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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ROMANIA

--2015--

15- 17 June 2016

This report is submitted by Romania to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held 15 – 17 June.

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Executive Summary

1. During 2015 Romanian Competition Council (RCC) performed an intense activity, managing to reach better results compared to the previous years.

2. We completed a significant number of investigations, 21 cases, in important sectors, such as electricity, fuels and telecommunications. The imposed fines were about 54 million euro, increasing by 30% compared to the year 2014. At the same time, we have initiated investigations on the most harmful anticompetitive practices, 62% of the new procedures aiming at possible cartels or abuses of a dominant position. As a result of the completion of the 21 cases, the average length of investigations regarding possible infringements of the competition rules, in progress at the end of 2015, decreased by 6 months compared to the end of the previous year.

3. In the field of economic concentrations, in 2015 we recorded an average duration for analysis of about two months, this value being maintained within the downward trend for the past five years. Almost 60% of the economic concentration operations have been analyzed by the simplified procedure, which has reduced the effort of notifying parties, compared to about 30% in 2012.

4. The correct justification of the decisions of the RCC was confirmed by the High Court of Cassation and Justice. Irrevocable legal decisions pronounced in the cases on competition were favorable to the competition authority at a rate of 100%, even if, in some cases, the amount of fines has been reduced by the Court.

5. We succeeded to finalize projects started during the previous years by accessing European funds: interoperability of the databases of the RCC with those of other institutions in Romania, the business architecture of the competition authority and the Register of State aids. The results of these projects will allow us, on one hand, to be more efficient and quick, and, on the other hand, to operate in an integrated way, supporting the activity of other partner public institutions.

6. The large reforming process of the legislation as initiated two years ago, which has targeted the rules on State aid and on unfair competition, was completed in 2015, through the modification of the Competition Law. Thus, the prerequisites for institutional modernization and the development of functional tools that we have at our disposal (recognition of the competition law infringements by the companies which have breached the law, the use of whistleblowers, the possibility to change easily the turnover thresholds for the economic concentrations) were created, in order to improve the results.

7. For 2016, we will focus on a series of important economic sectors. So, we will complete the sector inquiries relating to the distribution of medicines, relating to the electric power sector and to the access to the communications infrastructure of the municipality of Bucharest (Netcity project). We'll analyze an important economic concentration in the field of food retailers, the takeover of Billa by Carrefour, benefiting from the experience gained after the Real-Auchan operation analysis. In the field of energy, we'll continue the analysis of the regulatory framework in the context of the liberalization of this sector.

8. We'll also complete a number of major investigations on possible infringements of the competition rules: the investigations targeting the bids rigging in the milk sector, energy and IT, as well as the investigation for possible anticompetitive practices in the service sector for towage and pilotage in ports.

9. The RCC will continue working with the Government and the European Commission for the restructuring of the companies: Romanian Post office, Romanian Railways, Olchim and CEC Bank, with expert advice in the field of State aid.

10. During 2016, the project developed with the support of the OECD will be completed. It envisages the analysis of the current legislation in the three key sectors of the economy and its impact on the competitive environment: agro-food processing, transportation of goods and building materials. Through its extent and taking into account the pursued objectives, this exercise of regulations analysis is an example which could be followed in other major sectors of the Romanian economy.

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

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

11. The last review of the Romanian Competition Law no.21/1996 occurred in 2015 through the Law No. 347 published in the Official Journal of Romania dated 29 December 2015.

12. The main amendments to Competition Law no. 21/1996 (“Competition Law”) are:

1.1.1 Anticompetitive practices

13. With regard to national competition rules, the provisions of Articles 5 and 6 of the law mirror Articles 101 and 102 TFEU. The previous wording exemplified certain practices which were removed to avoid any exhaustive interpretation of the competition law.

1.1.2 Admission of guilt (settlement procedure)

14. The admission of guilt must be made prior to the hearings. The Competition Law expressly provides that any fine reduction awarded has to be calculated as a percentage of the base amount of the fine (with the amount determined in reference to the gravity and duration of the infringement, without applying increases or decreases for specific circumstances). In the event of admission of guilt, the final fine applied to the undertaking cannot be lower than 0.2% of the total turnover achieved in the year prior to the sanctioning. If the terms requested for the fine reduction by the undertaking during the settlement procedure are not accepted by the Competition Council, the admission of guilt cannot be used as evidence during the investigation. If the undertaking files a settlement proposal to the RCC before the communication of the statement of objection, the RCC will be able to apply a simplified settlement procedure, according to its guidelines. If the beneficiary of the admission of guilt fine reduction files an action for annulment against the decision, the court will remove the admission of guilt reduction at the request of the RCC.

1.1.3 Mergers

15. A series of clarifications on the cooperation between the RCC and CSAT on the economic concentrations likely to raise national security risks have been brought to the Competition Law. The RCC may request information necessary so that the competent authorities and structures would assess whether the merger affects state security procedures. The procedures are completed when CSAT issues a decision of prohibition a merger transaction which is likely to raise a risk to the national security.

16. The merger control authorization fee for authorisations preceded by an investigation conducted by the Competition Council have been established at between EUR 25,001 – EUR 50,000. For all other merger control authorisations, the authorisation fee limits remain the same.

17. Merger Notifications thresholds may be regularly updated, without passing through difficult legislative procedures (any amendment of threshold require the endorsement of the Ministry of Economy).

18. RCC’s decisions setting sanctions or merger control authorisation fees constitute enforceable titles without any other formalities, within 30 days as of communication of the decision.

1.1.4 Complaints

19. In investigations opened based on complaint, the complainant cannot anymore oblige the competition authority to organize hearings of the parties, if there is no sufficient ground to continue the

proceedings. In such situation, the case is closed by decision, after the complainant is given the possibility to present an opinion. Moreover, the period of assessment changed from 60 calendar days to 60 working days according to a World Bank recommendation.

1.1.5 Dawn-raids

20. RCC may carry out inspections at the request of a Member State or EC. Taking into consideration that the competition authority knows the details of the case, the participation of the representatives of the authority that requested the inspection is necessary in order to streamline the conduct of these dawn-raids. The change is based on the recommendation of the European Commission within the European Competition Network (ECN).

1.1.6 Communication of the order of inspection

21. The steps to be followed when the communication cannot be physically made to the legal representative or, in his absence, to any employee of that company are provided. Communication can be made by fax / email or by other means ensuring transmission of the text of the order and of the judicial authorization as well as confirmation of the dispatch. Some attempts to obstruct the dawn raid are thus eliminated. The claims were that the space where the company actually performs its activity is not legally owned by it or that the legal representative of the undertaking is not at the office and there is no one replacing him during his absence.

1.1.7 Investigations

22. RCC, similar to other competition authorities of the Member States, may take the necessary measures to create conditions for effective competition where, in a sectoral investigation, market failures affecting the competitive process are identified. Measures to remedy the market failures will be subject to public consultation before the adoption of a decision. Companies against which these measures are imposed have right of access to the documents in the file of the RCC and may submit written observations. In their written observations, the parties may request hearing by the RCC.

23. Interviews have been made available to the RCC as a new evidence gathering procedure (EC procedure taken over, observance of the parties' right with regard to privilege against self-incrimination). Competition inspectors may hold interviews with any individual or legal person, with their consent. In order to organize an interview, the Competition Council must notify in writing the people to be interviewed. The interview may be held through any means, including electronic means. All interviews will be recorded on audio-video support and registered in the interview minutes, which must be signed by all attendees. Sanctions for providing inaccurate or misleading information are applicable to the new interviews procedure.

24. Regulations regarding competition whistleblowers have been expressly provided by the Competition Law. Competition whistleblowers are individuals who, at their own initiative, provide the RCC with information regarding possible infringements of Competition Law. The identity of competition whistleblowers is kept confidential by the RCC.

1.2 Use of information and documents collected by other authorities and public institutions

25. Such a provision is useful for streamlining the procedures of the RCC and for diversification of analytical and investigative tools.

1.2.1 Access to the file

26. The documents, the data and the confidential information from the RCC's file may be required, usually only once after the communication of the investigation report. In the absence of new elements, successive requests of access to documents, data and confidential information cannot be made.

1.2.2 Sanctions

27. In case the company has not achieved any turnover either in the previous year to the sanctioning or in the former year, the fine will be applied to the last turnover registered by the company. Such situations have been encountered in practice and in the absence of express provisions, the RCC was able to note the violations of the law, but without being able to impose the fines.

1.3 Organization and functioning of the RCC

28. Cooling off period - An incompatibility has been established, for a period of three years, regarding a person who exercised a public dignity function or a public function (inspectors) within the RCC, if that person wishes to undertake any professional activities of any type in the private sector. To this end, that person must request the prior approval of the RCC;

29. For a better separation of the functions (executive and decision-making) within the RCC, following the recommendation of the World Bank, **the position of general director was set-up**. The General Director coordinates the executive activities within the RCC.

2. Enforcement of competition laws and policies

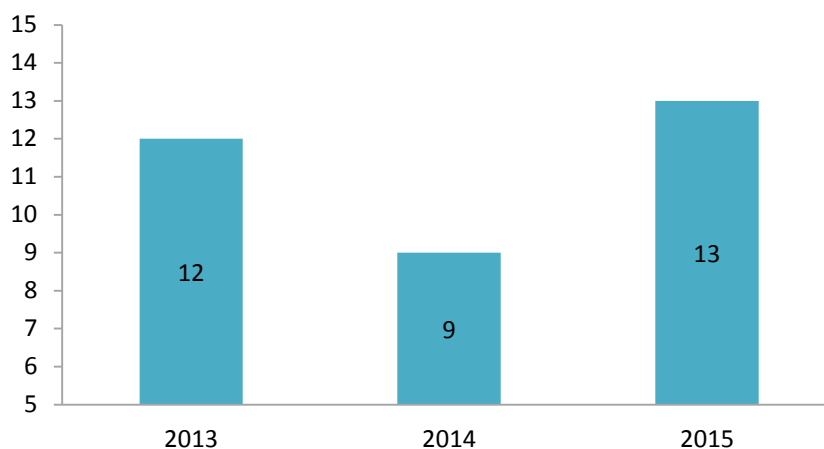
2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1 Summary of activities

2.1.1.1 Opened investigations

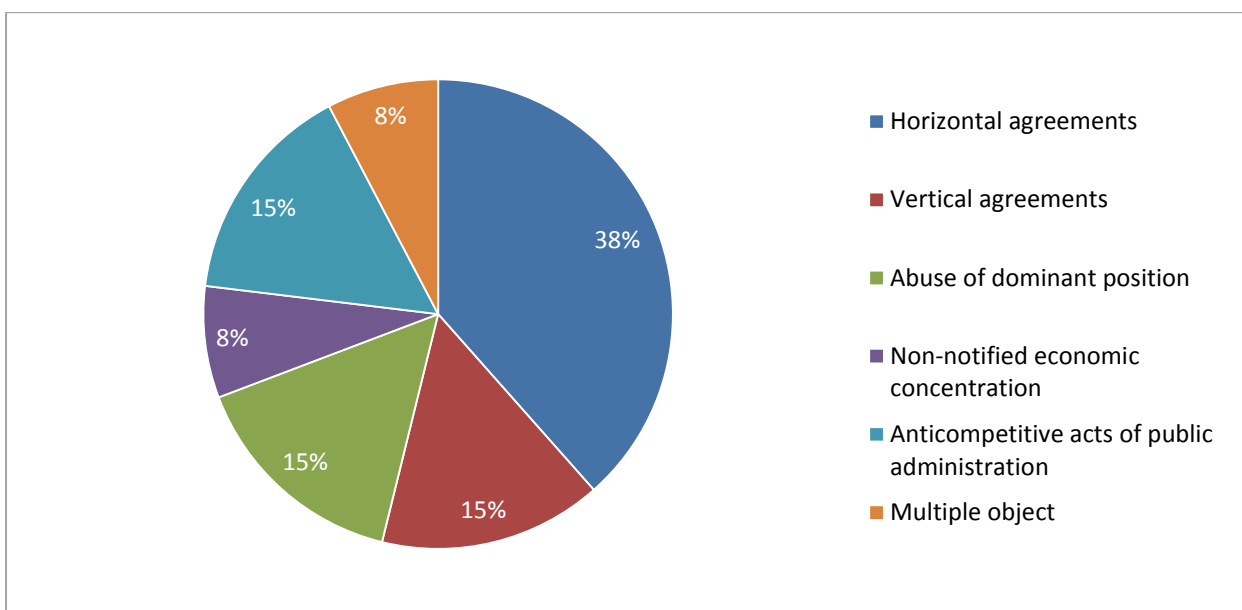
30. From the perspective of investigations relating to possible violations of the competition law, the main sectors affected by the proceedings initiated in 2015 by the RCC have been *the financial sector, the community water and sanitation services, and the electric power sector*.

Investigations started during 2013-2015



31. Most of the investigations on possible infringements of the competition law started in 2015 aimed at horizontal anticompetitive agreements (cartels).

Structure of the investigations concerning possible violations of the competition law started in 2015, depending on the investigated practice



32. The markets targeted by the investigations concerning anticompetitive practices, started in 2015, are as follows:

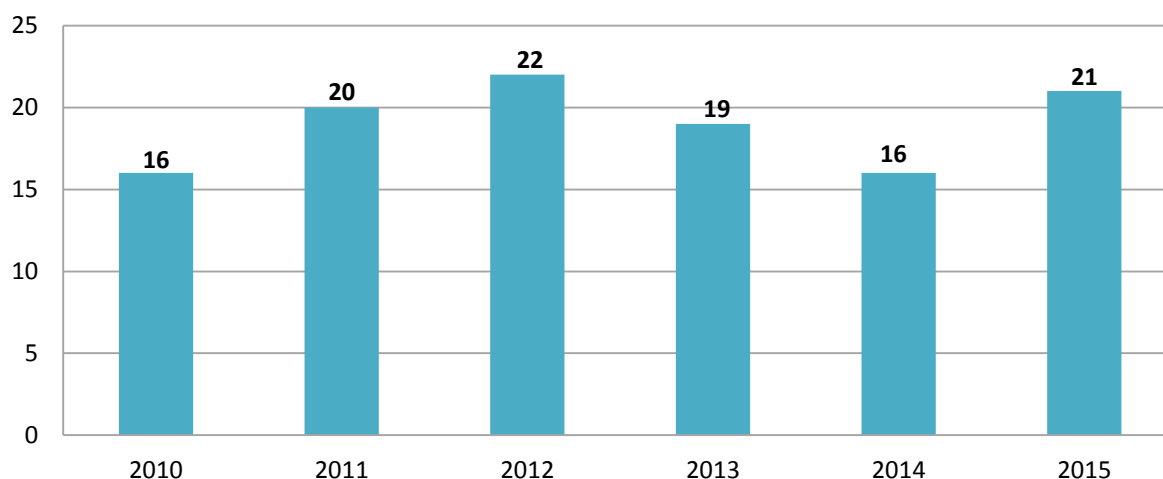
- distribution of electricity (abuse of dominant position);
- notary services (horizontal agreements);
- water and sanitation service (abuse of dominant position, anticompetitive acts of public administration respectively);

- distribution of films to the cinema theaters (vertical agreements);
- services provided by private security agencies (horizontal agreements);
- financial and banking services (non-notified economic concentration);
- insurances (horizontal agreements);
- hospital maternity services (horizontal agreements and abuse of dominant position);
- transport services under a taxi regime (horizontal agreements);
- laboratory tests for discharged waste water (anticompetitive acts of public administration);
- electric meters and electric power metering (horizontal agreements);
- maintenance services and spare parts for the ships equipment which ensures the border safety at the Black Sea (vertical agreements).

2.1.1.2 Concluded investigations

33. Most of the investigations on possible infringements of competition legislation completed in 2015 were represented by anticompetitive vertical agreements.

Investigations completed during 2010-2015



34. The investigations completed in 2015 are aiming major economic sectors, such as *energy* or *telecommunications*. The markets targeted by these investigations concerning violations of the competition rules were the following ones:

- the competitive segment of the electric power production and distribution (a case which targeted vertical agreements and an horizontal agreements);
- the oil marketing (horizontal agreements);

- the LPG distribution and marketing (vertical agreements);
- the service of calls termination at mobile points (abuse of dominant position);
- the postal services (horizontal agreements);
- the distribution of paints and varnish (vertical agreements);
- the conditioning systems of water/steam samples (vertical agreements);
- the distribution of adhesives and mortars for polystyrene (vertical agreements);
- the installations for use of natural gas (vertical agreements);
- the distribution of thermal power plants (vertical agreements);
- marketing of supplies for printers (abuse of dominant position);
- the supply of dairy products (horizontal agreements);
- the ready-made clothes distribution (vertical agreements);
- the distribution of films to the cinema theaters (vertical agreements).

35. The sector inquiry concerning the airport services (catering and handling services) was completed.

2.1.1.3 Investigation in progress at the end of 2015

36. By the end of 2015, the RCC had a number of 48 ongoing investigations as regard a possible violation of the competition law and 13 sector inquiries.

37. The interim reports of the sector inquiries carried out on the wood primary market, the market of access services at the communications infrastructure in the municipality of Bucharest, the vehicle insurance sector and the market of practitioners services in insolvency have been subject to public debate.

38. Over the past four years, the total number of investigations that were in progress at the end of the year has fallen continuously.

- **Dawn raids**

39. Within the dawn raids performed in 2015, 61 headquarters/working locations belonging to 60 undertakings were inspected within 8 investigations.

- **Fines**

40. During 2015, the RCC has imposed sanctions to 202 entities (3.8 times more than during the previous year), the total amount of fines imposed being of approx. EUR 53.921.382. Thus, the level of the sanctions has seen a considerable increase compared to the total level of sanctions during the previous years (1.3 times higher than in 2014, 2.76 times higher than in 2013 and 7.93 times higher than in 2012).

2.1.2 *Description of significant cases, including those with international implications*

2.1.2.1 Cartel on the market of fuel distribution

41. The RCC has sanctioned with fines amounting 16.907.202 lei (approx.3,7 million Euro) three fuels wholesale companies for concluding anticompetitive agreements.. During the investigation, the competition authority has found that the three companies concluded anticompetitive agreements consisting of price, discounts and mark-ups fixing, customers and sources of supply sharing on the Romanian market of gasoline and diesel wholesale distribution. All the sanctioned companies admitted their participation in the agreement and benefited from fine reduction of 20% from the basic level of the fine.

2.1.2.2 Rigged bids on diary supply market

42. The ex-officio investigation started in November 2013 and has as object the possible rigging of public procurement procedure organized in 2012 by Harghita County Council for the program ‘Milk and Croissant’ (Cornul si laptele) for 2012-2013 school year. The tender was organized for 67 lots depending on areas where the schools and kindergartens were located.

43. The investigation focused on the behaviour of three companies (Agro-Pan-Star SRL, Sole Sole-Mizo and Mizo Romania SRL ZRT) when participated in the public procurement procedure. The first two companies were the bidders and the third was the supplier of dairy products for the two bidders.

44. Further to investigation it was found that Sole Mizo Romania SRL and Agro-Pan-Star SRL participated in the tender with offers drawn up following an exchange of information and sensitive documents from the point of view of competition. Thus, the bids submitted were not the expression of a real competition. It was considered a market-share agreement. As concerns Sole-Mizo ZTR, there were not identified evidences to prove its involvement in market-share agreement.

45. Before completing the investigation, Sole Mizo Romania SRL and Agro-Pan-Star SRL admitted their facts and benefited from the reduction of fines applied. Thus, Sole Mizo Romania SRL was sanctioned with fines of lei 1.278.710 and Agro-Pan-Star SRL with a fine of 51.228 lei, the total amount being about Euro 298,500.

2.1.2.3 Cartel on the market of automatic processing of the correspondence

46. The RCC has sanctioned the companies Lykos SA Romania and Zipper Data SRL with fines amounting of 4,454,380 lei (approx. 994.000 Euro) for anticompetitive agreement. Further to the investigation carried out on the market of automatic mail processing, he RCC found that the two companies had coordinated their commercial strategies so that to share some clients.

47. The two competitive companies used the pretext of participation in association in a tender to exchange confidential information in order to share the clients and consequently to maximize their incomes and increase their market share.

48. Inform Lykos SA Romania was sanctioned with 3,826,562 lei (approx. 854.000 Euro) and Zipper Data SRL with 627,818 lei (approx.140.000 Euro). The companies Inform Lykos and Zipper Data prepare the correspondence (printing, enveloping, sorting etc.) and are intermediates of the relationship between correspondence shippers and service mail service providers.

2.1.2.4 Vertical and horizontal anticompetitive agreements in energy sector

49. The RCC has sanctioned Hidroelectrica SA and its 10 contractual partners, mainly electricity traders, with fines amounting 165,843,604 lei (approx. Euro 37 million) for concluding anticompetitive agreements on the electricity producing and trading market. Within the investigation, the RCC had analysed the long term contracts concluded between Hidroelectrica and some electricity suppliers and eligible consumers on wholesale electricity market having in view the scope, market conditions, positions on the market, contracts duration, the quantity of electricity assumed in contract, the contractual price, the producer impossibility of unilateral denunciation. Thus, the competition authority found that these contracts had as effect the obstruction of market for other electricity producers and suppliers and eligible consumers that led to heaviness of market development during liberalization process. The contracts preferentially concluded without an objective selection process and in the absence of transparent procedures for electricity trading provided for trading of a higher quantity of electricity than could had produced Hidroelectrica (95 -175% of the quantity of electricity produced). Further these contracts, it was made annually unavailable an amount of 42-60% from the electricity traded by producers on the competitive market for a period of 10-14 years. The prices charged under long-term contracts were permanently lower than those charged on the trading platforms as CMBC (Centralized Market of Bilateral Contracts) and DAM (Day- Ahead Market).

50. We have to emphasize that, in the period 2003-2012, Hidroelectrica SA had received about 450 requests for electricity supply and it was unable to meet. At the same time, these agreements also affected Hidroelectrica's competitors active on the electricity production and trading market that had not the possibility to make offers at prices that could had compete the prices provided in long-term contracts. Thus, the access of other producers to Hidroelectrica's group of clients was restricted.

51. Also, the contractual terms on the electricity supply provided in long-term contracts, in conjunction with contracting significant quantities representing almost the entire quantity of electricity available had as effect the limitation of the option of Hidroelectrica SA to participate in the DAM which led to liquidity reduction and distortion of reference price on the Romanian electricity market. Moreover, the conclusion and performance of long-term contracts, the quantity of electricity contracted by Hidroelectrica SA on the regulated market had declined, this reducing the quantity of low price electricity afferent to "regulated basket" and implicitly affected the electricity price for households. Another aspect found within the investigation is the fact that some Hidroelectrica's contractual partners had exercised in common their purchasing power during the contracts in question and coordinated their competitive behaviour setting trading conditions. Thus, Energy Holding SRL, Alpiq Romindustries SRL și Alpiq Romenergie SRL had coordinated their behavior during the long-term contracts concluded with Hidroelectrica to determine trading conditions, including related prices. The same behavior was proved in case of Elsid SA and Electrocarbon SA, they had established in common the contractual terms with Hidroelectrica SA. "By concluding these contracts, the competition on the electricity market was distorted, the parties' intention was to consolidate their position and gain some economic benefits without to expose to risks afferent to a competitive market"

52. Hidroelectrica SA, Elsid SA și Electrocarbon SA admitted their anticompetitive facts and benefited from fine reduction. We recall that the investigation was opened in 2012, it was an ex-officio one and the clues were identified during the sector inquiry on electricity market. During the investigation, several companies, electricity traders, have sued the RCC, challenging the use of documents gathered during the unannounced inspection carried out at their premises. These actions have delayed the investigation procedure with more than one year.

2.1.2.5 Anticompetitive vertical agreement on the heating plants distribution market

53. The ex-officio investigation has as object the possible infringement of the competition law on the Romanian heating plants distribution market (and their accessories). The agreement consisted in conclusion of a buy-sell agreement between BAXI ROMANIA SA (BAXI) and certain distributors, contract that contains restrictions on marketing limitation and price.

54. The RCC sanctioned BAXI ROMANIA SA and its 50 distributors with fines amounting Euro 274,600. As BAXI ROMANIA SA and 18 distributors admitted their anticompetitive agreements, the fine was reduced to Euro 220,006.

2.1.2.6 Abuse of dominant position on the market of spare parts for printing equipment

55. The RCC has sanctioned Hewlett - Packard (HP) Romania with fine of lei 2,966,516 (approx. Euro 665,000) for abuse of dominant position. Following the investigation conducted, the RCC found that HP Romania has abused of its dominant position by ending prematurely and without objective justification a contract through which it charged special prices for HP brand supplies delivered to an important client from business segment. The contract was handled through four partner companies: SC ISA SRL, SC KMP VEST SRL, SC S & T Romania SRL and SC Be Proffice SA / RTC Proffice Experience SA. The cancellation with 5 months before the expiry date of the contract in question and cease of existing trade relations with the four partners were done without any explanation from the dominant company HP Romania. In this case, the early cancellation of the contract and cease of existing trade relations with its partners were made by HP Romania without objective justification. During 2007-2011, HP Romania hold a dominant position on inkjet printers business market with a market share of 80%. The investigation was opened in 2012 further to a complaint.

56. The decisions of the above-mentioned cases can be found at: http://www.competition.ro/official_documents/competition/decisions

2.2 *Mergers and acquisitions*

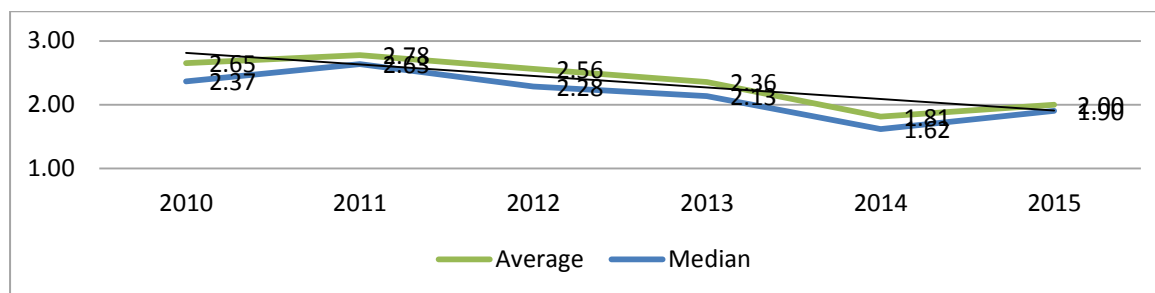
2.2.1 *Statistics on number, size and type of mergers notified and/or controlled under competition laws*

57. In the merger control policy, the main areas where the RCC has reviewed and approved such operations in 2015 were in the food, the banking and the energy sectors.

58. We mention some examples of mergers made in these sectors: the acquisition of Rio Bucovina by Tymbarc and of Whiteland Import Export by Hochland Romania (food sector); the acquisition of Volksbank by Banca Transilvania and of Nextebank by EEAF Financial Services BV and Emerging Europe Accession Fund Cooperatief (the banking sector); the acquisition of sole direct control by CET Govora over certain assets and liabilities of Oltenia Energetic complex (energy sector).

59. Following the notification, a number of 37 operations of economic concentrations have been authorized. The average duration of the economic concentration cases solved in 2015 was of 2 months.

Chart. Average/median time for the analysis of an economic concentration during 2010-2015 (months)



60. The amount of the authorization fees was of 2,061,767 lei (460,000 Euro). In most cases (57%), the economic concentrations were analyzed by the simplified procedure.

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

61. In 2015, in order to make compatible the legislative framework with the competition rules, binding opinions have been issued, point of views and opinions have been formulated for over 150 regulations initiated by the Government and legislative proposals of the Parliament, which focused on various sectors of the national economy (timber exploitation and commercialisation, public utilities, waste management, etc.).

62. A relevant example of pro-competitive reforms of the legislative framework is represented by the implementation, alongside with the Prime Minister's Chancellery, the Ministry of Public Finances and the OECD, of a project focused on the competitive impact assessment of the existing regulations in 3 fields of activity having a significant share in the GDP: the processing of agro-food products, transports and construction (mainly construction materials and organization of tenders in this sector). The output of the Project consists in a detailed Report assessing competition restrictions in the laws and regulations related to each of the three sectors and proposing Recommendations for improving the legislation.

63. We mention below some examples of draft normative acts that the RCC analysed in 2015 from the perspective of being in line with the competition rules:

- *three legislative bills to amend the Law no. 51/2009 on public services*

64. As concerns the first legislative bill, the RCC underlined in its viewpoint that this amendment “is contrary to the provisions on protection of competition and state aid, allowing distortion of competition by including the undertakings that are in association contractual relations with the beneficiary of public utilities service as an exemption provided for by Law No.51 / 2006.”“It was noted that the operator should be selected in a transparent and non-discriminatory way and direct assigning of services - by extending the ongoing contracts - means that the resulting price is not freely set, which would lead to closure of the market and extension of the monopoly situation. Also, the extension of contracts would lead to suspicion on the existence of state aid.”

65. The RCC’s viewpoint was taken into consideration and the draft normative act was rejected.

66. The second viewpoint on legislative proposals sounds as follows:

67. “The legislative bill has negative impact over the competitive environment on the markets of public utilities services and on other markets of public services. The proposed amendments lead to

widening of the entities sphere that could benefit from direct assigning of public utilities services administration by introducing the undertakings owned by administrative territorial units and broadening the sphere of public services set up by these administrative units subsequently. There are also competitive risks when operating and regulating functions are cumulated, both, in this case, being provided by the administrative-territorial unit."

68. The RCC's viewpoint was taken into consideration by both Government and Parliament.

69. Another legislative bill was also analysed that aimed at widening the modalities of delegation of public utilities services by including "indirect administration" as a new modality of services assigning, widening the sphere of undertakings that could benefit from direct assigning of contract of delegation of public utilities services administration and widening the sphere of situations when services management could be directly delegated to the operator set up by the public local administration authority by direct assigning of contract of delegation of public utilities services administration.

70. The RCC decided that amendments had a negative impact over the competitive environment and possibly on the state aid rules. Although the commission's report was adopted with amendments, the law was rejected by the Chamber of Deputies.

- *draft Law on the amendments and completion of the Law no. 46-2008 (Forest Code)*

71. The RCC communicated and claimed its viewpoint before Parliamentary commissions. Since the viewpoint was not taken into account during parliamentary debates, it was submitted to the President of Romania who requested its reviewing. The reviewing application was subsequently rejected by the Parliament.

- *draft Law on the access of SMEs to wood resource*

72. According to RCC's opinion addressed to the Commission for Agriculture within the Chamber of Deputies, the draft law contained provisions restricting the access of economic operators to raw material resources (wood mass) sold from state owned forests through tenders or negotiation procedure.

73. Basically, the legislative bill limited the possibility of participation in tender, imposing also an established threshold without a rigorous ground, which represented in terms of competition a discrimination sanctioned by the Competition Law.

74. In addition, the selectivity criterion for the wood mass buyers, included in the draft, would have provided an economic advantage from the state to certain companies, susceptible to have the character of State aid.

75. In December, 2015, the Chamber of Deputies rejected the draft law based on the negative report that included the arguments of the RCC.

4. Judicial review of RCC decisions in 2015

76. In the year 2015, the percentage of irrevocable decisions, favourable to RCC was 100%, meaning an increase by 4 p.p. relative to 2014. The fines irrevocably maintained represented 82% (an increase by 15 p.p. relative to 2014).

- *Fuel Cartel Case - MOL*

77. By decision no. 97/2011, the RCC sanctioned six oil companies with fines of almost RON 880 million (approx. Euro 205 million) for anticompetitive agreements. Further to the investigation, the competition authority found that the six companies had breached both the Competition Law and the Treaty on the Functioning of the European Union (TFEU) by agreeing on simultaneous withdrawal from the market of the assortment of Eco Premium gasoline: - SC OMV Petrom SA) – Ron 366,5 million - SC OMV Petrom Marketing srl – Ron 137,2 million - SC Rompetrol Downstream SRL – Ron 159,5 million - SC Lukoil Romania SRL – RON 136,8 million - SC Mol Romania Petroleum Products SRL – Ron 80,2 million - SC ENI Romania SRL – Ron 11,1 million The fines were executed by the National Agency of Fiscal Administration.

78. The High Court of Cassation and Justice has irrevocably confirmed the infringement of the competition law by the company Mol Romania by participating in a cartel agreement, together with other fuel companies, active on the fuel market. Nevertheless, the court has reduced the fine applied to the company Mol from lei 80, 2 million, as previously set by the RCC, to lei 64, 2 million.

- *Vertical agreements in pharma sector – Mediplus*

79. By Decision no. 98/2011, the RCC found that the producers SC Bayer SRL, SC Sintofarm SA and their distributors, including SC Mediplus Exim SRL (Mediplus) infringed the national and community competition rules by concluding anticompetitive agreements having as object and effect the restriction of competition by isolating the Romanian market and preventing the trade of Bayer products on other markets, including the common market.

80. Mediplus challenged the RCC's decision, but the Court of Appeal dismissed its application and upheld the decision, considering also that the sanction imposed was correctly individualized and the principle of proportionality correctly applied. The court considered that the competition authority based its findings on direct evidences, respectively on Bayer-Mediplus and Sintofarm-Mediplus distribution contracts, where the anticompetitive clauses were explicitly written and endorsed by Mediplus by signature.

81. Mediplus challenged also the Court of Appeal's decision. The High Court of Cassation and Justice confirmed the Court of Appeal's decision.

82. As concerns the individualization of sanction, both courts found that the fine applied to Mediplus was correctly applied, upholding the entire amount of it.

- *Abuse of dominant position- Romanian Post (Posta Romana)*

83. By Decision 52/2010, the RCC found that the National Company Romanian Post SA (CNPR) infringed the national and community competition rules by the following discriminatory treatment facts:

preferential treatment applied to Infopress Group SA compared to its competitors and discriminatory tariff reduction for supplying two postal services.

84. CNPR challenged the decision of the RCC and the Court of Appeal has reduced the fine applied by competition authority from lei 103 373 320 to lei 89,015,914 lei, confirming the existence of anticompetitive fact.

85. The RCC challenged also the Court of Appeal's decision in front of the High Court of Cassation and Justice that uphold the competition authority's decision both in terms of fine applied, respectively lei 103 373 320 and the existence of anticompetitive fact.

86. As concerns the individualization of sanction applied to CNPR, the High Court of Cassation and Justice underlined that the absence of case history cannot be regarded as a mitigating circumstance. To have fair market behaviour is a legal obligation of any undertaking and it should not be rewarded by applying mitigating circumstances in this respect.

5. Resources of competition authorities

5.1 Resources overall (current numbers and change over previous year):

5.1.1 Annual budget:

87. The 2015 budget was around €10.35 million. The 2016 budget is around €12.4 million. The value of non-refundable external funds in 2015 was 23% of total budget.

88. The budgetary execution in 2015 was 98.56%, without taking into account the projects with non-refundable external financing.

5.1.2 Human resources

In 2015, the staff of the Romanian competition authority represented 314 employees, divided in directions, services and compartments.

As in the other years, in 2015, the largest weight in the total number of staff is registered in the territorial directorate (28%), followed by the competition directorates and services (23.6 %) and the general secretariat with 15%.

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

The competition inspectors represent 68 % of the total number of staff.

As regards the professional background of the competition inspectors, most of them are economists (55%), followed by legal experts (21%).

In 2015, the RCC recruited on an undetermined period 8 people as competition inspectors and recorded 12 departures from the institution.

Continuous training is a core concern of the Competition Council. In 2015, 24 employees participated in 6 training courses.

More detailed information on the 2015 activity of RCC may be found in the RCC Annual Report 2015, which is available at: <http://www.consiliulconcurentei.ro/en/publications/annual-reports.html>.