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Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Romania

-- 2022 --

This report is submitted by Romania to the Competition Committee FOR INFORMATION.

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Romania

1. Executive Summary¹

1. 2022 was a year in which countries made efforts to recover from the pandemic, but faced low global production. On this sensitive background, pressures on supplies of essential resources such as oil, gas and electricity generated by the war between Russia and Ukraine have overlapped. State aid has been at the forefront of RCC's efforts in this context. This turbulent economic period forced us to be more efficient and faster, providing our expertise to the authorities to implement support measures involving European (including NRRP) and national funds in a total amount of EUR 29 billion, which represents an increase of about 250 % compared to the previous year.

2. However, antitrust activity was also at a high level of intensity. RCC has authorized a record number of 94 mergers, most of the last 16 years, which shows an effervescence of markets. In addition, RCC has initiated investigations in areas with a direct impact on consumers, such as the one aimed at potential agreements to fix the ROBOR interest rate.

3. RCC also completed a series of investigations and imposed fines in total amount of EUR 36.21 million. The largest case of 2022 was the investigation focused on the interaction of the car repair market with the one on which the insurance companies operate. In this case, auto repair companies, ACODAREN and insurance companies were sanctioned with total fines of EUR 26.35 million. Another case worth mentioning was the case on aviation insurance market, which resulted in three companies and an insurance broker being sanctioned with EUR 3.2 million for concluding an agreement to allocate large customers to four tenders.

4. The market monitoring activity continued to focus on the most sensitive sectors, such as electricity, natural gas, fuel, food, medicines. The Price Monitor platform has once again proven its effectiveness both for our monitoring activity as well as for buyers, who have been informed about fuel and food prices, as demonstrated by the number of accesses, which has increased by 80 % since 2021.

5. In 2022 RCC was also very active at the legislative level. In order to protect small firms from larger companies abusing their higher bargaining power, the Unfair Competition Law was amended. The amendment follows the practice of other countries around the globe and within the European Union regarding regulating and sanctioning the unlawful behaviour of companies with superior market power, which nonetheless falls below the standard of dominance under competition law.

6. In addition, RCC has elaborated, in collaboration with the Ministry of Entrepreneurship and Tourism, the Single Industrial Licence law, one of the milestones included in the National Recovery and Resilience Plan of Romania, which aims to de-bureaucratize the business environment. This legislative reform will create a single contact point, a single interface, between the public administration and those who want to develop a business in the industrial sector of the Romanian economy.

¹ For a more detailed description of RCC's activity in 2022, please see the extended version at <https://www.consiliulconcurentei.ro/documente-oficiale/rapoarte/rapoarte-anuale/>

7. An important legislative development was also the development of the enforcement regulation on unfair trading practices between companies in the agricultural and food supply chain, carried out jointly with the Ministry of Agriculture and Rural Development.

8. Since April 2022, the activity of the RCC has been expanded with new responsibilities as regards the screening of foreign direct investments. In this sense, RCC is a member of and ensures the secretariat of the Commission for the Examination of Foreign Direct Investments in Romania (CEISD). CEISD is composed of representatives of public institutions. Between April and December 2022, CEISD analysed 37 merger cases.

9. At the same time, the Romanian competition authority has been put in charge of enforcing the law regarding unfair trading practices among businesses in the agricultural and food supply chain.

10. Given its experience as a member of the OECD Competition Committee, RCC participated in the self-assessment of the country's legislation, policies and practices against the OECD standards, on the basis of which an initial Memorandum, the first step in Romania's accession, was drawn up. The RCC work in this area will continue in 2023 and the national competition authority will also be involved in the next stages of the accession process.

11. The year 2023 is just as challenging. RCC aims to finalise important investigations, such as the two potential abuse of dominance cases in the energy sector and ongoing investigations into the cement sector, book delivery, and electronic/digital archiving services. At the legislative level, RCC will focus on the transposition of the ECN + Directive, which gives the competition authorities of the Member States of the European Union the means to be more effective in enforcement, ensuring the proper functioning of the internal market.

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

Opened investigations

12. During 2022, RCC opened 16 investigations into possible infringements of competition law, of which 11 were initiated ex officio and 5 following complaints.

13. Most of the investigations initiated in 2022 concern possible horizontal cartels and possible abuses of dominant positions (5 investigations each).

Figure 1. Investigations initiated in 2022

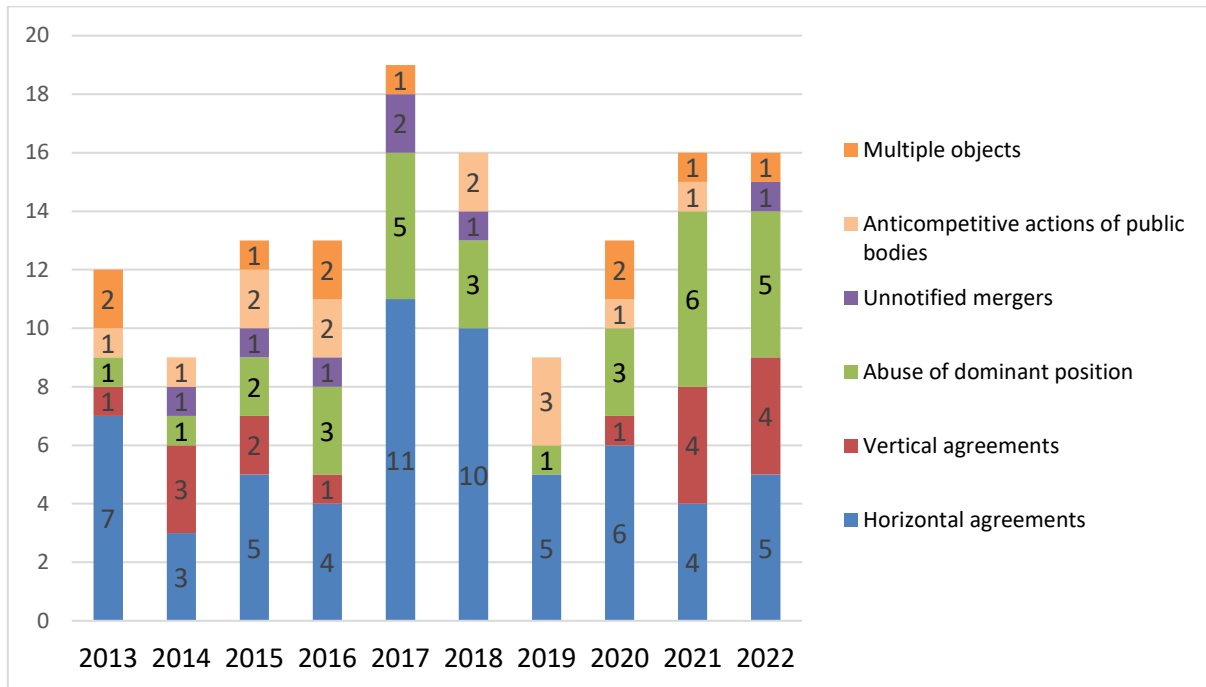
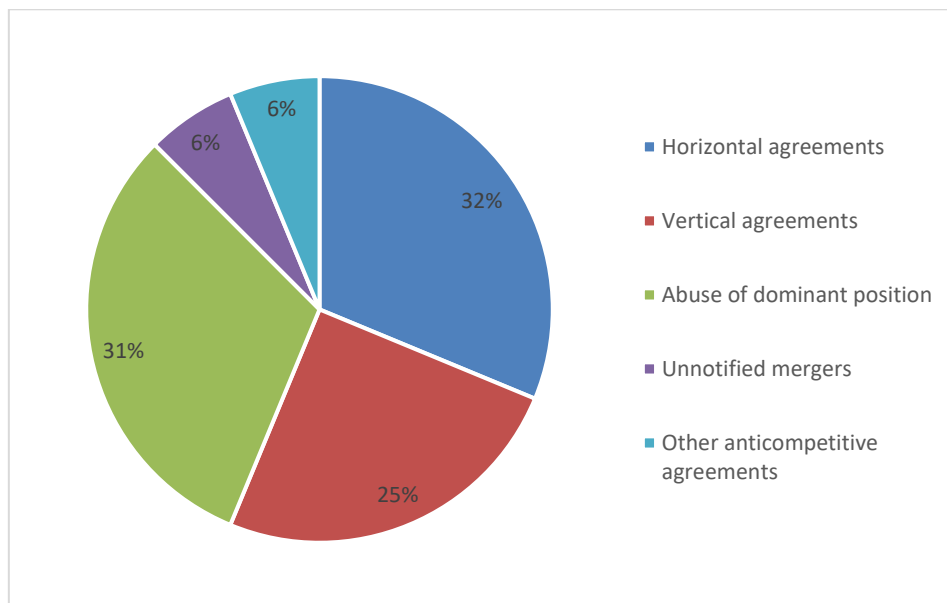


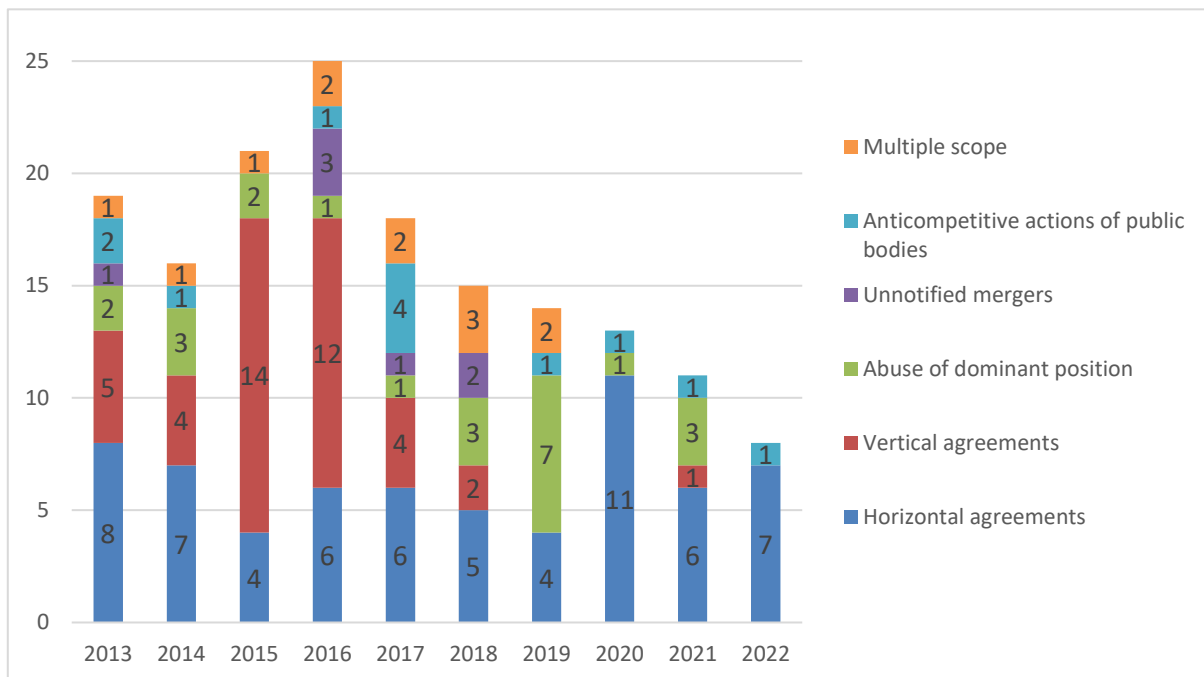
Figure 2. Structure of investigations initiated in 2022 depending on the anti-competitive practice concerned (%)



Completed investigations

14. In 2022, 8 investigations were completed, of which 6 concerned horizontal cartels (75 % of all investigations concluded), one vertical agreement case and one case concerning anticompetitive government actions.

Figure 3. Completed investigations by investigated practice



15. On average, investigations into possible competition law infringements completed in 2022 lasted around 3 and a half years, but most of them are approaching 3 years. As was the case in the previous year, in 2022 infringement of competition law was found in all 8 completed investigations. Thus, no investigation was concluded in 2022 with the acceptance of commitments from the investigated entities.

Impact of RCC enforcement

16. The methodology used by DG Competition provides for a period of 1 to 6 years, depending on the expected stability of the cartel at the time of detection. In this methodology, cartels are considered “unsustainable” (a life span of 1 year), “fairly sustainable” (a life span of 3 years), or “very sustainable” (a life span of 6 years). At the same time, in cases where there is insufficient data or detail on the effect of the practice on price, a surcharge on the part of those implementing the anti-competitive practice of between 10 and 15 percentage points shall be considered.

17. In order to estimate the damage caused by anti-competitive practices and the benefits to consumers resulting from the intervention of RCC, the analysis included all cases of anticompetitive practices concluded with sanctions in 2022.

18. It should also be noted that only first-round effects were taken into account both for the calculation of benefits and for the calculation of damages. Thus, account was taken of price increases imposed only by the companies participating in the anti-competitive practice, the affected market consisting only of the turnover of those companies or of part of their turnover where the percentage of products or services subject to the anti-competitive practice was reduced (and where this fact was demonstrated by the respective companies).

19. Such practices may have as side effects the fact that other companies on the relevant market align their prices with the prices charged by those involved in the anti-competitive

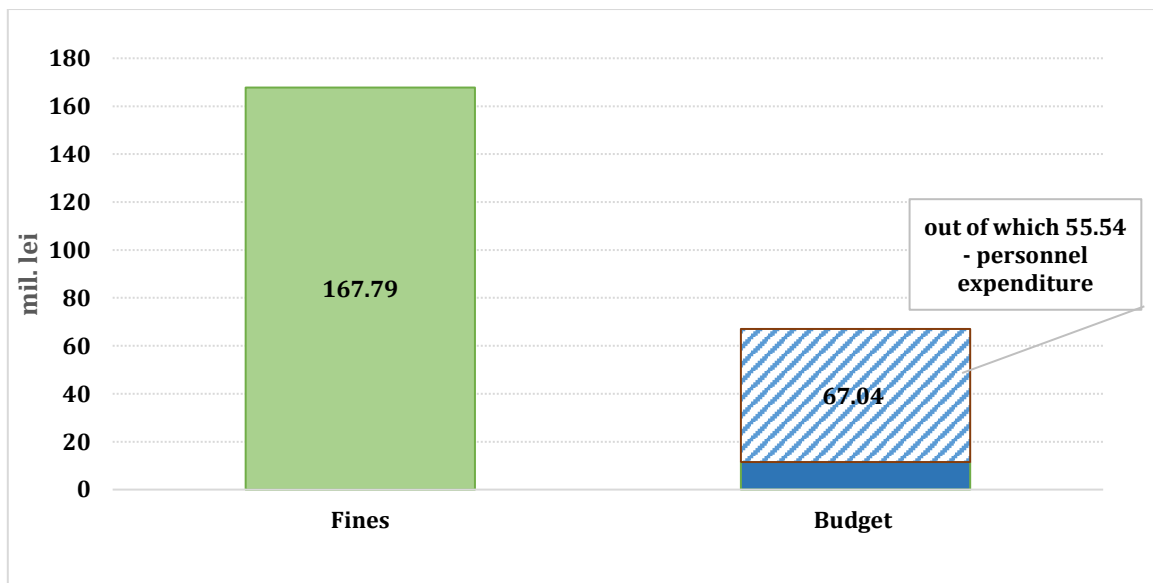
practice. These effects have not been taken into account in the analysis and are much more complicated to estimate.

20. Therefore, the analysis included 7 investigations, in the following markets:

- The market for the collection, transport and storage of household waste in Mureş County;
- Part of the market for timber trading;
- The market for the service of the fitting-out, organization and operation of pay parks on the public domain of the municipality of Braşov;
- The market for the marketing of occupational health and safety products and equipment;
- The market for the distribution of new, medium and heavy trucks of the Renault brand;
- The market for maintenance and repair services of motor vehicles;
- The aviation insurance market for large customers in Romania.

21. The value of the sanctions imposed in 2022 is 2,5 times the institution's budget and 3 times the level of expenditure related to the institution's staff.

Figure 4. The sanctions imposed in 2022 and the budget actually spent by the institution



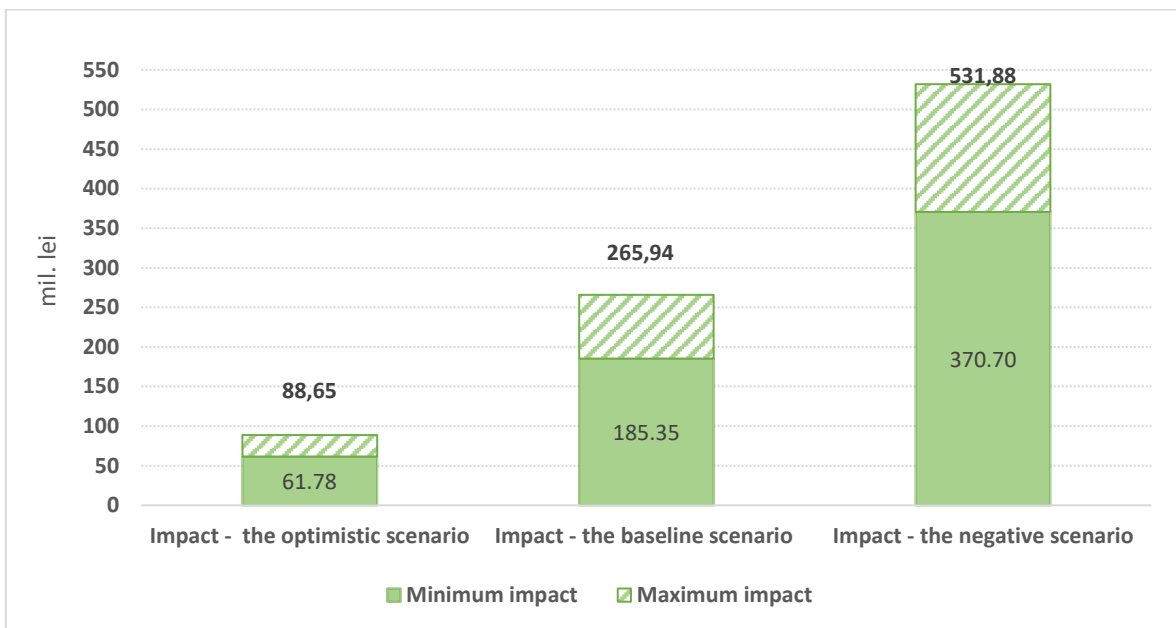
22. Three scenarios (optimistic scenario, baseline scenario and negative scenario) were used to estimate the benefits of competition policy. The impact of anti-competitive cartels on the price of the affected market is between 10 % and 15 percentage points, according to DG Competition's methodology.

- Optimistic scenario – it is a situation where the cartel is unstable and, without RCC intervention, would have broken down over a period of one year.
- Base case – it is a situation where the cartel is relatively sustainable and, without RCC intervention, it would still have resided on the market for a further 3 years.

- The negative scenario – is the situation where the cartel is very stable and, without RCC intervention, it would still have resided on the market for a further 6 years.

23. Thus, the minimum impact of RCC’s intervention (beyond the penalties imposed) is estimated at RON 61,78 million (EUR 12.53 million) if the cartels had broken down by themselves within a year and the prices charged by the cartels would have been only 10 % higher than without them, while the maximum impact would have been estimated at RON 531,88 million (EUR 107.89 million) if the cartels had lasted another 6 years and prices were 15 % higher than in the absence of the cartels.

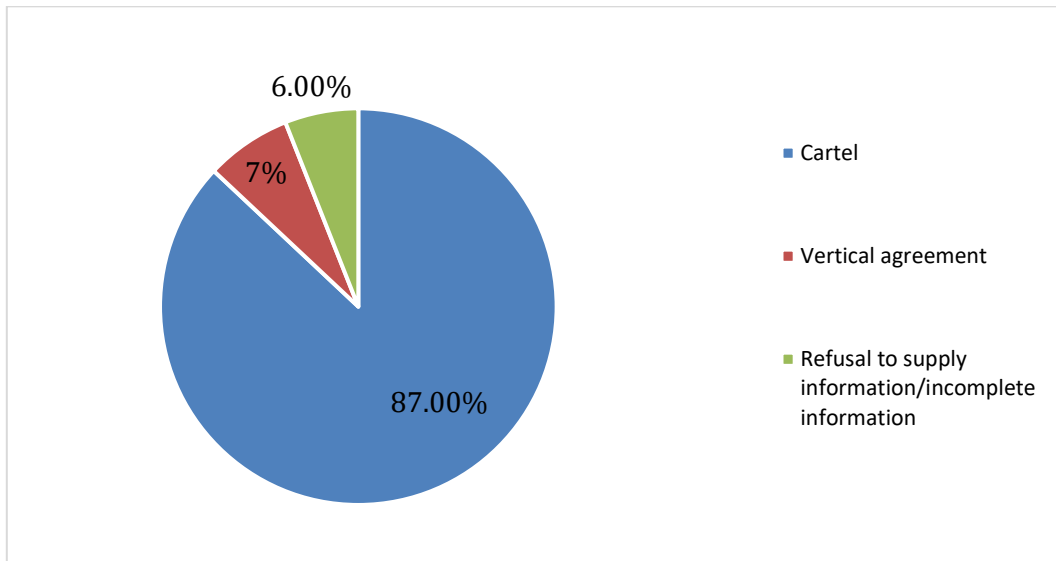
Figure 5. The impact of the competition policy – first-round benefits



Fines

24. The fines imposed in 2022 amounted to RON 178.587.984 (EUR 36,213,725). The largest share of the fines imposed in 2022 was applied in cartel cases. RCC also imposed fines for vertical agreements (7 %) and for failing to provide or provide information in incomplete form, with fines accounting for 6 % of the total fines imposed.

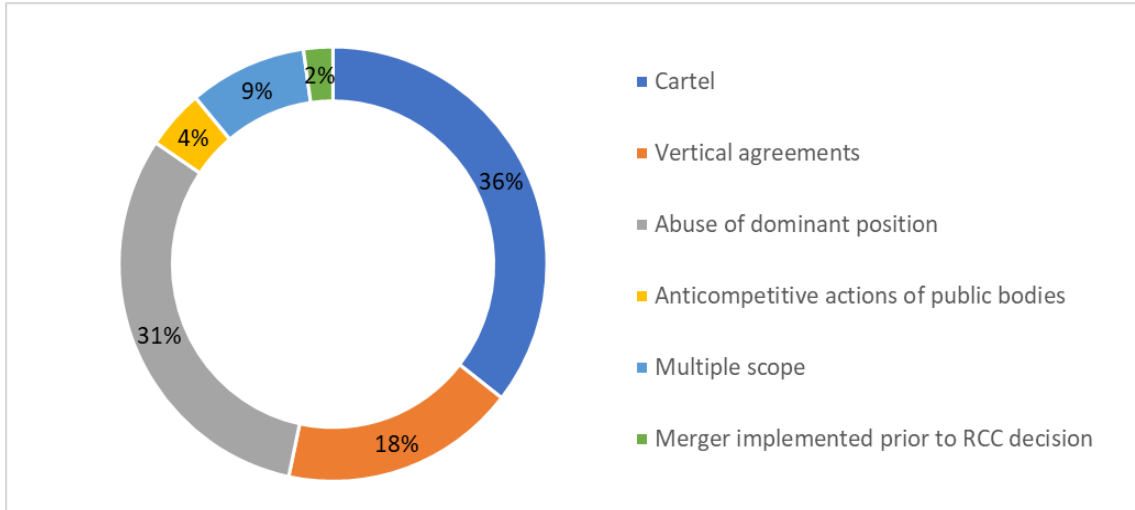
Figure 6. Fines applied in 2022 according to infringement



Ongoing investigations

25. At the end of 2022, RCC had 45 ongoing investigations on possible infringements of competition law, with 36% cartels and 31% abuse of dominance cases.

Figure 7. Fines applied in 2022 according to infringement (%)



Dawn raids

26. In 2022, 18 dawn raids were carried out in the framework of 16 investigation procedures, and 60 business locations of 54 undertakings were raided.

Sector inquiries /Studies/Analyses

27. Sector inquiries involve deepening research on certain markets for which the institution has concerns about the level of competition.

28. In 2022, 4 sector inquiries were launched:

- the market for services providing technical site advice on urban utilities and infrastructure;
- copyright market;
- automotive markets;
- retail pharmaceutical market.

29. During 2022, two sector inquiries were concluded, on the following markets: the market for upgrading, maintaining and repairing roads and streets in county-resident municipalities, and the market for alternative passenger transport services intermediated by ride-hailing digital platforms.

30. 7 sector inquiries were ongoing on 31 December 2022. The average length of completion of sector inquiries in 2022 was around 2 years and 10 months, which is below the average of the last ten years (around 3 years and one two months).

31. A brief description of the sector inquiry on ride-hailing can be found below:

Box 1. Sector Inquiry

With digitalisation requiring profound transformations in many services markets, RCC conducted a sector inquiry, launched in May 2020, into the **market for alternative ride-hailing services**, aiming to outline an overview of passenger transport services within the wider urban mobility framework. The survey carried out complex analyses to understand specific operating mechanisms, such as algorithms and dynamic prices (prices that are set in real-time, on the basis of supply and demand; thus, if demand is higher than supply, the dynamic price is determined by multiplying the standard price by a ‘price multiplier’, whose role is to reflect the balance between supply and demand) and multi-homing (the possibility for a driver to collaborate with several platforms); the relations established between the main actors (e.g. platform operators, alternative transport operators, drivers) and the regulatory framework (e.g. aspects of a fair and inclusive regulatory framework in relation to the main urban mobility options).

In its conclusions to the study, RCC made recommendations to the Romanian authorities, which, in a broader spectrum, are also relevant at the level of the European Commission and the EU Member States. For instance, it recommended a more transparent and fair policy in terms of fares and information displayed to passengers in the application, but also a legislator approach imposing certain minimum and equivalent standards for different groups of users or market players. Attention was also drawn to the importance of the independence of drivers and the need to devise legislative solutions that do not alter the business model of alternative transport services and do not inhibit the incentive for platform operators to compete effectively. Moreover, in the context of the draft Directive proposed by the European Commission, which would provide platforms with an implicit status as employers, the competition authority proposed to outline an alternative solution that would foster the independence of drivers,

including by reassessing the status of service providers on the platform and providing tax incentives for their development.

The competition authority has also signaled some tax inefficiencies – in particular the low tax compliance of drivers and the recording of platform revenues through companies in other tax jurisdictions. To this end, RCC proposes the establishment of a cooperation protocol between tax authorities and platform operators aimed at exchanging information of a fiscal nature. RCC's analysis also highlighted the need to outline strategies focused on sustainable development, the concept of smart city, and an integrated urban mobility framework. In this context, RCC recommended launching a mobile application integrating, in addition to taxi and alternative transport services, other urban transport options. The app could also offer payment options for some types of services managed by the authorities, but would also allow the extension of the feedback review system to taxi services.

The report can be found [here](#).

32. RCC studies analyze the competition issues specific to certain markets in order to acquire more in-depth knowledge on certain markets and new trends present in those markets.

33. In 2022, six studies were launched on the following topics:

- groups of economic interest (GEI and GEIE) ;
- medical services provided by telemedicine;
- circular economy;
- electricity generators' connection to the national energy system;
- renewable energy;
- the impact on competition of legal provisions stating that for establishment/authorisation, undertakings in the field of tax consultancy and financial audit need to be owned by professionals.

34. In 2022, three studies were completed with the following topics:

- non-prescription medicines and medical supplements;
- food additives;
- the impact on competition of legal provisions stating that for establishment/authorisation, undertakings in the field of tax consultancy and financial audit need to be owned by professionals.

35. A brief description of the study on the establishment of tax advisers and financial auditors can be found below:

Box 2. Study

The profession of both tax adviser and financial auditor is one of the liberal professions. In the liberal professions, the European Commission encourages deregulation or, at the very least, the abandonment of restrictive rules which do not genuinely serve the general interest and cannot be objectively justified. It is considered that such rules result in fewer economic operators present on a market than would have entered the market in the absence of regulation, affecting competition.

In this context, in 2022 RCC finalized the study on the **impact on competition of legal provisions making the establishment/authorisation of companies in the field of tax consultancy and financial audit conditional on their ownership by professionals in these fields**. This study assessed the extent to which the legal provisions, namely Article 9 (1) of Government Order No 71/2001 and Article 3 (5) of Law No nr.162/2017, restrict economic operators' access to the markets concerned.

The analysis found that the legal provisions in the field of tax advice are restrictive, representing barriers to entry, as they do not allow those who do not have this qualification but who hold investment capital to set up companies in this market. The competition authority considers that the protection of the quality of tax consultancy services can be ensured by less restrictive measures, such as the existence within the company of a director who is a tax advisor or the strengthening of the internal professional and integrity standards of the tax advisor. On the other hand, as regards the area of financial auditing, while the removal of the provisions on the ownership and management of audit firms could lead to more service providers entering the market and strengthening competition, it was found that the requirements imposed do not go beyond what is necessary to achieve these objectives.

In this context, RCC recommended that the Ministry of Finance amend the provisions relating to the organisation of the profession of tax adviser in order to remove the provisions relating to the holding of the share capital of tax consultancy companies by persons acting as tax advisors. Such a change leads to more competition and access to the market for more service providers. A high level of competition benefits consumers by lowering prices, increasing the quality of services, encouraging innovation and increasing the interest of economic operators to respond to changing consumer needs.

The report can be found [here](#).

Mergers

36. During 2022, RCC authorised the largest number of mergers in the last 16 years, namely 94.

37. From these 94 merger cases, two cases involved the acceptance of commitments, Medlife SA /Muntenia Medical Competences and Diagnostic Rapid SA /Onco Card SRL and Onco Card Invest SRL.

38. The breakdown of merger clearance decisions according to the adoption of commitments and the analysis procedure used can be found in the figures below.

Figure 8. Number of authorised merger decisions (2015-2022)

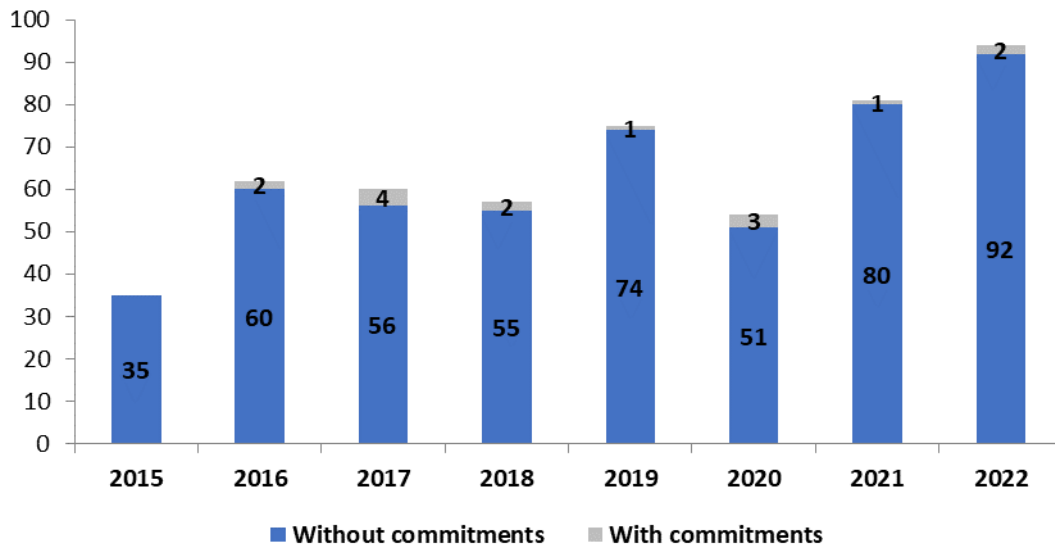


Figure 9. Number of authorisation decisions, full procedure (2015-2022)

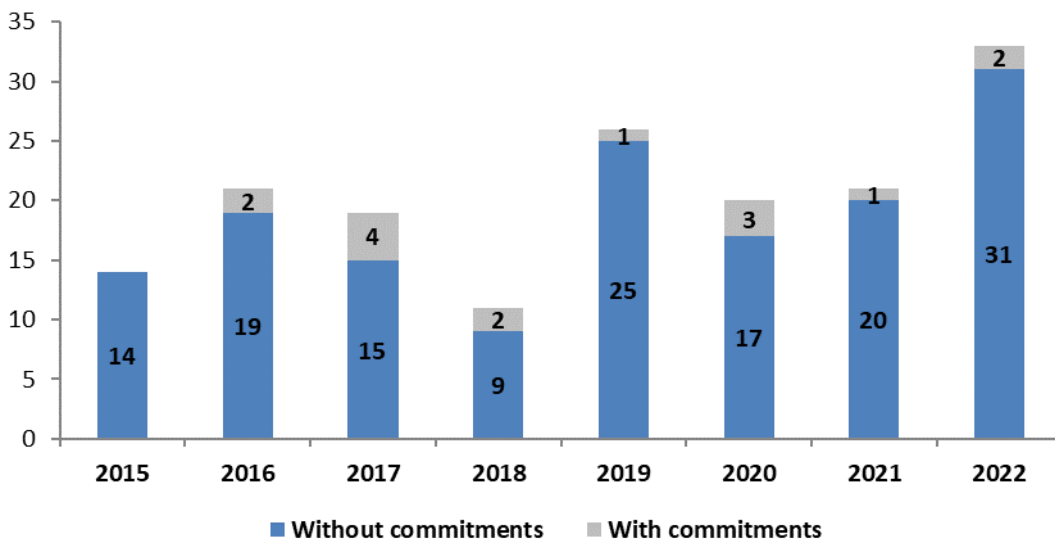
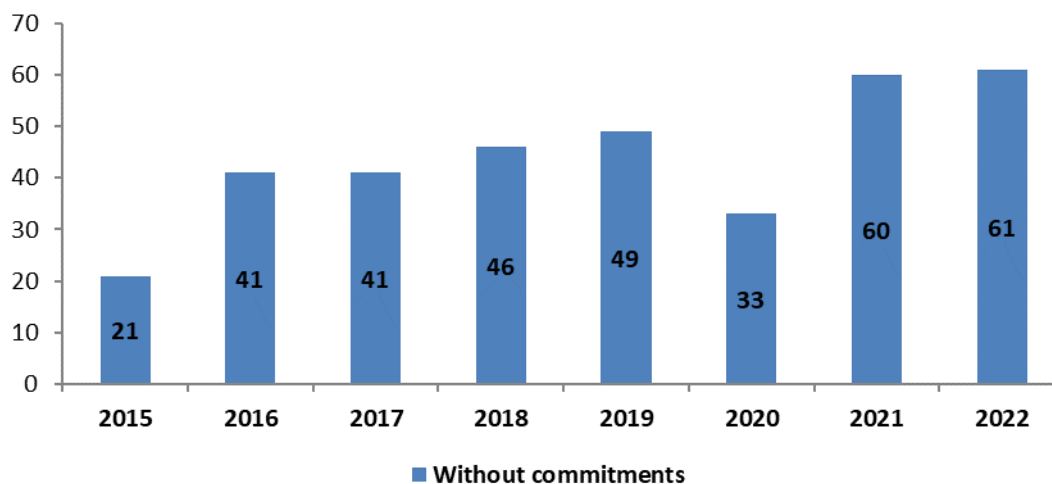


Figure 10. Number of authorisation decisions, simplified procedure (2015-2022)



Whistleblowing Platform

39. The Whistleblower Platform is a tool that aims to diversify the methods of identifying possible anti-competitive practices by collecting information voluntarily provided by individuals who are aware of the existence of such practices. By using this means of communication, the persons concerned shall remain anonymous unless they wish to communicate their identification data.

40. Since the end of January 2015, the Whistleblower Platform has been active and accessible to interested parties on the RCC website².

41. The whistleblower platform protects the anonymity of whistleblowers by means of a specially designed encrypted messaging system that allows two-way communication.

42. The system ensures the confidentiality of those who use it. Whistleblowers – persons who wish to transmit information to the RCC – can log on the platform via an SSL’s encrypted internet connection. This method ensures that those who manage the system are not able to trace the user’s IP or detect the user’s identity.

43. During 2022, **140 referrals** were received, raising issues related to various areas of interest, such as the energy market, the insurance market, e-commerce, the functioning of online platforms, sanitation, ride-sharing, labour market, timber market, possible unfair competition etc. Certain referrals received via the platform have led to dialogue (correspondence/exchange of messages) between the authority and whistleblowers while preserving their anonymity.

44. Referrals relevant to RCC have remained under scrutiny, together with continuously monitoring markets. Thus, the authority can trigger investigations whenever there are sufficient indications of a potential infringement of competition law. In 2022, the number of complaints covered by the Competition Law was 106 and 10 respectively in the case of the Law against Unfair Competition.

45. Importantly, at the end of 2022, RCC completed a case investigation - for the marketing of protective products and equipment in the area of health and safety at work - triggered on the basis of the information received on the platform of whistleblowers. The

² <https://report.whistleb.com/ro/consiliulconcurrentei>

eight companies investigated were sanctioned with fines totaling RON 4.886.811 (EUR 987,622).

46. RCC encourages the use of this accessible, modern and secure channel of communication for users in order to attract as much information as possible on potential anti-competitive practices from individuals who have information in this regard and wish to communicate it to the authority.

Bid rigging/monitoring public procurement

47. In the field of public procurement, the competition authority is primarily responsible for investigating possible anti-competitive agreements (cartels) between tenderers in public procurement procedures, with the aim of distorting competition.

48. In 2010, in order to enhance governmental cooperation in public procurement, several public Romanian authorities established the Bid Rigging Module (MLT).

49. The aim of³ the MLT module is to ensure a normal competitive environment in the public procurement market through institutional cooperation and rapid exchange of information at the expert level in order to identify bidders.

50. The main actions carried out under the MLT in 2022 were the following:

- opinion requested by the national public procurement regulator (ANAP) on the draft Government Emergency Ordinance on certain measures relating to performance guarantees established under public procurement contracts and sectoral contracts;
- Organising and participating in working meetings with some of the institutions involved in the MLT, namely CCA, ADR, ANAP and CNSC, with a view to identifying risks and vulnerabilities in relation to the public procurement procedures organised in the context of the NRRPs, as well as the arrangements for monitoring the behaviour of economic operators in tendering procedures, with a view to detecting infringements of competition rules, protecting the market and the general interests of citizens;
- Organising and participating in the webinar “Competition in Public Procurement – Competitive Risks and Practical Remedies” alongside the institutions involved in the MLT;
- analysis and resolution of 5 referrals received under the MLT from ANAP and CCA.
- Issuing advisory opinions/points of view/opinions on draft legislative acts relevant to the area of public procurement, as follows:
 - Point of view requested by the Committee on Defence, Public Order and National Security of the Romanian Senate on the legislative proposal to regulate certain measures necessary for the protection of the essential interests of Romania’s security;

³ The following state institutions are part of this module: RCC, the National Public Procurement Authority (ANAP), the National Council for the Resolution of Complaints (CNSC), the Prime Minister’s Control Corps, the Romanian Court of Accounts (CCA), the Public Prosecutor’s Office in the High Court of Cassation and Justice, the Anti-Fraud Department (DLAF), the Romanian Digital Agenda Agency (AADR) and the National Anti-Corruption Directorate (DNA).

- Point of view requested by the Ministry of Development, Public Works and Administration on the draft GEO on the price adjustment of public procurement contracts/sectoral contracts/concession contracts/framework agreements;
- Point of view requested by the Ministry of National Defence on the draft law for the realisation of transitional operational air capability provided for in the Design for the gradual realisation of air defence capability in the framework of the programme, Aviation Multirole Air Force;
- Points of view requested by the Romanian Senate on the following legislative proposals: The *Solidarity with Ukraine* legislative proposal to ban the import and intra-Community acquisition of oil, natural gas, coal and nuclear fuel from the Russian Federation during the unprovoked aggression against Ukraine, the legislative proposal amending and supplementing Law nr.98/2016 on public procurement, Law nr.99/2016 on sectoral procurement and Law nr.100/2016 on works concessions and service concessions;
- Point of view requested by the Ministry of Internal Affairs on the draft Government Emergency Ordinance on how to operate unmanned aircraft systems within the Ministry of Internal Affairs and on the designation of the General Inspectorate for Aviation of the Ministry of Internal Affairs as the centralised purchasing unit for the centralised procurement of unmanned aircraft systems;
- Point of view requested by the Ministry of Economy on the draft Government Ordinance on the adjustment of prices of public supply/service contracts, sectoral contracts and framework agreements awarded in the fields of defence and security;
- Point of view requested by the Ministry of National Defence on the draft Government Decision approving the circumstances and the specific procedure for the award of a specialized defence contract;
- Point of view requested by the Ministry of Transport and Infrastructure on the draft Government Emergency Ordinance on price adjustment of framework agreements/sectoral purchase contracts for coal rail transport services for energy complexes;
- Issuing 33 Points of view on plausible indications of exclusion of tenderers from public procurement procedures, requested by contracting authorities. On three of the public procurement procedures, RCC opened investigations, while the remaining complaints did not present sufficient indications of distortion of competition.

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

Box 3. Cartel

An investigation into possible cartels in the **market for vehicle maintenance and repair services was initiated ex officio** in February 2017. **As a result, 65 companies and one association of companies were found to have infringed competition law.**

56 of the companies sanctioned are or have been members of the Dacia, Renault and Nissan Concessionaires Association – ACODAREN and, among other things, carry out vehicle repair activities.

These companies were found to coordinate their commercial behaviour, through ACODAREN, establishing, inter alia, a fixed level of spare parts prices and labour tariffs used in relation to certain insurance companies. In this way, they have eliminated competition between them.

These actions were supported, consolidated and amplified by the behaviour and actions of Renault Commercial Roumanie SRL, RCI Broker de Asigurare SRL and the insurance companies Allianz-Țiriac Asigurări SA, Omniasig Vienna Insurance Group SA, Groupama Asigurări SA, Uniqa Asigurări SA, Romanian Insurance Insurance – ASIROM Vienna Insurance Group SA, Euroins România, Societatea Astra SA. Their participation gave the cartel a greater extent than if it had remained limited to coordinating the behaviour of repairers only.

Following the investigation, Renault Commercial Roumanie SRL and the insurance companies involved were fined a total of RON 120,9 million, whereas the car repairers who participated in the cartel were sanctioned with RON 130 million (approximately EUR 26 million). 64 of the 66 sanctioned entities settled and benefited from a reduction of the fine.

Once published, Decision No 143/2022 will be available [here](#).

Box 4. Cartel

In September 2017, an investigation was initiated ex officio into the **aviation insurance market for large customers in Romania** (Romatsa, ROMAERO, Aerostar, Tarom, Blue Air, Bucharest Airport). The investigation found that the market was affected by an anti-competitive cartel aimed at sharing the market and customers between Omniasig and Generali Romania, two large insurance companies operating in Romania. The understanding between the two companies was facilitated by Aon Romania, as an insurance and reinsurance broker.

Following the withdrawal of the operating licence of a major Romanian insurance company (Astra), Aon Romania intended to broker a certain percentage of gross written premiums for aviation insurance. In view of its existing partnership with Omniasig and the entry of a new and aggressive competitor into the market, Generali Romania, in

order to achieve the objective, Aon proposed to Omnisig (Astra's usual competitor on this market) and Generali Romania to implement a cartel, in the form of an association or co-insurance, so that these companies do not compete and thus do not generate a decrease in insurance premiums.

In order to support the cartel, other companies within the group had to be involved. Generali SpA, the parent company of Generali Romania, which dictated its commercial policy on the reinsurance market, through its UK branch, was present on the reinsurance market. Aon UK, acting as a supporting entity for Aon Romania in placing risks on international markets, was also on the reinsurance market.

Depending on the requirements imposed by the beneficiaries in the tender specifications or calls for tender, Generali Romania and Omnisig were to participate either in co-insurance or in association in order not to compete. None of the undertakings retained any percentage of the risk, which was transferred to reinsurance through Aon Romania and Aon UK respectively. Aon UK would give priority to the reinsurance placement to Generali SpA UK acting as the leading reinsurer, thus having the possibility to determine the most important conditions of reinsurance: terms, conditions and price for a certain percentage of risk. Depending on Generali SpA's subscription capacity, Generali SpA UK retained a certain percentage of the risk, with the risk remaining to be taken over by other reinsurers through Aon UK.

The anticompetitive cartel, which took place between 16 November 2015 and 20 December 2016, was intended to limit competition on the market and to avoid the application of reduced insurance premiums which would have resulted from effective competition on the relevant market.

All 4 undertakings involved entered into a settlement procedure to benefit from a reduction of the fine. In this case, a total fine of approximately RON 15 million (approximately EUR 3 million) was imposed.

Once published, Decision No 128/2022 will be available [here](#).

Box 5. Vertical agreement

RCC launched in May 2020 an investigation into possible anti-competitive practices on the **market for the distribution of new, medium and heavy Renault trucks**.

The analysis found that Volvo Romania SRL (formerly Renault Trucks Romania SRL) and distributors in its selective truck distribution network had concluded anti-competitive agreements between 2005 and 2014. Those agreements consisted of restricting the territory in which distributors could sell the contracted goods. Thus, Volvo Romania SRL and the distributors which formed its selective distribution network agreed on the territory in which they could resell new, medium and heavy Renault trucks and decided not to market this type of trucks outside Romania.

The market-sharing arrangements were laid down and implemented in the terms of the contracts, negotiated and signed by Volvo Romania with its distributors. The respective companies no longer competed with each other, leaving customers without choice,

thereby affecting competition at the national level as well as trade between EU Member States.

Volvo România SRL acknowledged the infringement of the Competition Law and consequently received a reduction of the fine.

Following the findings of RCC, a fine was imposed on Volvo Romania SRL in the amount of RON 13,2 million, representing approximately EUR 2,7 million (the amount also includes the reduction granted following the recognition of the facts by Volvo Romania SRL during the settlement procedure).

Once published, Decision No 144/2022 will be available [here](#).

Box 6. Anticompetitive government actions

An investigation into possible anti-competitive actions by certain local public administrations was opened in September 2020. RCC examined whether their behaviour distorted or prevented competition in **the market for the collection/return of packaging waste from the public from its place of generation**, within the geographical area of each of these administrative-territorial units (ATUs).

Certain categories of recyclable waste have a positive economic market value, and thus the holders of that waste have a legitimate interest in recovering it on their own behalf by selling it to a authorized collector.

Under the legislation in force, ATUs may not grant exclusive rights to the sanitation service operator to whom the management of the sanitation service has been delegated within its territorial jurisdiction also with regard to the economic activities situated on the flow of packaging waste, in particular the economic activities of collecting packaging waste. However, the investigation found that the way in which the ATUs interpreted and applied the legal provisions resulted in the removal of competition from the market. ATUs granted only to the sanitation operator in charge of the municipal waste stream the right to collect or take back packaging waste by purchasing it from the public from the place where the respective waste was generated.

Those actions by the ATUs led to the distortion or even restriction of competition by artificially assigning exclusive rights to the sanitation operator also for other economic activities besides the ones for which it received exclusivity, within the administrative area of its competence. In this way, administrative barriers were created to the entry into the relevant market of other operators which could have provided the same service under higher economic efficiency conditions.

Following the investigation, RCC found an infringement of competition law and imposed measures with a view to restoring a normal competitive environment in the market in question. The respective ATUs have the legal obligation to implement the measures imposed by RCC.

Once published, Decision No 146/2022 will be available [here](#).

Box 7. Merger - commitments

Policlinica de Diagnostic Rapid SA (PDR), part of the Med Life group (a group of companies providing medical services), intended to acquire sole control over Onco Card SRL and Onco Card Invest SRL. The Onco Card group operates medical services through its hospital unit located in Braşov, focusing in particular on the provision of hospital medical services relating to the diagnosis and treatment of oncological conditions, including radiotherapy medical services.

During the analysis of the transaction, a number of concerns were identified. In particular, given the market shares of the newly created entity, the position of competitors and the elimination of a competitor that has the capacity to create price constraints, the transaction under consideration had the capacity to negatively alter the competitive dynamics in the market for the provision of hospital medical services for oncological conditions provided by private suppliers in Braşov County.

In order to remove any competition concerns in the hospital health services market for oncological conditions in Braşov County, PDR took a number of commitments, as follows:

- PDR will observe the objective criteria for treating oncological patients on a daily or continuous hospital basis, in accordance with the medical decisions and the settlement rules established with the Braşov County Health Insurance Fund;
- Onco Card and RDP will keep fees for hospital services for oncological patients on a continuous and daily basis in medical sections below a certain maximum threshold, with the possibility of an annual indexation;
- Onco Card and RDP will keep fees charged to oncological patients as a personal contribution for hospital services on a continuous basis below a maximum ceiling for a period of 5 years, with the possibility of an annual indexation;
- Onco Card and RDP will maintain the quality of hospital services provided to oncological patients in medical sections by reference to a number of quality indicators.

In those circumstances, RCC authorised the merger.

Once published, Decision No 25/2022 will be available [here](#).

2.2. Judicial review of RCC's decisions in 2022

Box 8. Court proceedings – Zenith Media case

In Decision No 49/2014, RCC found that 11 media agencies (Brand Programming Network S.A., B.V. MCCann-Erickson S.R.L., GroupM Media Operations S.R.L., Initiative Media S.A., MediaCom Romania S.R.L., Mediaedgencia Romania S.R.L., Mindshare Media S.R.L., Opti Media S.R.L., Starcom Mediavest Group S.R.L., United Media Services S.R.L. and Zenith Media Communications S.R.L.) participated in an

anti-competitive agreement aimed at eliminating competing media outlets belonging to or affiliated to The Group from the market for media communication services in Romania. Thus, RCC sanctioned the respective 11 companies.

In that context, Zenith Media requested a preliminary ruling from the Court of Justice of the European Union, pointing out that the method used by RCC to calculate the fine was incorrect. More specifically, **Zenith Media** claimed that the basis for calculating the fine was wrongly established as the turnover in the Balance Sheet, Profit and Loss Account. Zenith Media's explanation was that the balance sheet turnover, due to the specific nature of its activity, includes, together with the commissions earned as a result of the intermediation activity, the amounts re-invoiced to end customers for services. The company argued that the fine should not be applied also on the latter.

The High Court of Cassation and Justice approved the request to refer the matter to the Court of Justice of the European Union. The referring court pointed out that, prior to the adoption of RCC decision, all the undertakings involved argued that, for the purposes of determining the amount of the fine, RCC should take account not all their revenue but only their actual revenue. However, the Law on competition and the Guidelines on the individualisation of sanctions refer to the total turnover as shown in the annual accounts as the basis for the calculation of the fine, without distinguishing between the components of that turnover or the activities of the undertaking concerned. The Guidelines on the individualisation of sanctions do not leave RCC any discretion in order to avoid the risk of arbitrariness. Thus, a company involved cannot claim that the turnover shown in its profit and loss account fails to comply with the relevant accounting rules, since that figure results from its own decisions and accounting entries. CJUE issued the following preliminary ruling:

“Article 4(3) TEU and Article 101 TFEU must be interpreted as precluding national legislation or practice under which, for the purposes of calculating the fine imposed on an undertaking for infringement of Article 101 TFEU, the national competition authority is required, in all circumstances, to take into account the turnover of that undertaking as shown in its profit and loss account, without having the possibility of examining evidence put forward by that undertaking to show that that turnover does not reflect its real economic situation and that, consequently, another amount which reflects that situation should be taken into account as turnover, provided that that evidence is precise and documented.”

Box 9. Work in court – MOLDOCOR case

By Decision No 75/2018, RCC found that INSPET S.A., CONDMAG S.A., T.M.U.C.B. S.A., ROMINSTA S.R.L., MOLDOCOR S.A., CIS GAZ S.A., ARMAX S.R.L., PEGAMONT S.A., ECPROD S.A., AMARAD S.A., POSADA MED S.R.L., staza INVEST S.R.L. and INSTCOMP S.A. had infringed competition law with agreements and/or concerted practices to share the market for pipeline construction works for the transport of natural gas and related works in Romania by distorting the competitive process in public procurement procedures organised by TRANSGAZ in 2011.

In particular, in the course of the public procurement procedures, the undertakings communicated with each other, both directly and indirectly, information on how to

coordinate their bidding behaviour so that the contracts were won by the undertaking appointed by the cartel members, in rotation order.

The evidence gathered by RCC to demonstrate the market sharing cartel and/or concerted practice consisted of:

- records of intercepted telephone conversations of persons directly involved in the conduct of public procurement procedures, namely representatives of undertakings participating in public procurement procedures and representatives from TRANSGAZ forming part of the evaluation committees. These records were sent to RCC by the competent criminal investigation bodies;
- extracts from the statements of representatives of the undertakings participating in the procurement procedures concerned by the investigation;
- documents seized in unannounced inspections;
- documents and information provided by the contracting authority, the undertakings involved and certain public undertakings and institutions at the request of RCC;

MOLDOCOR sought the annulment of Decision No 75/2018 on the ground, inter alia, that the minutes of telephone conversations sent by the criminal authority could not be used as evidence by RCC.

The Bucharest Court of Appeal rejected MOLDOCOR's arguments, upholding RCC's decision in its entirety, and the decision of the court of first instance was subsequently confirmed by the High Court of Cassation and Justice.

51. In 2022, RCC had 293 case proceedings before Romanian courts, of which 221 cases concerned antitrust. The percentage of decisions favourable to RCC, handed down by the first-instance court, the Bucharest Court of Appeal, was 73 %, which maintained 99 % of the amount of sanctions challenged in court cases closed in 2022.

52. As regards the share of decisions favourable to the Romanian competition authority in the total number of judgments handed down on appeal by the High Court of Cassation and Justice, it reached the level of 89 %. At the same time, the supreme court maintained 66 % of the amount of sanctions challenged in court cases closed in 2022.

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

53. In 2022, RCC had a significant role in the process of regulatory endorsement of draft public policies or draft legislative acts, and also in raising awareness and promoting competition or State aid rules among the initiating institutions.

3.1. Advisory opinions, points of view and opinions issued by RCC

54. During 2022, there was a notable increase in the total number of opinions, opinions and opinions submitted by the competition authority in contrast to 2021, both in terms of collaboration with the Romanian Government, with 193 opinions/opinions and at the level of the Parliament, in which case 174 opinions were submitted.

55. The legislative acts submitted to RCC for opinion were influenced by the current economic and social context, focusing in particular on the areas affected by the energy crisis and Russia's military aggression on Ukraine. In this respect, RCC has been actively involved in the process of strengthening a fair and pro-competitive regulatory framework that ensures that both the national economy and final consumers are protected against the backlash of significant price increases.

56. RCC has therefore made a number of recommendations to improve the solutions contained in the draft legislative acts under consideration. RCC has helped define the economic support measures and other state actions aimed at limiting the negative economic effects produced in the exceptional military context, ensuring that the support measures comply with European State aid legislation.

57. In order not to distort competition and undermine the proper functioning of the market, RCC has consistently stressed the need for measures taken to combat the negative effects of price increases to be kept as low as possible and targeted, in particular, at vulnerable consumers in difficulty. The purpose of RCC's recommendations was to ensure the competitive functioning of the markets under review and to ensure that there is a regulatory framework that discourages any opportunistic behaviour by undertakings operating in these sectors of the economy.

Table 1. Advisory opinions, points of view and opinions transmitted to the Government, 2018-2022

Type	Competition	State aid	Competition and State aid	TOTAL
2018				
Points of view	2	4	—	6
Advisory Opinions	—	24	5	29
Opinions	27	31	89	147
Total responses:	29	59	94	182
2019				
Points of view	—	1	1	2
Advisory Opinions	4	14	12	30
Opinions	19	38	59	116
Total responses:	23	53	72	148
2020				
Points of view	—	2	4	6
Advisory Opinions	2	17	7	26
Opinions	17	89	53	159
Total responses:	19	108	64	191
2021				
Points of view	—	—	—	—
Advisory Opinions	—	6	1	7
Opinions	22	44	51	117

Note: 'Formal Advisory Opinions' adopted by the RCC Plenum in accordance with Article 7 (6) of Government Emergency Order No 77/2014.

'Formal points of view' adopted by the RCC Plenum in accordance with Articles 25 (1) (l) and 28 (c) of Competition Law.

RCC replies (letters) communicating its opinion on draft legislative acts submitted to RCC for analysis.

Table 2. Legislative endorsement and representation of the Competition Council at Parliament level, 2018-2022

Indicator	2018	2019	2020	2021	2022
Points of view to the specialised committees	28	15	32	88	174
Number of participations and interventions in specialised committees/plenary	71	60	18	28	52
Answers – interpellations/parliamentary questions	6	1	19	13	72

3.2. Legislative acts co-initiated by RCC

58. RCC has also been very active in co-initiating draft legislative acts, working with ministries and public authorities, with a view to ensuring a pro-competitive and fair regulatory framework.

59. The main legislative acts are presented below:

- Draft Government Decision approving the Rules of Procedure of the Committee on the Screening of Foreign Direct Investments;
- Draft Government Emergency Ordinance on implementing measures for Regulation (EU) No 452/2019 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments in the Union and supplementing the Competition Act No 21/1996, creating the national administrative mechanism for the analysis and authorisation of foreign direct investments in the non-EU area;
- Draft Government Emergency Ordinance on combating exploitative actions and amending certain legislative acts (amendment of Law No 11/1991 on combating unfair competition);
- Draft Government Emergency Ordinance on the Single Industrial Licence.

60. The project, co-initiated by RCC with the Ministry of Entrepreneurship and Tourism, aims to simplify the procedures for obtaining licences and administrative acts of a similar nature in order to carry out an industrial activity related to the activity, so that entrepreneurs benefit from the following:

- obtaining a single industrial licence by submitting the application to a single electronic point of contact;
- possibility to use the licence simulator to know in advance the timelines for obtaining, the procedures and the related charges
- easy communication with the authorities involved in the single industrial licensing process.

61. This reform was initiated following the OECD Simplifying Business Licensing project in Romania. The project aimed at increasing the quality of public administration services by facilitating the exchange of data between IT systems, reducing bureaucratic and administrative burdens on natural and legal persons and increasing transparency in the use of data by public institutions and authorities. The legislative act establishes the Office for Industrial License (OLI), a specialised body of the central public administration, with legal personality, under the authority of the Government and the coordination of the Prime

Minister, with the role of rationalising, simplifying and digitising the specific procedures for obtaining the single industrial licence. OLI is assisted in its activity by an Inter-ministerial Working Group on Single Industrial Licensing. RCC is also a member of this inter-ministerial group.

62. The draft legislative act was submitted for approval by the Romanian Government. It was adopted at the meeting of the Government of 19.10.2022 as Government Emergency Order no.140/2022.

4. Resources of competition authorities

4.1. Annual budget

63. RCC's budget for 2022 was EUR 15.28 million (EUR 13.27 million from the State budget and EUR 2.01 million from its own revenues).

64. The budget expenditures for the two sources of funding in 2022 were 99.65 % of public funds and 18.33 % from own revenues. Thus, the overall budget expenditure rate was 88.92 % at the end of 2022.

4.2. Human resources

65. In 2022, the staff of the Romanian competition authority was comprised of 383 employees - civil servants, public managers and contractual staff. The competition inspectors represented 68 % of the total number of staff.