starting year of the reforms on the institutional framework on competition and state aid in Romania. With a view to complete harmonisation with relevant community provisions, as well as to reinforcing the administrative capacity for implementation of the legislation in the competition field, the Competition Law and the Law on State Aid are in amending process, taking over the remarks of the European Commission. They have been approved by the Government of Romania and have been sent to the Romanian Parliament.

Amendments to the Competition Law aim to:

- abolish the obligation to notify to the Competition Council in order to obtain a block exemption, notification that created both supplementary costs for the involved companies and administrative crowding of the mentioned authority;
- eliminate the existing overlapping of competencies, generated by the existence of two institutions (the Competition Council, as autonomous authority, and, respectively, the Competition Office, as governmental body), achieved by preserving only the Competition Council. Thus, the Government of Romania is giving up its previous powers, in this field, leaving the entire responsibility to a sole institution, powerful and autonomous, politically unsubsordinated;
- empower the Competition Council to give a compulsory advice on drafts of normative acts that could have an anti-competitive impact and to recommend the necessary improvement changes of those provisions. Thus, the prevalence of the competition legislation over any other legislation which could include anti-competitive provisions will be ensured.

The main amendments to the Law on State Aid consist on:

- introducing the possibility, for the Competition Council, to control the State aids granted through provisions of laws, government ordinances, governmental decrees, etc.;
- eliminating the provisions which had given the possibility to authorise state aids based on a subjective assessment, balancing the positive and negative effects, rather than taking into account the criteria and conditions provided in the acquis communautaire;

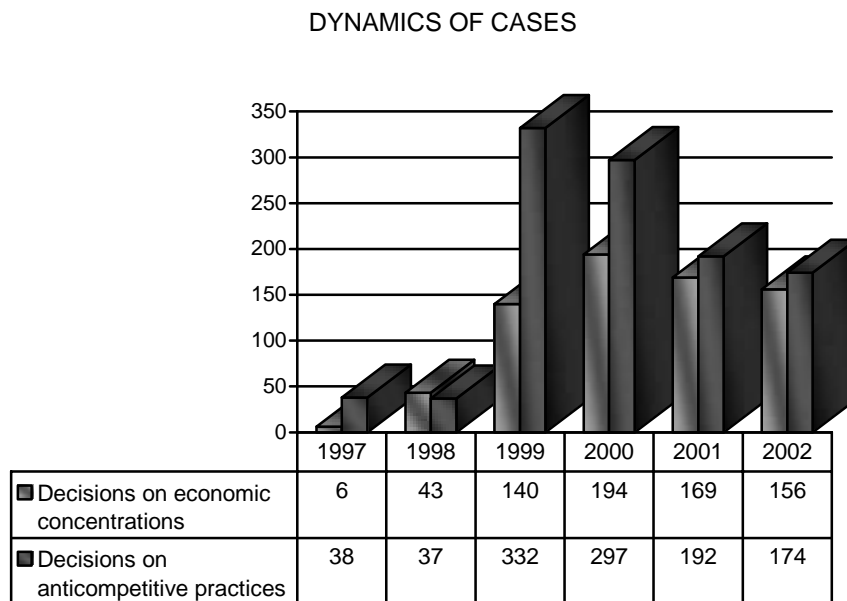
- Competition Council remains the sole authority in this field, having all the competencies in this respect, i.e.: authorising, monitoring and controlling, inventorying and reporting State aids.

18. Implementing this modernisation reform is certainly a challenge, but also an opportunity: the opportunity to consolidate the role of the Competition Council as promoter of the rules of the effective market economy.

### 2.1.2 *Maturity of the business environment*

19. Competition policy is protecting competition as most efficient resources allocation system of the society and it is not protecting competitors. The maturity of the business environment depends on the maturity and level of the economic development of the country. Talking about the promotion of the competition principles or about the increase of awareness on the importance of competition enforcement by the economic agents or about the long term benefits both for private business and the general economic growth, we must analyse the dynamic of the activity of the Competition Council for each category of cases.

20. The following graphic presents the evolution of the Competition Council's decisions on anticompetitive practices and economic concentrations issued in the period 1997-2002:



21. It could be noticed the constant evolution of the economic concentration which shows that the undertakings tend to regroup themselves, to search ways to strengthen their position which do not distort competition but which allow them to continue or develop their activity. The decrease in the number of anticompetitive practices confirms the understanding by the business community of the fact that the competition is the engine of their affairs.

22. For ensuring the opening to competition of the regulated markets and the continuation of privatisation process, the competition authority is getting involved in the design of privatisation schemes for finding solutions to minimise the restraints on competition and to facilitate new entries as soon as possible.

23. The competition authority intensified its actions to systematically identify and analyse the restrictions on competition and the market barriers in all economic sectors, and to propose concrete steps to eliminate or attenuate the distorting effects of these restrictions. Thus the competition authority will play an effective check-up function vis-à-vis the regulatory authorities.

24. A dynamic business environment, ensuring that competition sets incentives to innovate and foster productivity growth, induces firms to enhance their efficiency and thus enable them to better prepare to compete on national and international markets.

## **2.2 Internal, intra-organisational challenges**

### *2.2.1 Lack of resources*

25. It is about financial and human resources, which are strongly related together: the number of personnel can increase at an optimal level only if sufficient resources can be allocated for its proper work (offices, technical equipments) and for ensuring the conditions of the continuous acknowledgment.

26. Even functioning under optimal capacity, in a same extent the Competition Council surpassed the problems of staff training and improved its endowment through Phare technical assistance (1 investment program and 2 twinning programmes, one of them being on going). The seminars and conferences organised in Romania and abroad, training stages within competition authorities in Germany and Italy, as well as within European Commission, have contributed to the increase of knowledge and skills of the specialised staff of Competition Council. Representatives of the ministries granting state aids, of the business community and of the academic environment have been invited to attend these events.

### *1.3.2 Lack of access to information both for research and to prosecute cases*

27. This challenge is directly linked with the previous ones: the maturity of the business environment, on the one hand and the lack of resources, on the other hand.

28. After seven years of enforcement of the competition rules in Romania the economic agents are more open to offer the relevant and significant data and information in specific cases.

29. An agreement signed with the Chamber for Trade and Industry of Romania and the relationships established within the sectoral group provide us also very useful information but a lot of actions remain to be enforced in order to attend a proper level of market research.

## **3. Conclusion**

30. The economic progress depends in a significant extent on our ability to create and protect effective markets by advocating pro-competitive policies.

31. To pursue advocacy role, the competition authority can educate all the actors concerned: ministries (industrial ministries and Ministry of Finance), sectoral regulators, politicians (lawmakers and their counsellors), judges and lawyers and make them understand the benefits of competition. Moreover, the public should be aware of the benefits of competition through competition authority's communication activities.

32. The methods used by Competition Council in order to promote competition culture are diverse:

- *seminars and workshops* for the representatives of business environment, for the experts in the regulating authorities, for lawyers and judges, for representatives of the academic

environment (organised with the research institutes within the Romanian Academy – i.e. the Prognosis Institute, with EU and American experts, and the Centre promoting competition in the Institute of World Economy);

- *press releases* on issues of major importance included on the Competition Council agenda;
- publishing the Annual Report and the newsletter “Profil: Concurența”;
- the web page;
- publishing several *guidelines or view points*, aiming to clarify the approaching manner used by Competition Council in certain cases (i.e. „Guidelines relative to the application of the competition rules on agreements aiming the access in the electronic communication sector – general framework, relevant markets and principles”, or “Guidelines on defining the relevant market in order to establish the significant market share).

33. These activities have as a result the *increase of transparency* of the competition protection policy, *the rise of credibility and persuasion* of the involved institutions. They have, also, as an effect, to build up the “*competition advocacy*”, materialised in awareness of the undertakings, and of the public on the competition rules.

34. I wish to stress again that the main challenge is to transform challenges in opportunities.