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Annual Report on Competition Policy Developments in Romania

-- 2020 --

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Romania

1. Executive Summary

1. 2020 was a challenging year for each of us, incomparable to any other period, with the epidemiological crisis having implications on all economic and social activities.
2. In this context, the activity of RCC in 2020 has been marked by three major trends, i.e. the challenges posed by the pandemic and subsequent increased digitalization of the business models, the change and then quick adaptation to the new market conditions.
3. The COVID-19 pandemic has certainly and sometimes forcefully increased the pace of RCC's digital transformation towards becoming a paperless institution in certain areas which were not addressed or less addressed before such as the use of electronic signatures, the development of remote communications via VPN, use of videoconferencing tools on a regular basis, automated workflows for 90% of its activity and an electronic registry.
4. The year 2020 was a year abundant in legislative initiatives in competition area and competition-related areas, especially in digital field, for instance, for the enforcement of the EC Regulation on platform to business and EC Regulation on Foreign Investments. This is due to the intense reform of competition law currently under development at European level, with packages of measures started before or after the crisis, all of them of high importance for the business environment that needs to adapt to a mix of legislative amendments.
5. The enforcement and advocacy activities of RCC proved to be intense in 2020, especially, in food and pharma retailing sectors against the burst of the pandemic and the subsequent sudden and excessive increase of prices to basic food products and medicinal products included in the emergency stock.
6. Despite the difficulties surrounding COVID-19, the RCC continued in good conditions its regular activities: Thus, (i) economic concentrations continued to be examined according to the schedule provided by the relevant legislation and their number was more or less similar to the one recorded in previous years, i.e. 54, out of which 3 on financial services, pharmaceuticals, telecommunications markets were approved with commitments; (ii) antitrust investigations did not witness delays, the finalization degree being the best achieved so far, i.e. 88%, (iii) 13 investigations were finalized in 2020, with one less than in 2019, out of which 8 cartel cases and 1 abuse of dominant case finalized with fines, (iv) 13 investigations on possible infringement of the Competition Law were opened, with one more than in 2019, (v) 33 investigations on possible infringement of the Competition Law were ongoing at the end of 2020, more than half representing cartel-type agreements.
7. Overall, RCC applied fines of more than 400 million RON, a value that makes 2020 the third best year in which the highest fines were applied since RCC's establishment. The fines imposed were about 7 times the budget of the institution from public funds.
8. From a statistics perspective, year 2020 reveals that cartels prevailed in RCC's portfolio of closed cases (85%) as one of the main priorities of the RCC remains to prevent, detect and sanction such harmful anticompetitive behaviours.

9. RCC recorded in 2020 the highest percentage of recognized fines by the undertakings investigated for anticompetitive deeds, i.e. over 40% (abuse of dominant position of Dante International and bid-rigging cases in wood industry).
10. 9 impact investigations completed in key areas such as pharmaceuticals, financial services, road construction, transport, wood trading, agricultural machinery trading market and e-commerce and the lessons learned thereby will guide RCC's approach in future similar cases.
11. In advocacy field, the intervention for a differentiated claw-back tax for foreign innovative medicines relative to generic ones is a notable success. Also, in the area of liberal professions, RCC welcomed the Constitutional Court Decision no. 846/18.11.2020 that found unconstitutional the amendments and completion brought to the Law no.160/1998 for the organization and practice of the veterinary profession and even abolished the entire law. This decision supports RCC's past advocacy interventions in this area.
12. In 2020, the process of liberalization of natural gas supply to household customers was in the spotlight.
13. Regarding new sector inquiries/studies/analyses launched, the markets targeted are the following: the alternative passenger transport services mediated by ride-hailing digital platforms, natural gas liberalization of the gas supply for residential customers, natural gas wholesale segment in Romania, marketing of products and equipment set up as emergency medical stocks, influenza vaccines, PCR test and food marketing market.
14. In 2020, the RCC also improved the official website to a more user-friendly and mobile-friendly version.
15. Starting with 2020, a new directorate was set up within the institution, which has as main task to identify entry legal barriers on the national markets, as well as on the internal market of the European Union. This activity complements the RCC's efforts to protect and develop competition by removing or reducing barriers to entry.
16. In 2020, the RCC implemented six technical assistance and administrative capacity projects having as beneficiaries the competition authorities of Ukraine, Turkish Republic of Northern Cyprus, Serbia and Republic of Moldova. The competition authority also continued the internal implementation of the Big Data Project, as well as the licensing and procedures simplification for the business environment project (carried out together with the OECD and DG Reform).
17. The High Court of Cassation and Justice ruled that the provisions on the payment of half of the minimum fine, provided by the Law on measures to streamline the payment of fines are not applicable to the contraventional sanctions imposed by RCC's decisions.
18. Another very important judgment for the investigation of future cases is the decision of the European Court of Justice on the prescription of sanctions and interruptive acts, according to which the order to initiate an investigation is not the last act that interrupts the limitation period.
19. Last but not the least, in 2020, the High Court of Cassation and Justice maintained 82% of the total amount of the fines contested. Further, 80% of the decisions of the High Court of Cassation and Justice have been favourable to the Competition Authority in important cases.
20. This year's outstanding results, obtained in difficult conditions, are the result of the team's involvement and efforts.

21. In 2021, the RCC aims to complete investigations in important areas, such as: insurance, energy, food products etc.
22. At the legislative level, the priorities for 2021 are resuming/continuing the inter-ministerial approval process of the draft normative acts necessary for the adoption in the national legislation of the necessary measures for the application of the European Regulation on online platforms – Platform to Business and of the European Regulation establishing a framework for the examination of foreign direct investment in the Union (FDI), for the transposition into the national law of the ECN + Directive, for the finalization of the legislation on compulsory motor insurance and for the transposition of the Unfair Commercial Practices Directive within the agricultural and food supply chain.
23. The transposition into the national law of the Directive on unfair commercial practices of companies operating within the agricultural and food supply chain is also envisaged in Romania due to the need to strengthen the bargaining power of farmers and small and medium-sized enterprises within the food supply chain, by prohibiting certain unfair commercial practices.
24. RCC is particularly interested in the process of liberalizing the electricity and gas markets. If for the gas market, the direction is clearer, for the electricity market, the process seems more difficult. The goal is both liberalization processes to be efficient, so that consumers get the best price and best associated services.
25. The Big Data project stands out among the major projects carried out within the institution. It aims to optimize the interaction of the institution with the business environment and to implement advanced mechanisms of data analysis and exchange. Another important project is the one carried out in collaboration with the OECD aiming at modernizing the Romanian licensing process and at its alignment with the best international standards, including the simplification of procedures for the business environment.
26. As in the past years, in 2021, RCC will focus all its efforts on protecting a normal competitive environment, for the benefit of consumers.

2. Enforcement of competition laws and policies

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

2.1.1. Summary of activities

27. In 2020, an atypical year due to the health crisis, the institution had to cope with the challenges of new economic and social realities and to conduct its activities taking into account different functioning constraints.
28. Even in such a context, the results of the RCC's activity are notable. Thus, RCC conducted specific studies and analyses for the new context, such as those related to food products, medical protective equipment, influenza vaccines or tests for COVID-19 detection.
29. Yet, RCC did not find any steady unjustified price increases. However, a high variation of prices has been found with respect to a rapid Covid-19 antigen test sold online depending on the purchasing platform which determined the adoption of certain recommendations. Overall, the price trends for medical products and equipment as well as for basic foodstuff continue to be monitored by RCC.

30. It has also made intensive use of the Price Monitor Platform initially developed for basic food products and fuels and then extended last year to sanitary protection products, due to the pandemic, offering thus consumers the possibility to compare prices store chains charge for these categories of products.

31. The number of investigations on possible competition law infringement initiated in 2020 increased by 45% compared to previous year, from 9 to 13 such proceedings. Horizontal agreements continued to have the largest share in the total new competition infringement investigations, this being a signal that this type of practice remains under the scrutiny of the institution.

32. 13 competition infringement investigations were finalized, out of which a record number targeted, as mentioned above, horizontal agreements (11 investigations), this being the largest number of investigations with this object completed annually between 2010 and 2020. The competition infringement investigations finalized in 2020 had an average duration of 2.7 years (approximately 2 years and 8 months), most of them having a time length closed to 2.5 years (2 years and 6 months). These values remain close to the minimum value of this indicator in the past years.

33. The value of fines applied registered a record level, of approximately 400 million lei, well above the average of fines applied between 2012 and 2020. Sanctioned companies that admitted their anticompetitive practices account for approximately 40% of the total fines, with most of the sanctioned anticompetitive practices being cartels (89%). The increase of acknowledgment statements seems to be the result of RCC's active advocacy of the recognition procedure's benefits.

34. 9 impact investigations completed in key areas such as pharmaceuticals, financial services, road construction, transport, wood trading, agricultural machinery trading market and e-commerce and the lessons learned thereby will guide RCC's approach in future similar cases.

35. First, RCC defined for the first time at European level, the relevant market on which online platforms operate (the market of online intermediation services in Romania via marketplace platforms), found an abuse of dominant position of the Dante platform consisting in manipulating the algorithms for positioning its own products offered as a seller, marketed by the platform and imposed some measures to prevent such behaviour in the future. The company recognized that it abused from its dominant position.

36. Second, in the financial leasing area, RCC established in the exchange of strategic information type of cartel case concluded, what type of information undertakings can exchange and how often. Following this investigation, RCC sanctioned with approximately 8.4 million euros the Association of Romanian Financial Companies - ALB and 16 of its member companies.

37. Third, in the wood industry, RCC analysed a huge amount of acts and applied the highest fine of 26.6 million EUR to the companies operating in the Romanian wood trading market for coordinating their behaviour through exchange of commercial sensitive information.

38. Apart from sanctioning the 31 undertakings involved in the 45 bid rigging schemes implemented, RCC sanctioned also the undertaking that took over the assets representing the infringement object by applying for the first time in its practice the economic continuity principle. 13 companies admitted the competition law infringement.

39. Fourth, in the agricultural machinery equipment and supplies' market, a foreign company with no presence in Romania who engaged in bid-rigging schemes involving EU funds was sanctioned based on world turnover. The case determined certain clarifications

to be brought to RCC's sanctioning policy, especially in the case of companies with no presence in Romania, i.e. segments of reduction of the fines of up to 90%.

40. Fifth, in 2020, RCC applied fines of approx. 2.6 million Eur to GlaxoSmith Kline for breaching part of the commitments assumed by decision to withdraw a drug from the market, following an investigation for abuse of dominant position settled by commitments in 2017. More specifically, the GSK, through its conduct, has stopped supplying three pharmaceutical forms of Seretide on the Romanian market before the completion of the 2 year's term undertaken according to the commitments. Glaxo Smith Kline becomes also the fourth company fined by the RCC for failure to comply with the commitments assumed.

41. 2 cases of facilitators of cartels (Transgaz and Tarom) and 1 case of cartel within a consortium (on road rehabilitation market) represent other highlights of 2020.

42. A sector inquiry (on the market for copyright and related rights) was completed in 2020 with recommendations for improving the competitive environment and two more sector inquiries were initiated.

43. The number of mergers authorized in 2020 remained in line with the values of previous years, which shows that the concentration process within various economic sectors was not affected strongly, even if it was a difficult year. In addition, the average duration for the analysis of a merger remained at a low level, of 1.8 months. Mergers that require full analysis and which are finalized with commitments have the longest analysis duration. Their number increased in 2020 compared to previous year and, consequently, the result is reflected in the increase of the average analysis period (the longest analysis of a merger was of 6.7 months). The average duration of merger analysis carried out by simplified procedure was at the level of the previous year (1.2 months), while the average duration of the merger analysis carried out by complete procedure increased slightly compared to the previous year (from 2.1 to 2.3 months).

Opened investigations

44. Despite the unfavourable context represented by the pandemic, the number of investigations on possible competition law infringements initiated in 2020 increased by 45% compared to previous year, from 9 to 13 such proceedings. Horizontal agreements continued to have the largest share in the total new competition infringement investigations, this being a signal that this type of practice remains under the scrutiny of the institution.

45. Most part of the investigations have been initiated ex-officio, i.e. 8 investigations whereas 5 following complaints.

46. As concerns the structure of investigations on alleged breach of competition legislation opened in 2020 depending on the investigated practice, 46% of the investigations opened in 2020 envisaged horizontal agreements. The cases of agreements with multiple object and vertical agreements cumulated 23% of the total number of investigations opened in 2020, these representing types of investigations that lacked from the structure of investigations opened by the competition authority, at least over the last two years.

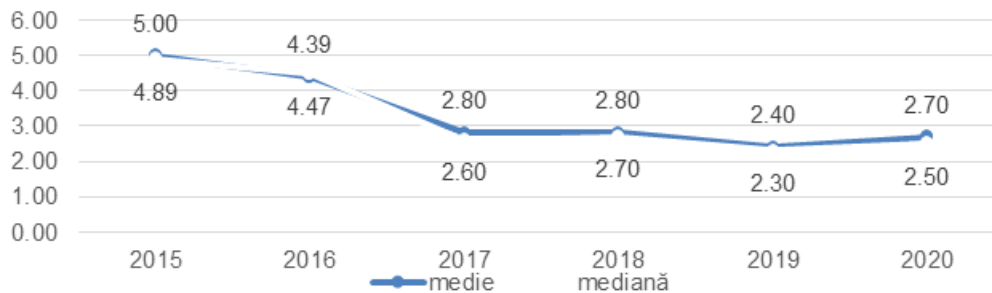
Completed investigations

47. 13 competition infringement investigations were finalized in 2020, out of which a record number targeted horizontal agreements (11 investigations), this being the largest number of investigations having this object that was annually completed between 2010 and 2020.

48. In 2020, the finalized investigations envisaging breaches of national competition legislation have had a relatively balanced weight relative to the finalized investigations representing breaches of both national and community legislation (46% relative to 54%).

Figure 1. Duration of concluded investigations on alleged breach of competition law, 2015-2020

(years)



49. The competition infringement investigations finalized in 2020 had an average duration of 2.7 years, most of them having a time length closed to 2.5 years. These values remain close to the minimum value of this indicator in the past years.

Fines

50. The value of fines applied in 2020 registered a record level, of approximately 400 million lei, well above the average of fines applied between 2012 and 2020. Sanctioned companies that admitted their anticompetitive practices account for approximately 40% of the total fines, with most of the sanctioned anticompetitive practices being cartels (89%).

51. Out of the 90 undertakings sanctioned in 2020, 23 acknowledged the anticompetitive deeds benefiting thus from fine reduction.

Ongoing investigations

52. In 2020, RCC continued to maintain a low number of ongoing investigations into possible breach of competition law at the end of the year (33 investigations), this indicator being close to the minimum level of the period considered.

53. More than half of ongoing investigations envisage possible horizontal agreement-type infringements (68.8% of total investigations) and followed by possible abuses of dominant position.

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

Public passenger transport services by road¹ - cartel

54. Within an ex officio investigation launched in 2018, the Competition Council analysed a possible anticompetitive behaviour on the market of public passenger transport

¹ The decision is available in Romanian at the following link:

www.consiliulconcurentei.ro/documente_oficiale/concurentă/decizii/directia_teritorială

service between Bucharest and Ilfov County, consisting in reaching an agreement to limit (to suspend) the service in 2018.

55. Following the investigation, it was found that 18 competing companies have jointly decided to suspend the public passenger transport between Bucharest and Ilfov County starting with November 1st, 2018. A joint decision of certain competing companies to limit or, in this case, even to interrupt the provision of a service is a breach of the competition law.

56. The responsibility lies with the 18 companies that participated directly in the anticompetitive practice, as well as with the Confederation of Authorized Operators and Carriers in Romania (COTAR), as a facilitator of the anticompetitive practice.

57. In this case, by Decision no. 55/2020, the Competition Council found an infringement of the national competition law and decided to sanction Allegro Maxi Taxi SA, Anbo SRL, Axi Tours Izi SRL, Brebenel Impex SRL, C&I Grup International SRL, CDI Transport Intern and International SRL, Condor Impex SRL, G&S Tours SRL, Georgio Trans SRL, Madcom DLS Impex SRL, Millennium Trans Impex SRL, Miruna Trans SRL, Nicarom Trans Express SRL, Omerta Impex SRL, Ridm Impex SRL, Trans Cyty 2002 SRL, Transvib Serv SRL and Vretas Impex SRL, as well as COTAR with total fines of 5,054. 569.22 lei (approximately 1 million euros).

Timber commercialization² - cartel

58. Following an ex officio investigation opened in 2016, the Competition Council analysed several tenders organized during 2011-2016 by various administrators or forest fund owners and found that, in 45 of them, a number of 30 companies infringed the competition rules by reaching agreements and/or concerted practices for the distribution of wood partitions/lots, as well as/or for the distribution of supply sources.

59. Thus, companies coordinated their behaviour through exchanges of commercially sensitive information regarding the raw materials, the timber procurement policy and the commercial strategy of participation within certain tenders or the conduct of bidding/not bidding for certain timber partitions/lots. In this way, companies removed competition between them within the tenders submitted in order to award the timber at the lowest possible price, most of the time, to the detriment of the State that collected less money.

60. Following this investigation, by Decision no. 71/2020, the competition authority found the infringement of both national and EU competition law and sanctioned 31 companies with fines totaling 129,684,823 lei (approximately 26.6 million euros): Alredia SRL, Argatu Cristi Individual Enterprise, Cupamaru Prodcom SRL, Egger Romania SRL, Euromarchet Impex SRL, Explosiv Group SRL, Fagus Forest Prod SRL, Forest Land SRL, Forestar SA, Frasinul SRL, Ful Prod Company SRL, Gelu Transexplor SRL, Genex Com SRL, Gilfor SRL, Gyorgy L. Tibor Individual Enterprise, LV Transilvania SRL, HS Timber Productions SRL, Kronospan Romania SRL, Kronospan Sebeş SA, Kronospan Trading SRL, Limsilva Forest SRL, Raumont Impex SRL, Sylvania International Prod SRL, Silva Logistics Services SRL, Simi-Con Exploatare SRL, Simicom SRL, Sirva-Tour SRL, Sorin-Alcos SRL, Trans Monica SRL, Valcon SRL and Vortex SRL. It is worth mentioning that Kronospan Trading SRL is among the sanctioned undertakings to which the contravention liability was attributed in connection to the anticompetitive practices of Kronospan Romania SRL and Kronospan Sebeş SA.

² The decision is available in Romanian at the following link:

www.consiliulconcurentei.ro/documente_oficiale/concurentă/decizii/directia_teritorială.

61. A number of 13 companies admitted the infringement of the competition law and benefited from reductions of the fines (Alredia SRL, Egger Romania SRL, Explosiv Group SRL, Fagus Forest Prod SRL, Forest Land SRL, Genex Com SRL, HS Timber Productions SRL, Kronospan Romania SRL, Kronospan Sebeş SA, Kronospan Trading SRL, Limsilva Forest SRL, Sylvania International Prod SRL, Silva Logistics Services SRL).

62. Following this investigation, the RCC also submitted certain recommendations for improving the competitive environment in the sector.

*Financial services - cartel*³

63. Within an ex officio investigation initiated in 2017, the RCC analysed a possible cartel-type anticompetitive practice in the financial leasing and consumer credit market. The act concerned an exchange of information between competitors regarding the value of current and future financing and some elements with a high degree of detail, such as the value of goods, the financed period, the residual value, the leasing portfolio etc.

64. All this has led to excessive market transparency, giving competitors the opportunity to adapt their business strategies accordingly.

65. This practice was facilitated by the Association of Romanian Financial Companies - ALB, but also by a company that applied for leniency, providing the competition authority with the information necessary to launch the investigation in 2017. Also, a company acknowledged its participation in the anticompetitive practice, which led to a reduction in the imposed fine.

66. By Decision no. 68/2020, the RCC noted an infringement of the national and EU competition law and sanctioned with fines totalling 41,251,774 lei (approx. 8.47 million euros) the Romanian Financial Companies Association - ALB and its 16 member companies (Alpha Leasing Romania IFN SA, BCR Leasing IFN SA, BRD Sogelease IFN SA, BT Leasing Transilvania IFN SA, Idea Leasing IFN SA, Impuls Leasing Romania IFN SA, Motoractive IFN SA, OTP Leasing Romania IFN SA, Piraeus Leasing Romania SA, Porsche Leasing Romania IFN SA, Raiffeisen Leasing IFN SA, RCI Leasing Romania IFN SA, RD Leasing IFN SA, Ţiriac Leasing IFN SA, Unicredit Leasing Corporation IFN SA and Vista Leasing IFN (Romania) SA).

67. Following the investigation, ALB adopted measures to comply with the competition law, implementing a "black box" project. Thus, ALB concluded a contract with a consulting firm that centralizes and processes only past information (not companies' future intentions) and then presents them in an aggregated form (which does not allow the identification of the strategic information from participants).

*Sale of agricultural machinery - cartel*⁴

68. The investigation was initiated following the information received in 2017 by the RCC through the Competition Warning Platform and had as object a cartel on the Romanian market for the sale of specialized agricultural machines, machinery and equipment.

³ The decision is available in Romanian at the following link www.consiliulconcurentei.ro/documente/oficiale/concurentă/decizii/serviciul_carteluri.

⁴ The decision is available in Romanian at the following link www.consiliulconcurentei.ro/documente/oficiale/concurentă/decizii/serviciul_carteluri.

69. Following the investigation, the competition authority found that, between 2014 and 2018, the companies involved participated in two agreements:

- an anticompetitive agreement aiming at coordinating the commercial behavior of fixing the selling price used when marketing CLAAS brand products in Romania, by Claas Global Sales GmbH, Claas Regional Center South East Europe SRL, Agrocomert Holding SA, Proagroservice SRL, Proinvest SRL, Serv Class SRL, Tehnoland SRL and Ursa Mare Comprod SRL;
- an anticompetitive agreement aiming at coordinating commercial behaviors of fixing the selling price used when marketing AMAZONE brand products in Romania, by Amazonen-Werke H Dreyer GmbH & CoKG, Agrocomert Holding SA, Proagroservice SRL, Proinvest SRL, Serv Class SRL, Tehnoland SRL and Ursa Mare Comprod SRL.

70. The trade policies coordination took place in the context of a database setting up at the level of the Agency for Financing of Rural Investments. This database included reference selling prices for the equipment financed from the European funds, granted through the National Rural Development Program.

71. The discussions between competing companies concerned, on the one hand, the registration of CLAAS and AMAZONE brands in the AFIR database and, on the other hand, setting the prices charged for projects co-financed by European funds, as well as the minimum price level to be used for customers, regardless of the source of financing.

72. The investigation found a breach of both national and European competition rules for fixing sales prices for CLAAS and AMAZONE products, respectively.

73. The RCC sanctioned the nine companies involved with fines totalling 126,981,967 lei (approximately 26.5 million euros). Agrocomert Holding SA and Ursa Mare Comprod SRL admitted their anticompetitive behaviours and benefited from a fine reduction.

Rehabilitation of streets – bid-rigging⁵

74. The investigation analysed a possible anticompetitive behaviour of an association of 5 companies, when participating in the public procurement procedure for "Rehabilitation of streets in the city of Pitești", organized in 2018 by the Public Domain Administration of Pitești. The investigation was initiated in the same year, following a referral of the contracting authority requesting the RCC to issue a point view on the possible distortion of competition.

75. The analysis revealed that, when participating within the public procurement procedure aiming at rehabilitating the streets in Pitești, the 5 competing companies used the appearance of legality by forming an association so that they do not compete with each other and share the contracts related to the corresponding five lots.

76. Associations of undertakings are permitted by public procurement and competition law unless they are intended to eliminate or restrict competition. From the analysis of the association's compliance with competition rules, it was established that each of the companies involved could individually meet the requirements set out in the award documentation, having the ability to participate with individual tenders in the investigated public procurement procedure.

⁵ The decision is available in Romanian at the following link:

www.consiliulconcurentei.ro/documente_oficiale/concurență/decizii/serviciul_carteluri.

*Online platforms – Abuse of dominant position*⁶

77. In 2017, the competition authority initiated an ex officio investigation on a possible abuse of dominant position of Dante International SA (Dante) on the market of intermediation services through online platforms in Romania.

78. Dante's main object of activity is the retail trade of household appliances, in specialized stores. In Romania, the company operates as a general retailer, through the eMAG platform (www.emag.ro) and through 15 physical stores/showrooms and as the owner and administrator of the online marketplace platform.

79. The investigation mainly focused on the presentation and marketing of products on the eMAG platform and also on the existence and use of algorithms and other specific tools for listing and presenting product offers.

80. Following the investigation, the RCC found that Dante, as owner and administrator of the online platform eMAG Marketplace (www.eMAG.ro) abused its dominant position between January 2013 and June 2019 by positioning and giving a more favourable display for its own product offer to the detriment of its partners' offer using the platform and with which it was in direct competition.

81. By Decision no. 67/2020, the competition authority found a violation of the national and EU competition law and sanctioned Dante with 32.28 million lei (approximately 6.7 million euros). It should be noted that the company admitted the anticompetitive behaviour and benefited from a fine reduction.

82. To avoid a repetitive conduct, the RCC imposed certain measures regarding the algorithms used by the platform, Dante having the obligation to fully and correctly inform the partner traders on how the algorithms work as regards listing and positioning products on the platform, and to limit manual interventions in the operation of relevant algorithms.

83. At the same time, the company must develop changes in the organizational structure, create a system for managing data collected and stored through the platform, so that access to this aggregated data is achieved in a non-discriminatory manner. At the same time, Dante needs to improve its complaints policy, by creating a set of good practices in managing the relationship with the participants on the platform.

Pharmaceutical products – non-compliance with commitments

84. In 2020, the RCC applied fines of 11,961,550 lei (approx. 2.6 million Eur) to GlaxoSmith Kline (GSK) for breaching part of the commitments assumed and made mandatory by decision to withdraw a drug from the market, following an investigation for abuse of dominant position settled by commitments in 2017 (Decision no. 84/2017).

85. More specifically, the GSK, through its conduct, has voluntarily stopped supplying quantities of three pharmaceutical forms of Seretide on the Romanian market before the completion of the 2 year' term undertaken according to the commitments assumed by the GSK. GSK becomes also the fourth company fined by the RCC for failure to comply with the commitments assumed.

⁶ The decision is available in Romanian at the following link - www.consiliulconcurentei.ro/documente_oficiale/concurentă/decizii/bunuri_de_consum.

86. The effect resulted in the impossibility of marketing the products in question after November 6th, 2019, when the validity of the prices in CaNaMed⁷ expired. Another effect of GSK's challenge of the pricing established by the Ministry of Health is the fact that, in November 2019, the products in question were removed from the list of reimbursed drugs of the National Health Insurance House. At the same time, GSK knowingly adopted irreversible measures to restrict the demand by informing doctors, since the summer of 2019, on the cessation of marketing of the three main forms of Seretide.

Pharmaceutical products⁸ – Merger with commitments

87. By Decision no. 35/2020, the RCC authorized with conditions the transaction through which Help Net Farma SA (Help Net) took over the sole control of the goodwill related to a number of 63 pharmacies belonging to Farmaceutica Remedia SA.

88. Help Net is part of the German group Phoenix, that provides integrated health services, at European level, with an active presence in 27 countries and it has as main object of activity the retailing of pharmaceutical products through specialized stores and operates a pharmaceutical chain in Romania consisting of over 300 pharmacies. Through Farmexim SA, in Romania, the Phoenix group also carries out activities in the field of wholesale of pharmaceutical and para-pharmaceutical products.

89. The purchased pharmacies are owned by Farmaceutica Remedia SA, a joint stock company having as main object of activity the retailing of pharmaceutical and para-pharmaceutical products through specialized stores.

90. Following the analysis, the RCC considered that the merger raises concerns on the retail market for pharmaceuticals and para-pharmaceuticals for a single pharmacy, located in Bucharest, where the cumulative market shares of the parties involved exceeded the threshold of 40%, which, according to the Competition Law, is presumed to be a dominant position. As a result, the transaction was authorized provided that the commitments made voluntarily by Help Net were respected, namely the selling of the pharmacy.

Electronic communications services – merger with commitments⁹

91. By Decision no. 38/2020, the RCC authorized with conditions the transaction through which RCS&RDS SA acquired the sole control over certain assets of AKTA Telecom SA, Digital Cable Systems SA and ATTP Telecommunications SRL.

92. The commitments assumed by RCS&RDS regarding the clients in order to address RCC's concerns are binding for a period of 3 years from the transaction's completion date. They mainly refer to the undertaking made by RCS&RDS to upgrade the networks and to provide to at least 95% of the clients communications services of the same technical quality as offered to its existing customers.

93. In addition, RCS&RDS has to offer to all customers the opportunity to benefit from the packages and prices offered by RCS&RDS to its existing customers and refrain from price increases during the three year period under review.

⁷ National catalog of prices for prescription drugs.

⁸ The decision is available in Romanian at:

www.consiliulconcurentei.ro/documente_oficiale/concurenta/decizii/bunuri_de_consum

⁹ The decision is available in Romanian at:

www.consiliulconcurentei.ro/documente_oficiale/concurenta/decizii/servicii.

94. The commitment assumed by RCS&RDS as concerns the relationship between RCS&RDS and the TV Channel providers in order to address RCC's concerns is binding for a five-year period as of the date of the authorisation.

95. The commitment refers to the undertaking made by RCS&RDS that, in case it does not reach a commercial agreement with any TV Channel provider for inclusion of such channel into its Basic TV Package, then it will offer the provider the possibility to carry such channel as a pay tv offering which shall be provided to customers in exchange for an additional charge. The price of such pay tv channel will be mainly determined by the TV Channel provider.

Integrated cash management services – Merger with commitments¹⁰

96. By Decision no. 49/2020, the Competition Council authorized with conditions the transaction consisting in changing the control over CIT One S.R.L., from the sole control of BCR, to the joint one of BCR, BRD and Raiffeisen Bank.

97. Founded in 2009 as BCR Procesare, CIT One is a provider of integrated cash management services (transport of cash and other valuables in armored vehicles, cash processing, technical assistance services for ATMs), offering its services nationwide.

98. As the transaction had an EU dimension, the notifying parties submitted a request to the European Commission asking for the transaction to be examined by the RCC. The request was validated by the European Commission.

99. The economic motivation for the notified merger was that a specialized company, such as CIT One, needs to invest in assets (e.g., armored vehicle fleet, processing equipment, IT and security equipment etc.) in order to remain competitive on the market. The entry of other companies into the shareholding of CIT One will allow new investments, which will improve the activity of CIT One on the market and reduce any existing inefficiencies.

100. With regard to the new shareholders, their motivation is the need to have a stable and reliable supplier. Cash management services are of interest in the activity of credit institutions (banks), as it is necessary to meet the current demands internally as well as the needs of their corporate clients. For credit institutions, the continuity of their relationship with the cash management services provider is important, as it is a function under the supervision of the National Bank of Romania.

101. Following a review of the transaction, the RCC found that it could impact competition on the cash management services market. As a result, BRD, BCR and Raiffeisen Bank have committed to implement a set of measures to ensure compliance with competition rules regarding their interaction with CIT One as shareholders and as customers. The three banks also pledged that CIT One's pricing policy should be based on fair and non-discriminatory principles.

2.2. Judicial review of RCC's decisions in 2020

102. In 2020, there were 225 cases in which the RCC had a procedural quality and which concerned the field of competition. These files accounted for 87% of the total number of files handled in court by the institution.

¹⁰ The decision is available in Romanian at: www.consiliulconcurentei.ro/documente_oficiale/concurență/decizii/servicii.

103. The percentage of favourable judgments handed down by the first court of instance, the Bucharest Court, was 89%, the Court maintaining 81% of the amount of the sanctions contested in the files resolved in 2020.

104. The proportion of judgments favourable to the RCC given in appeal by the High Court of Cassation and Justice is 79%. At the same time, the Supreme Court maintained 82% of the total amount of fines appealed.

105. We present below two irrevocably settled cases in 2020 by the High Court of Cassation and Justice.

2.2.1. Optimedia case – cartel on the media services market

106. By the Decision of the RCC no. 49/2014, Opti Media was sanctioned for violating national and European competition law, consisting of an agreement aimed at eliminating from the market of marketing media services in Romania of competing media agencies, belonging to or being affiliated to The Group.

107. By action for annulment against the decision of the RCC, Opti Media sought, *inter alia*, the annulment of the decision and, subsidiarily, the reduction of the fine by applying it to the turnover determined in accordance with the provisions applied to the media agencies, respectively point 152 of the Guidelines on the concepts of economic concentration, enterprise involved, full operation and turnover.

108. By the civil sentence no. 2911 / 11.07.2017 passed by the Bucharest Court of Appeal, the first instance court admitted the action filed and ordered the complete annulment of Decision 49/2014, regarding Opti Media.

109. In the recitals of the Sentence no. 2911/2017, regarding the deed found and sanctioned, the court showed that Decision no. 49/2014 correctly analyzed the content and purpose of the agreement, legally holding that it was likely to affect competition itself as such, by changing one of the essential parameters, namely the market structure, and these elements are sufficient to retain the suitability of the agreement to prevent, distort or restrict competition, as Opti Media's claim regarding the insufficient evidence of the high anti-competitive potential of the agreement is manifestly unfounded.

110. However, the court annulled Decision no. 49/2014, holding that this is illegal, as the contraventional fine was applied in violation of the legal provisions regarding the determination of turnover, to which the contraventional sanction of the fine is applied in the case of media agencies, falling under the provisions of point 152 of the Guidelines on the concepts of economic concentration, the undertaking concerned, full functioning and turnover.

111. Both the RCC and Opti Media filed an appeal against the sentence handed down by the Bucharest Court of Appeal.

112. The Court of second instance dismissed Opti Media's appeal and upheld the competition authority's appeal, holding that the Guidelines on the concepts of concentration, the undertaking concerned, full functioning and turnover, including the provisions of paragraph 152, effect of which had been upheld at first instance, cannot constitute the ground for adjusting the total turnover relevant for the determination of the basic level of the fine.

2.2.2. The decision of the High Court of Cassation and Justice on the norms applicable in case of certain sanctions of the RCC – clarification of certain law matters

113. By Decision no. 72/09.11.2020, pronounced in the file no. 2372/1/2020 having as object the clarification of certain law matters, the High Court of Cassation and Justice stated that „The provisions of Art. 22 align. (2) of Law no. 203/2018 with further amendments on measures to streamline the payment of contraventional fines, are not applicable as concerns the contraventional fines enforced by decisions of the RCC in virtue of Art. 55 align. (1) of Competition law no. 21/1996, republished, with further amendments and completions.”

114. The panel for clarifying legal issues from the High Court of Cassation and Justice thus invalidated the reasoning of several companies sanctioned by the RCC who argued that debts represented by fines imposed by decisions of the competition authority can be cleared by paying half of the minimum fine provided by law.

115. The High Court of Cassation and Justice mentioned that the application of Art. 22 para. 2 of Law no. 203/2018 would empty the content of the deterrent nature of the fines provided by the Competition Law, with the possibility of having reached the situation where an undertaking carrying out an anti-competitive practice can pay only half of the minimum amount of 0.5% provided by law, respectively 0.25%, so 40 times less than the maximum percentage of 10% provided by Art. 55 of Law no. 21/1996, in the context in which high levels of fines are intended to punish practices that distort competition, to inhibit other infringements of competition policy rules and to prevent economic strategies from assuming the payment of half of the minimum fine provided by law, in the consideration of a higher profit obtained from committing the deed.

116. The High Court of Cassation and Justice ruled that the provisions on the payment of half of the minimum fine, provided by the Law on measures to streamline the payment of fines are not applicable to the contraventional sanctions imposed by RCC’s decisions.

117. Another very important judgment for the investigation of future cases is the decision of the European Court of Justice on the prescription of sanctions and interruptive acts, according to which the order to initiate an investigation is not the last act that interrupts the limitation period.

3. The role of RCC in the formulation and implementation of other policies

118. Overall, the RCC issued 159 opinions, 6 point of views and 26 advisory opinions and it launched consultation procedures and technical support to the Government, Parliament and other authorities and bodies with regulatory role.

119. In 2020, the process of liberalization of natural gas supply to household customers was in the spotlight. In this context, RCC carried out analyses and collaborated with other authorities in order to improve consumers' access to relevant information, but also to verify the general commercial conditions and provisions of gas supply contracts.

120. Due to the pandemics, meetings have been limited, so that the main exchanges have been conducted in a written form, as detailed below.

121. Some of the opinions sent by RCC included a series of recommendations that have been successfully observed by the legislators. The most notable ones are the following:

122. In the health field:

- Export ban on medical devices and sanitary equipment used to prevent and treat Coronavirus associated afflictions, for 6 months;
 - Export ban on NCMP (National Catalogue of Medicinal Products) medicines, except for those produced in Romania. The RCC has stated that an export ban can be justified if there is a major public interest, such as ensuring people's health, in respect of the proportionality principle. Such a measure is only possible, however, in exceptional cases and in a time limited framework, so that: (i). it does not become a general rule, (ii). only the necessary measures, in order to achieve the public interest may be adopted and (iii). the situation does not imply an arbitrary means of discrimination or a dissimulated restriction for the commerce between Member States. Subsequently, the above-mentioned Order has been replaced by Order no 672/2020 (on which the RCC opinion has not been asked for), which has, nevertheless, a more flexible approach on export bans - the 6 months export ban is only applied to medicines included in the Coronavirus Treatment Protocol, as well as for medicines having a high discontinuity risk for chronic diseases during the pandemics;
 - Draft law on basic drugs' cap prices, by introducing a maximum 10% mark-up, not only on the production, but also on the distribution chain of such medicinal products. The RCC has stated that price regulation might have negative consequences, such as the distortion of the optimal level of supply or demand, rent-seeking, facilitation of tacit collusion among producers in order to align prices or even regulation delays, which might lead to an inappropriate price.
123. In the agri-food products field:
- The RCC has analyzed the draft law on amending and supplementing Government Ordinance no 99/2000 on marketing goods and services. The amendment refers to the installation of sales structures bigger than 400 square meters exclusively in the suburban perimeter. The RCC stated that it is beneficial for consumers to have more choices and access to many retailers and also that competition between the modern and the traditional commerce should be conducted without or with limited interference from the state;
 - The RCC has expressed its opinion on law project on agri-food cap prices, by introducing a maximum 10% mark-up, not only on the production, but also on the distribution chain of basic groceries. The RCC has stated that price regulation might have negative consequences, such as the distortion of the optimal level of supply or demand, rent-seeking, facilitation of tacit collusion among producers in order to align prices or even regulation delays, which might lead to an inappropriate price;
 - The RCC has expressed its opinion on the Coronavirus Therapeutic Protocol, which refers to the commercial denomination of a medicinal product (Kaletra, DCI Loponavir/Ritonavir), for the treatment scheme for the easy/no pneumonia disease form, as well as for the early stages of Coronavirus infection. The RCC has stated that including the commercial denomination of a medicinal product in the treatment scheme for the easy/no pneumonia disease form, as well as for the early stages of Coronavirus infection might lead to creating a competitive advantage to the producer AbbVie Deutschland GmbH, as well as a disadvantage to the other producers of Loponavir/Ritonavir active substances, such as Accord Healthcare Polska SP Zoo, Mylan SAS and Terapia SA. Nevertheless, the legal limitation of doctors prescribing a certain commercial denomination to patients infected with Coronavirus might be justified by the existence of a major public objective, such as ensuring public health, if objective, medical considerations lead to the

conclusion of superior clinical results for using the above-mentioned commercial denominations versus any other competitor commercial denominations;

- The RCC has successfully advocated for the adoption of a differentiated claw-back tax by Law 53/2020 for financing certain expenses in the healthcare sector. Thus, the Law 53/2020 provides the following reduced but differentiated claw-back taxes: 25% for foreign innovative drug manufacturers, 20% for foreign generic drug manufacturers. In each case, the percentage will be applied to the total consumption communicated by the National Health Insurance House. The Law provides also for a reduction of the “claw-back tax” to 15% for domestic drug manufacturers (both generic and innovative), based on consumption reported by the National Health Insurance House. Regarding the provision stating that a different claw-back tax should be applied to medicinal products based on their fabrication area, even if it can be perceived as encouraging local manufacturing, any difference does not necessarily constitute discrimination, if there are pertinent and objective differences regarding the situation of the envisaged medicinal products;
- While investigating a possible abuse of a dominant position on the market of services related to therapeutic mineral water supply, in addition to solving the case, the RCC has done a brief analysis of the whole Romanian spa sector. Having in mind the general Romanian spa sector, deeply affected by the Coronavirus pandemics during 2020, the RCC has advised the authorities to consider additional support measures for the spa sector in Romania, subject to budgetary resources and in respect of state aid provisions. Thus, one of the possible options to consider would be differentiated value vouchers, according to the destination and their use. Therefore, vouchers destined to a spa treatment in a spa resort and to a hotel which might ensure adequate treatment facilities might have a higher value than the vouchers to be used in the classical tourism, outside the spa sector.

124. Legal changes proposed

- Essential legal changes in 2020 consist in the elaboration of two important normative act projects in digital area, in the form of draft Government Emergency Ordinances aiming at establishing the necessary measures to ensure the enforcing of the Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investment into the Union and of the Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services;
- Another important proposal is the transposition into national law of the Directive (EU) 2019/1 to empower the competition authorities of member states to be more effective enforcers and to ensure the proper functioning on the internal market. The Directive aims to ensure that when applying the same legal basis - the EU antitrust rules, national competition authorities have the appropriate enforcement tools that would bring about a genuine common competition enforcement area. To that end, the Directive provides for minimum guarantees and standards to empower national competition authorities to reach their full potential. On the basis of the document drafted by the RCC, a public consultation has taken place on the proposed transposition of the Directive to which comments were received. RCC will continue its efforts in transposing the Directive in 2021;
- RCC also intends to transpose into national law the Directive on unfair commercial practices between companies in the agricultural and food supply chain;

- In 2020, RCC continued the discussions with the other authorities involved and consulted the market players on completing the rethinking of the legislation on Compulsory Third Party (CTP) civil liability insurance for vehicles for the sake of consumers. More specifically, RCC advocates for making compulsory this mechanism of damages management through which the RCA insurer of the prejudiced person recovers the damage counter value from the RCA insurer of the guilty person for the prejudice; RCC believes such a mechanism would stabilize the market and would take into consideration also important aspects of non-price competition conducive to a well-functioning and efficient network of car repair services;
- During December 2020, the members of the Romanian Association of Pharmaceutical Distributors and Retailers (“ADRFR Pact”) brought to the attention of the RCC the final form of a Solidarity Pact on ensuring the technical conditions required for patient access to the vaccination against the COVID-19 pandemic (“Solidarity Pact”), which the members of ADRFR decided to sign, in the context of the efforts to contribute to the protection of the Romanian population. Thus, the RCC expressed its view that, although under normal market conditions, coordination between competing undertakings could be problematic from the point of view of competition rules, in the context of the exceptional challenges posed by the Covid – 19 pandemic, certain forms of coordination among undertakings do not raise such concerns if certain conditions are met: (i) it is limited in time, (ii) the cooperation project is appropriate and necessary, (iii) the principle of proportionality is observed and (iv) the autonomy of each undertaking is observed, in the absence of exchanges of commercially sensitive information.

125. In 2020, the series of inter-institutional meetings with other public authorities, institutions and ministries with responsibilities in the food processing, construction and freight transport sectors continued to be organized at both expert and senior management level in order to implement the sectoral Recommendations stemming from the Project on Competition Assessment concluded between RCC, Romanian Government and the OECD entitled “*The analysis of the impact of legislation in force in key sectors of Romanian economy*”. Yet, 34 recommendations were implemented and 26 normative acts were modified.

126. Additionally, the RCC continued the Project “*Comprehensive redesign of the licensing system in Romania*” which aims at supporting Romania in modernising its licensing system, strengthening the capacity of its licensing institutions and aligning the licensing system with best international practices.

127. The project implemented by the OECD and with the financial support of the Structural Reform Support Service (SRSS) addresses key bottlenecks and systemic issues of the current licensing system. It plays a critical role in creating a regulatory environment that is conducive to doing business, creating jobs and attracting investment.

128. RCC continued to make use of the OECD's Competition Assessment Toolkit and its experience in the Romanian Competition Assessment project in another project with OECD and benefiting from the financial support of the Structural Reform Support Service (SRSS) on energy.

4. Resources of competition authorities

4.1. Annual budget

129. In 2020, the RCC's budget was 76,469 thousand lei, i.e. an increase by about 10.1% compared to the previous year. The general budget execution (covering financing from public funds, non-reimbursable European funds and financing from own resources) for 2020 was 93.1%.

4.2. Human resources

130. In 2020, the staff of the Romanian competition authority represented 343 employees, divided in directions, services and compartments.

131. The staff of Romanian competition authority consists of civil servants, public managers and contractual staff. The competition inspectors represent 67.9 % of the total number of staff. As regards the professional background of the competition inspectors, most of them are economists (45.1%), followed by legal experts (19.2%).

132. In 2020, the RCC recruited on an undetermined period 2 people as competition inspectors and recorded 13 departures of competition inspectors from the institution.