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Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Romania

-- 2023 --

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

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Romania

Executive Summary

1. In 2023, the economy evolved well overall, confirming its upward trend restored after the pandemic. At the same time, however, there was a lot of concern and even uncertainty, especially as a result of the shock generated by the electricity crisis, which was largely absorbed, and the still increasing price instability, which required state intervention in certain markets where vulnerable consumers existed.
2. RCC's activity in the last year has been connected to the trends and realities of the Romanian economy. A record number of 24 investigations were started, including in areas with a strong impact on consumers - such as the food and banking sectors, in areas where there has been significant turbulence in recent years - such as electricity but also in other areas that are particularly relevant to the economy, such as the construction and road repair sector or the digital sector. In the context of working with the other competition authorities in the European Union, the investigation launched on the Sony console market has to be mentioned, where RCC received support from the Dutch authority and where RCC was the first European authority to investigate this practice, and the Apple case, in which RCC collaborated with other five European authorities.
3. In 2023, RCC completed 14 investigations and imposed fines in a total amount of EUR 32.1 million, 77% of which being sanctions applied for agreements between enterprises. The most important sanction, of EUR 25 million, was applied to SEROM, Dante International, Altex Romania and Flanco Retail, for participating in a cartel on the market for the sale of TVs and mobile phones, during 2019-2021.
4. Another important case was the participation with rigged bids at the tender organized by the Ministry of Internal Affairs to develop an electronic services delivery centre. The fine, of EUR 4.1 million, was applied to the companies Dataware Consulting, Kontron Services Romania and Tema Energy.
5. In the food sector, RCC imposed Albalact, Covalact and Dorna Lactate, members of the Lactalis international group, a fine of approximately EUR 2.9 million for refusing to provide access to certain information during the dawn raids carried out as part of the investigation into possible price-setting arrangements on the market for the production and marketing of butter.
6. RCC authorized 74 mergers and imposed special conditions for the takeover of Gedeon Richter Farmacia and Pharmafarm by Mediplus Exim.
7. Since 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 the Commission for the Examination of Foreign Direct Investments in Romania (CEISD) and ensures the secretariat of this Commission. From 2023, merger control and foreign investments screening work in complementarity. The Commission for the Examination of Foreign Direct Investments (CEISD) issued 105 decisions authorizing transactions.
8. In terms of measures to mitigate the impact of price instability in certain markets, RCC's central role is to help the Government identify solutions that dampen the shock for vulnerable groups of consumers, without a negative impact on the functioning of markets and competitive mechanisms. Therefore, RCC has been

involved in this whole process, both in issuing advisory opinions and managing a sustained dialogue with all important actors, and by monitoring the markets and the effects of the measures taken.

9. The state had the most important intervention in the field of energy, amid the impact of the war in Ukraine, which was largely absorbed. Consequently, the next steps must be prepared, to get out of this capping mechanism and, together with the Government and the regulator, to find appropriate solutions for markets to function well and for vulnerable consumers to benefit from a certain level of protection.

10. Long term contracts were found for the commercial spaces in Otopeni Airport due to the automatic extension clause they included. An auction was completed for food marketing premises and RCC set the condition that the prices should not be higher than those at similar airports in Eastern Europe.

11. Regarding the competition impact assessment of draft normative acts, 2023 entailed an extremely intense activity for RCC. The authority drafted more than 380 opinions, views, responses and interpellations regarding State aid and competition. Of these, 212 represented recommendations/observations regarding drafts of normative acts, most of which were taken into consideration by the initiators.

12. In addition, RCC has drafted the Government Decision for the organization and functioning of the Industrial License Office (ILO), which was approved. This legal act was one of the milestones included in the National Recovery and Resilience Plan of Romania – Milestone 243, 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.

13. 2024 will be one with at least as challenging investigative activity as the previous year, with banking, cement market, public procurement and book supply investigations ready to complete, and a complex year for merger control. RCC analyses the possible acquisition of Telecom, the fourth operator in the country (a transaction that was blocked in 2023 for reasons of national security), large transactions in the banking area, and the acquisition of Profi by Delhaize Mega Image, an operation that the European Commission referred to RCC for analysis this year.

14. 16 sector inquiries, studies and analyses remain ongoing, in the following sectors: automotive, rail, natural gas supply to household consumers, retail banking and copyright services, pharmaceutical retail, municipal waste sorting, telemedicine services, circular economy, connection to electricity distribution networks, fuel and the digitalisation of SMEs.

15. In the field of unfair competition, RCC will apply the recently adopted provisions that allow, among other things, to deal with cases of exploitation of one company's superior negotiating position over another. This year's priorities are contracts for differences in renewable energy, the restructuring of TAROM and Nokian's investment in building a tyre factory in Oradea.

16. In terms of legislative priorities, our efforts will focus on the mandatory car insurance sector, where the cap on insurers' tariffs will be extended and certain functional market mechanisms need to be in place to ensure its stability and development in the medium and long term.

17. RCC¹ will also be involved in amending the legal framework applicable to freight transport, passenger transport, alternative transport and taxi services, rail and shipping.

18. As regards the food area, the authority will continue to monitor the evolution of the prices of capped trade-added products.

19. Moreover, the next steps must be prepared later this year to get out of this capping mechanism and, together with the Government and the regulator, to find solutions for the markets to function well and for vulnerable consumers to benefit from a certain level of protection.

20. Also, this year the Industrial Licensing Office (ILO) will become operational, as part of the reform initiative that RCC has carried out in collaboration with the Ministry of Entrepreneurship and Tourism since 2022. ILO will issue only one industrial license so that companies no longer have to go through separate procedures to obtain all authorisations to carry out their activities. A similar project for the service sector is ongoing, financed by DG Reform and with the assistance of the OECD. The project will be finalised next year in the coming period.

21. As part of the international activity, we will continue our active involvement in Romania's accession to the OECD. Another priority is participation in several technical assistance projects for competition authorities in the region – Ukraine, Moldova, Georgia, Western Balkans area.

22. Another objective for the period ahead is to address the problem of the competition authority's resources, in particular as regards the low level of employees' salaries, which generates the migration of specialized and well-trained staff to the private sector, which offers much more attractive wage packages and benefits.

In an increasingly dynamic and complex economic context, the national competition authority learned to adapt on the go to the new paradigms and has developed new tools for intervention and monitoring of markets, so that it can continue to make a real contribution, aligned with its mission to strengthen the competitive environment.

¹ For a more detailed description of RCC's activity in 2023, please see the extended version at <https://www.consiliulconcurentei.ro/documente-oficiale/rapoarte/rapoarte-anuale/>

1. Enforcement of competition laws and policies

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

1.1.1. Summary of activities

Opened investigations

23. In 2023, RCC launched 24 investigations into possible infringements of competition law - representing a record number in the last 12 years - of which 11 were launched ex officio and 5 following complaints.

Figure 1. Investigations initiated in 2023

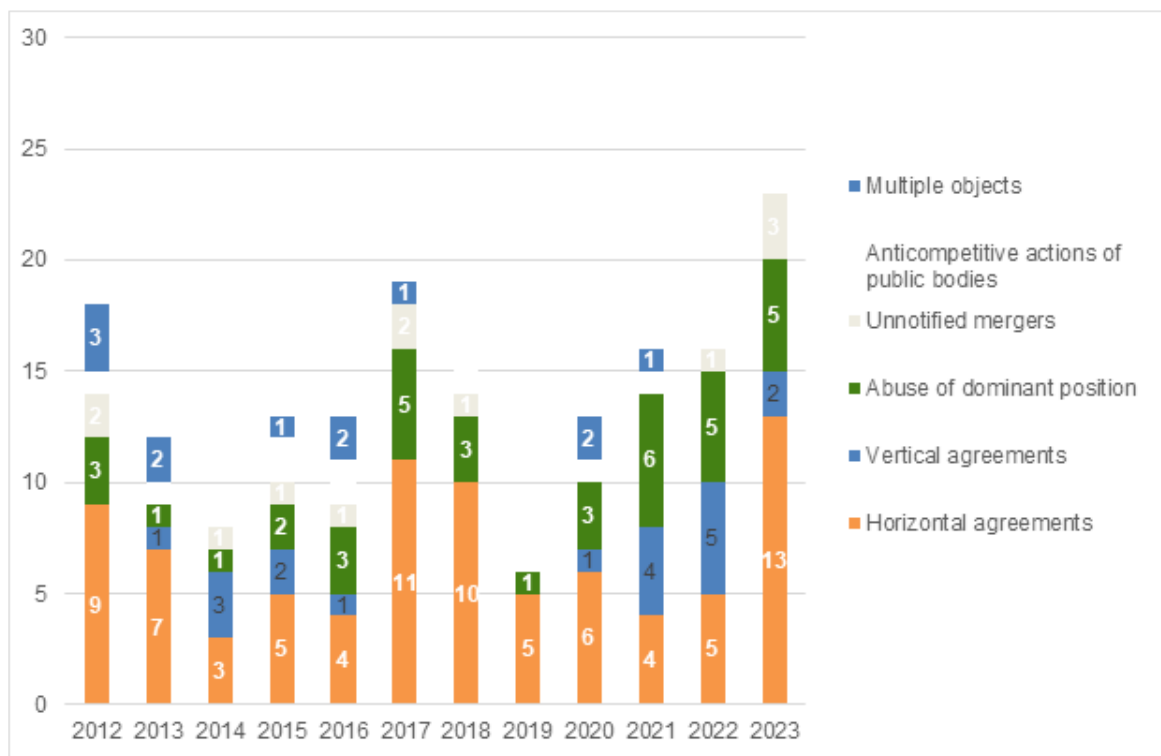
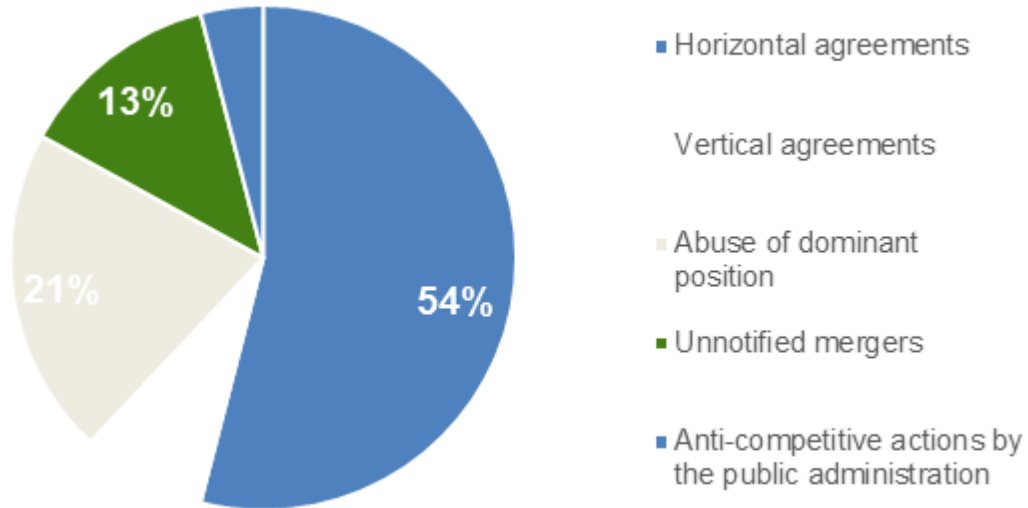


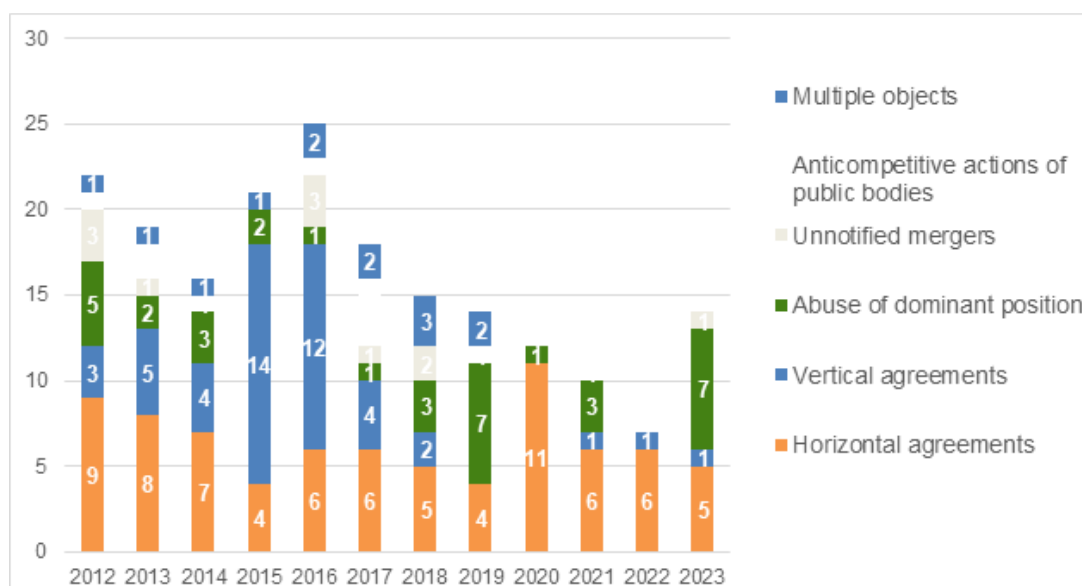
Figure 2. Structure of investigations initiated in 2023 depending on the anti-competitive practice concerned (%)



24. Of the 24 investigations launched in 2023, the majority target possible anti-competitive agreements (horizontal and vertical). From the perspective of the competition legislation concerned by the investigations initiated in 2023, 42% of them are focused on the possible infringement of national and Community competition law, and 58% of all investigations initiated in 2023 are related to the possible infringement of the relevant national rules.

Completed investigations

Figure 3. Completed investigations by investigated practice



25. In 2023, 14 investigations were completed, out of which 7 concerned abuses of dominant position (with a 50 % share in the total investigations concluded), 5 investigations on horizontal agreements and one investigation on vertical agreements and mergers implemented without a decision of RCC. From the perspective of the competition law covered by the investigations concluded, 71 % of them involved infringements of national competition law and the remaining 29 % concerned infringements of national and Community rules in the field.

Impact of RCC enforcement

26. To assess the impact of RCC actions on the well-being of consumers, the Chief Economist Unit analyzed the cases completed during the year 2023, using the methodology developed by the European Commission. The impact on consumers at the level of a market is determined by estimating the costs avoided as a result of RCC's intervention. It is important to note that this impact assessment does not capture the entire activity of RCC in the last year, due to the following factors:

27. Only cases suitable for the application of such a methodology, i.e. 3 anti-competitive agreements concluded with sanctions, were analysed in the following markets:

- the electronics and IT&C products market in Romania;
- the market for facilities, communication services and other related activities thereof;
- the market for road transport services on the Constanta – Năvodari route.

28. Only the first-round effects were taken into account. Thus, account was taken of price increases corresponding to the undertakings participating in the anti-competitive practice, the affected market being assessed by their turnover or by part of their turnover, depending on the percentage of goods or services relating to the anti-competitive practice. The side effects of the envisaged practices could be that other undertakings on the market could align their prices with those charged by the parties to the anti-competitive act.

29. The indirect effects of RCC's interventions, such as the deterrent effect of sanctions for other undertakings in the investigated market or other markets, or the effects of the activity to promote competitive principles, were not considered.

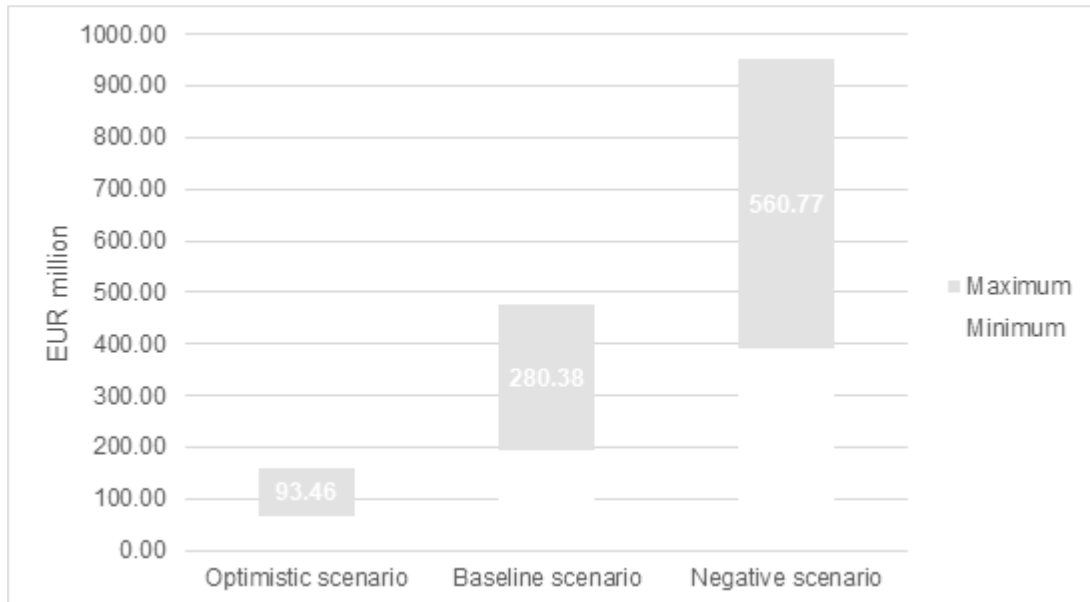
30. The three reference elements for determining the benefits are: the size of the affected market (estimated by referring to the turnover of the parties to the agreement and the percentage related to the goods/services related to the infringement), the counterfactual scenario regarding the period of the continuation of the act in the absence of the intervention of RCC and the level of the overprice generated by the deal.

31. Thus, the methodology used by the European Commission provides results for an interval between 1 and 6 years of lifetime for the cartel, depending on the estimated stability of the cartel on the date of detection. In this methodology, cartels are considered "unsustainable" (a lifetime of 1 year), "quite durable" (a lifetime of 3 years) or "very durable" (a lifetime of 6 years). At the same time, when there is not enough data or details regarding the effect of the practice on the price, a surcharge from those implementing the anti-competitive practice between 10% and 15% is taken into account. According to the methodology of the European Commission, to estimate the benefits of the competition policy, 3 scenarios were used (the optimistic scenario, the basic scenario and the negative scenario), the impact of anti-competitive agreements on the price, for the affected market, at the level of each scenario being between 10% and 15%.

1. The optimistic scenario is the situation where the cartel is unstable; without the intervention of RCC, it would have broken down within one year;

2. The baseline scenario is the situation where the cartel is relatively sustainable; without the intervention of RCC, it would have lasted for another 3 years;
3. The negative scenario is the situation where the cartel is very stable; without the intervention of RCC, it would have lasted for another six years.

Figure 4. The impact of the competition policy – first-round benefits



32. According to the most conservative estimates on the three markets analysed, RCC interventions' impact on consumers, i.e. the negative effects of unfairly increased prices that the consumers were able to avoid, was estimated between a minimum of EUR 65,14 million and a maximum of EUR 560,77 million.

Fines

33. The fines imposed in 2023 amounted to EUR 32.351.391. The largest share of the fines imposed in 2023 was applied in vertical agreements accounting for 77% of the total fines imposed. RCC also imposed fines for horizontal agreements and for not complying with dawn raids.

Figure 5. Fines imposed in 2023, depending on the type of offence sanctioned (%)

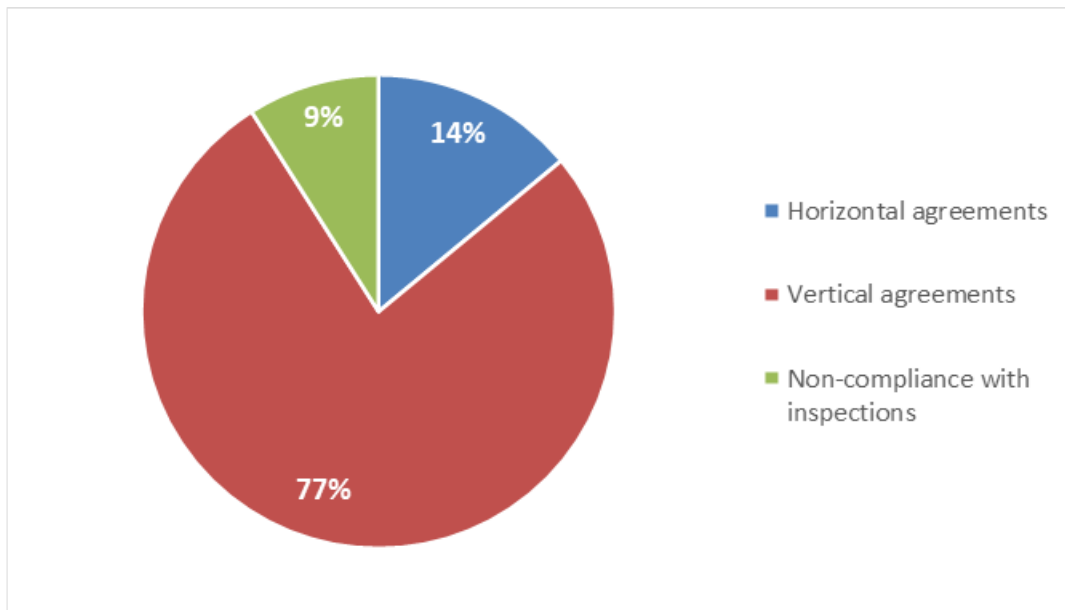
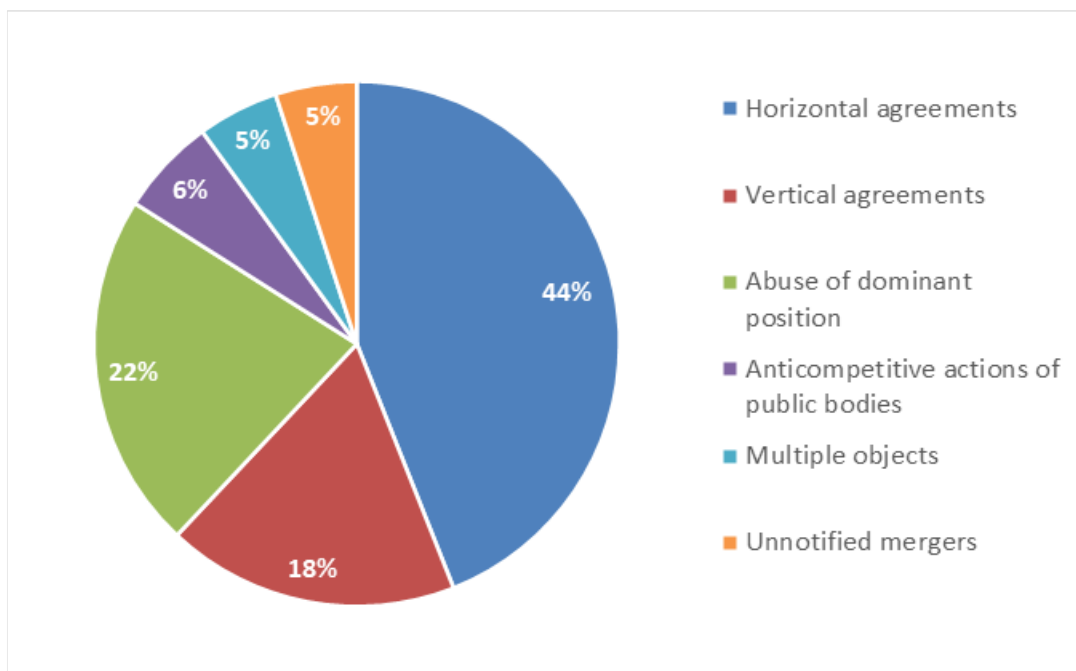


Figure 6. Fines applied in 2023 according to infringement (%)



Ongoing investigations

34. At the end of 2023, RCC had 46 ongoing investigations on possible infringements of competition law.

Dawn raids

35. In 2023, 22 dawn raids were carried out in the framework of 20 investigation procedures and 90 premises belonging to 75 companies were raided.

Sector inquiries /Studies/Analyses

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

37. Seven sector inquiries were ongoing at December 31st, 2023, similar to the previous year. RCC's studies analyze the competition issues specific to certain markets to acquire more in-depth knowledge of certain markets and new trends present in those markets.

38. In 2023, RCC initiated a study on the digitalisation of small and medium-sized enterprises.

39. During 2023, RCC finalized five studies, on the following topics:

- building materials;
- the process of connecting household consumers to electricity distribution networks;
- the impact of the licensing system for sales of products and services on the access to market of enterprises;
- identification of possible legislative barriers to market entry concerning the connection of new renewable electricity generation capacities to the National Electric Power System, including electricity distribution networks, related to issuing the technical approval for grid connection;
- possible restriction of the entry to the market of renewable energy producers as part of the licensing/authorisation process of public authorities.

40. A brief presentation of the study on the building materials can be found below:

Box 1. Study - building materials

The study aimed to analyse the evolution of the prices of the main products/categories of products in the construction materials sector in Romania for the period 2020-2022.

The evolution of prices differs from one type of construction material to another. While for BCA and ceramic blocks, the weighted average price followed a steady upward trend, for grey cement, the price showed an evolution in annual steps, but also on an upward trend. The price of bitumen for road applications marketed in Romania, mainly from imports, shows a fluctuating evolution, similar to that of Brent crude oil. Prices of polystyrene and certain construction timber products show a relatively steady trend over the years 2019-2020, followed by a significant increase from 2021 onwards.

Some of these materials are traded on markets beyond the national territory, which makes their prices influenced by international factors (e.g. international transport conditions). Other materials are traded on rather national markets, which makes domestic factors more influential.

The analysis of RCC led to the conclusion that the price increase since 2021 was driven by the rise in raw material prices, national, regional and global demand, transport costs, the emergence of certain supply problems, and the advance in energy prices.

41. A brief description of the study regarding the impact of the approval system for products and services trading on the market entry of enterprises can be found below:

Box 2. Study - the impact of the licensing requirements for sales of products and services on the access to market of enterprises

The study aimed to analyse the impact of the approval system for products and services trading on the market entry of economic operators.

The lawful conduct of an economic activity obliges undertakings to apply for and obtain the permit/authorization/licence issued by the municipality in whose jurisdiction the activity is carried out.

The analysis showed that, in practice, there are differences covering several aspects, such as the nature of the business activities, the procedure for issuing the administrative document, its validity and the requirements for issuing it, etc. It was found that the lack of clarity of the rules at the level of local public authorities, led to an unified interpretation and, implicitly, to an unified application of the rules issued by local public authorities.

Differential treatment of undertakings could have consequences such as discouraging economic operators from entering the market and paying higher prices for products/services purchased in the area of administrative-territorial units, where approval conditions are more restrictive than those where conditions are more permissive.

As a result, in order to ensure fair competition through correct and consistent application of the legislative framework, eliminating the possibility of contradictory interpretations, RCC sent its recommendations to the Ministry of Economy, Entrepreneurship and Tourism on the need to re-evaluate the relevant rules (OG No 99/2000 and its implementing rules), taking into account those adopted in the report.

42. A summary of the study regarding a possible restriction of the entry to the market of renewable energy producers is presented below:

Box 3. Study - restriction of the entry to the market of renewable energy producers

The analysis carried out in the framework of the Study on the possible restriction of access to the market of renewable energy producers, as part of the approval/reporting process by public authorities, highlighted the fact that the permitting procedure from the perspective of civil engineering, which, in addition to obtaining the building permit, involved the modification of the Zonal Urban Plan (PUZ), was the biggest challenge faced by an investor in relation to public authorities (multiple interactions with many public authorities/other entities in order to obtain all the opinions/agreements required by the incident legislation).

During the course of the study, some changes were made to the relevant legislation on the permitting process.

However, the analysis carried out in the study revealed that there are still issues that hamper or block market access for companies. Therefore, RCC made recommendations related to: the unified practice of local public authorities, the impossibility of developing specific projects on land above 50 ha, the impossibility of developing wind farms on category I and II land and the complexity

and duration of the set-aside procedure.

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

Mergers

- 43. During 2023, RCC authorised 74 mergers, similar to 2019.
- 44. From these 74 mergers, Mediplus Exim SRL’s acquisition of Gedeon Richter Farmacia SA and Pharmafarm implied acceptance of commitments.
- 45. 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 7. Number of authorised merger decisions (2015-2023)

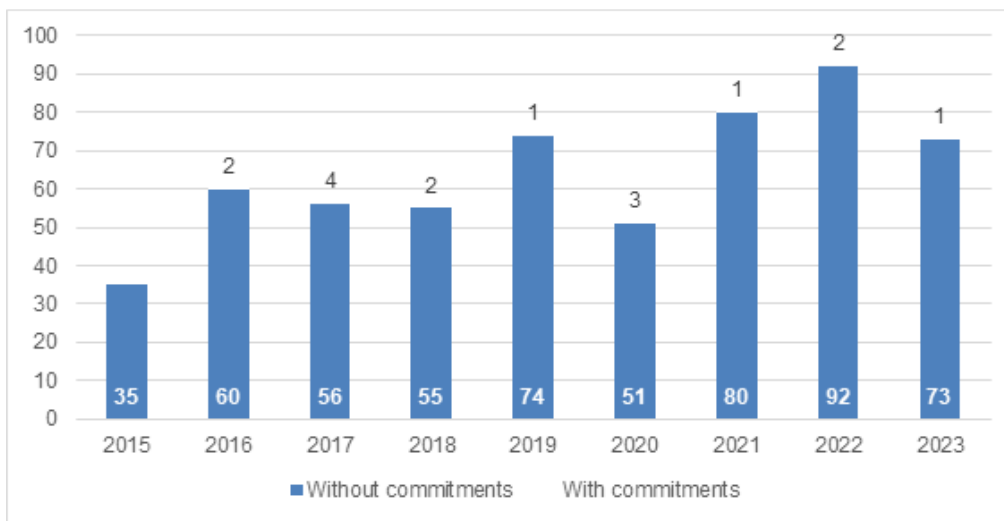


Figure 8. Number of authorisation decisions, full procedure (2015-2023)

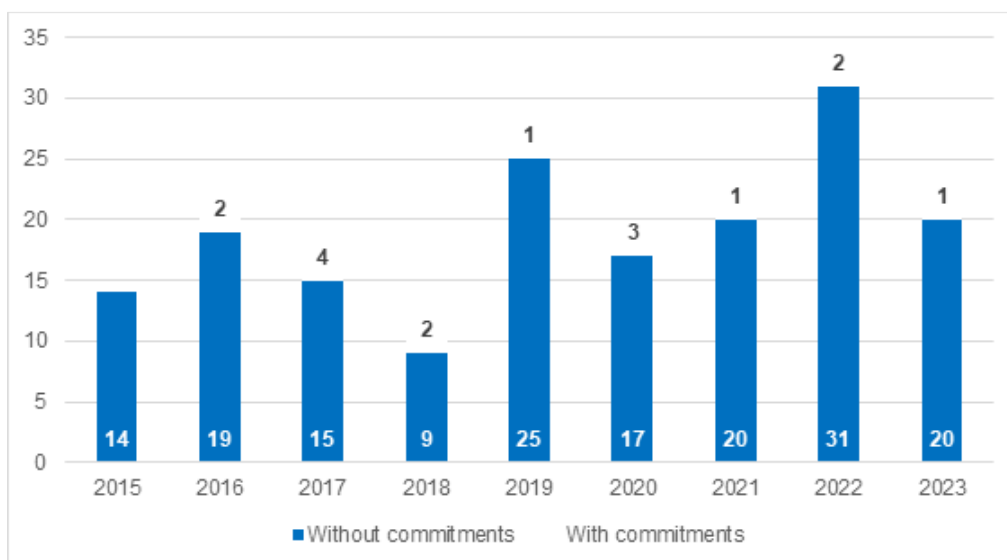
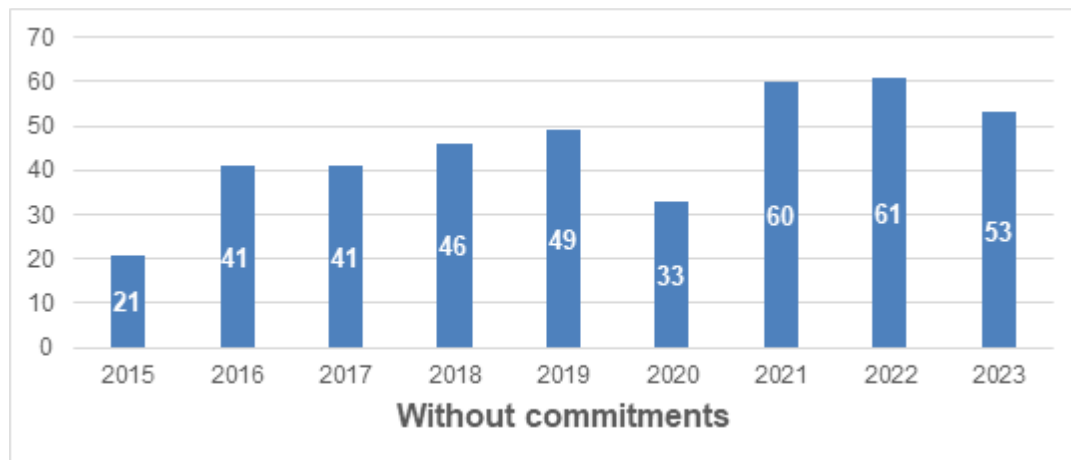


Figure 9. Number of authorisation decisions, simplified procedure (2015-2023)



Whistleblowing Platform

46. 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.

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

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

49. The system ensures the confidentiality of those who use it. Whistleblowers – persons who wish to transmit information to the RCC – can log on to the platform via an SSL - 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.

50. During 2023, **67 referrals** were received, indicating issues covering various areas such as the market for credit products and services, the fuel market, the SGR packaging market, e-commerce, the functioning of online platforms, taxi services and others. Certain complaints received through the competition whistleblower platform led to dialogue (correspondence/message exchange) between RCC and whistleblowers, while maintaining their anonymity.

51. The complaints relevant to the area of activity of RCC have remained in the attention of the institution, which continuously monitors the markets and may initiate investigations into the possible infringement of the competition law whenever there are sufficient indications of a potential infringement of competition law.

52. In 2023, 46 referrals were received under the Competition Act and there were no referrals on matters falling within the scope of the Competition Law.

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

53. RCC encourages the use of this accessible, modern and secure channel of communication for users 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

54. In the field of public procurement, RCC is primarily responsible for investigating possible anti-competitive agreements (cartels) between tenderers in public procurement procedures.

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

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

57. The main actions carried out under the MLT in 2023 were the following:

- organising and participating in two working meetings with some of the institutions involved in the MLT, namely CCA, ADR and ANAP, to identify risks and vulnerabilities in the public procurement procedures organised in the context of the National Recovery and Resilience Plan (NRRP), as well as the ways of monitoring the behaviour of economic agents in the tendering process and to detect infringement of competition rules, to protect 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;
- cooperating with ANAP on the Joint Opinion of these institutions (aspects related to the implementation and updating of the blacklist of economic operators sanctioned for bid rigging).
- Issuing advisory opinions/points of view/opinions on draft legislative acts relevant to the area of public procurement, as follows:
 - the point of view requested by the Chamber of Deputies of Romania on the legislative proposal to supplement Law 232/2016 on the national defence industry, as well as for amending and supplementing certain normative acts;
 - the point of view requested by the Ministry of Finance regarding the draft of GEO on some fiscal-budgetary measures, the extension of certain deadlines, as well as for amending and supplementing some normative acts;

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).

- points of view requested by the Ministry of Research, Innovation and Digitalisation on the draft Decision for the approval of the Substantiation Note on the necessity and appropriateness of the expenditure related to the investment project – Implementation of the Government Cloud Infrastructure, respectively the draft Decision on the Governance of the Cloud Platform;
- points of view requested by the General Secretariat of the Government (Department for Relations with the Parliament) on the proposals for amending the draft Law approving GEO no. 18/2014 for regulating certain measures regarding the activity of RAAPPS, for changing the legal regime of some buildings and for amending some normative acts, namely the legislative proposals related to a State aid scheme for strawberry agricultural producers and supplementing Law No 98/2016 on public procurement;
- the opinion requested by the Ministry of Internal Affairs on the project of the Order of the Deputy Prime Minister, Minister of Internal Affairs for the approval of the performance criteria regarding the establishment, classification and endowment of voluntary services and private services for emergency situations;
- the opinion requested by the Ministry of Health on the draft GD on the approval of the National Equipment Program of the GP's Cabinets or Associations of Medical Care Cabinets, of the National Equipment Program for Family Planning Offices, of the National Equipment Programme of Integrated Community Centres, of the National Programme for Newborn Intensive Care Ambulances and of the National Programme for endowment with Mobile Cancer Screening Units, as well as amending Government Decision No 502/2018 on the organisation and functioning of the National Office for Centralised Procurement;
- points of view requested by the Romanian Senate on the legislative proposal for the adoption of measures in the field of public procurement, namely the legislative proposal for amending and supplementing Government Emergency Order No 26/2000 on associations and foundations;
- the opinion requested by the Ministry of Transport and Infrastructure related to the draft GEO on the adjustment of the prices of public procurement contracts for rail coal transport services for energy complexes;
- the point of view requested by the Ministry of Environment, Waters and Forests on the draft GEO on the procedure for renting tourist beach areas for summer seasons 2023-2024;
- the opinion requested by the Ministry of Education regarding the draft GD for approval of the Methodological Norms for implementing the GEO's provisions regarding the consent of the continuation of the pilot program for providing food support for preschoolers and pupils from 450 pre-university schools.
- Issuing 51 views on plausible indications of exclusion of tenderers from the public procurement procedure requested by contracting authorities. Following the analysis of public procurement procedures, five investigations of infringement of competition law were initiated.

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

Box 4. Vertical agreement

In 2021, an ex officio investigation was initiated into possible anti-competitive agreements concluded by SEROM within the framework of its commercial policy in relation to Altex România S.R.L. (Altex), Flanco Retail S.A. (Flanco) and Dante International S.A. (Dante or eMAG) on the Romanian electronic and IT &C products market. The infringement concerned the existence of a cartel and/or concerted practice restricting resale prices by SEROM in relation to its trading partners, aimed at distorting and preventing competition on the market concerned by restricting retailers' ability to set their resale prices independently.

During the relevant period, 2019-2021, there was an agreement (at least tacit) between SEROM and the retailers involved, on monitoring and actively influencing the retail prices provided by SEROM. Through their communications and behaviour, SEROM and retailers expressed a common desire to limit price competition in the retail market for phones and TV's. The purpose of the agreement and/or concertation between SEROM and the three retailers on adjusting the resale prices of products of the categories of telephones and televisions was to limit competition by object. SEROM practice limited retailers' freedom to set their own resale prices and distorted competition at retail level, with direct effects at consumer level.

In this case, a single and continuous infringement of national and Community competition law was found against SEROM and its three trading partners, imposing fines totalling RON 13.4 million (about EUR 25 million)

After publication, Decision No 86/2023 will be available here.

Box 5. Cartel

The investigation was initiated ex officio in 2021 and concerned the participation of Dataware Consulting S.R.L., Kontron Services Romania S.R.L. (previous name S &T Romania S.R.L.) and Tema Energy S.A. in a concerted agreement and/or practice, consisting of coordinating their commercial policies and strategies, with the aim of manipulating the public procurement procedure for activities of designing and constructing the investment objective "Hub Services (Electronic Services Supply Center) at the level of the Ministry of Internal Affairs". The aim pursued by the parties was to increase the budget allocated by the contracting authority and, implicitly, the price of the products/services/works offered on the market for installation services, the market for communications services and their other related activities, by limiting or controlling trading, including an exchange of competitively sensitive information, which would facilitate the coordination of market behaviour with the ultimate aim of price increases.

The undertakings adopted a joint plan aimed at coordinating non-supply behaviour, with the ultimate aim of increasing prices in the procurement procedure covered by the investigation. The behaviour of the parties involved demonstrates the option of no longer competing in the procurement procedure investigated, thereby distorting competition. Thus, the competitive process has been replaced by a form of cooperation that excludes uncertainties about the future market behaviour of the parties involved.

The anti-competitive practice found took place between 10 July 2020 and 26 January 2021 and amounted to an infringement of national and Community competition rules, with fines totalling RON 20.5 million (approximately EUR 4.1 million).

After publication, Decision No 80/2023 will be found [here](#).

Box 6. Cartel

In 2020, an investigation on the market of road transport services for hire and reward by regular flights on the Constanta – Năvodari route was initiated ex officio, following matters referred to RCC.

During the investigation, the behaviour of four transport operators winning the tender organised for the award of routes in Constanta County, on the Constanta – Năvodari route, providing public transport services for hire by regular flights on this route was analysed: Grup Media Sud Călători S.A., J.T.A. Trans Group S.R.L., Metropolitan S.R.L. and Transevren S.R.L.

Although there are differences between the parties involved, in the economic elements analysed, three of the four transport operators, Grup Media Sud Călători, J.T.A. Trans Group and Transevren, increased tariffs to the same level, with simultaneous application.

Following the investigation, it was found that Grup Media Sud Călători SA, J.T.A. Trans Group SRL and Transevren SRL coordinated their conduct in order to eliminate competition between them, thus achieving an agreement and/or concerted practice for price fixing, which represents an infringement of the national competition rules, the three undertakings being penalised with total fines of RON 1.1 million (about EUR 223,7 thousand).

After publication, Decision No 100/2023 will be found [here](#).

Box 7. Possible abuse of a dominant position

In April 2021, RCC launched an ex officio investigation into a possible abusive conduct of Distribuție Energie Oltenia SA (DEO), on the electricity distribution market related to the geographical areas for which the operator holds a distribution licence. It concerned the involvement of the distribution system operator in the process of switching the electricity supplier, in order to favour the supply company within the

group of which it is part (CEZ Sale), to the detriment of their competitors. The suspected behaviour had the potential to affect competition in the electricity supply market, as well as consumers of electricity.

Following the submission of the public debate on the commitments made by DEO in the context of the investigation, the decision of RCC was issued which gave binding force to the commitments proposed by the DEO, for a period of 2 years, considering that they are sufficient to protect competition and their fulfilment will lead to the removal of the situation that led to the investigation's initiation.

DEO's commitments include: automation of the system for processing and solving notifications received from the online platform for switching the electricity and natural gas supplier and for contracting the supply of electricity and natural gas (POSF), automatic charging of the index read/determined when switching supplier in the POSF, creating a dedicated channel for referrals related to the switching process, implementing a dedicated information guide to users, in order to increase their awareness of the rights they have in the process of switching the supplier according to the rules in force, the revision of the DEO policy on competition rules.

After publication, Decision No 106/2023 will be found [here](#).

Box 8. Merger- Commitments

RCC Mediplus Exim SRL ("Mediplus") has as its main activity the wholesale of pharmaceutical products. This company distributes both pharmaceutical and parapharmaceutical products in Romania. Mediplus is part of the controlled group of Penta Investments Group Limited, a group of investment companies, established in the Slovak Republic, specialising in long-term investments. In Romania, on the retail market of pharmaceuticals and parapharmaceuticals, the Penta Investments Limited Group operated, at the time of the analysis, pharmaceutical units under the brands "Dr. Max" and "Sensiblu". Gedeon Richter Pharmacy SA operates on the retail market of pharmaceuticals and parapharmaceuticals through a chain of 94 pharmacies located as follows: 10 pharmacies in Bucharest, 8 pharmacies in rural areas and the rest of pharmacies in other urban localities in Romania. Pharmafarm SA operates on the wholesale market of pharmaceuticals and parapharmaceuticals.

As a result of the analysis carried out by RCC, some concerns have arisen about the effects this operation could have on competition in three retail markets for pharmaceuticals and parapharmaceuticals. Thus, in view of the market shares of the newly created entity and the position of competitors, the transaction was capable of adversely changing the competitive dynamics of the three relevant markets and of creating serious doubts as to its compatibility with a normal competitive environment, in particular by creating or consolidating a dominant position of the acquiring group in those markets.

In order to eliminate the competitive concerns identified by the competition authority, Mediplus made commitments to divest the retail business of pharmaceuticals and

parapharmaceuticals carried out through three pharmacies. Because the analysis carried out revealed that the commitments proposed by Mediplus remove the competitive concerns arising from this operation, RCC authorised the economic concentration, under the conditions imposed by complying with the commitments.

After publication, Decision No 72/2023 will be found [here](#).

1.1.3. Judicial review of RCC's decisions in 2023

Box 9. Court proceedings – ALRO SA case

By Decision No 82/2015, RCC found that the national competition law had been infringed and penalised several companies, including ALRO SA (ALRO), for participating in an anti-competitive cartel consisting of limiting the sale of electricity to other electricity suppliers and/or other eligible consumers in Romania, as well as for limiting other producers to sell to the contractual partners of HIDROELECTRICA SA, following the conclusion and performance, between January 2003 and August 2012, of sale/purchase/supply contracts.

Alro was fined RON 21.238.719, representing 1.05 % of the turnover achieved in 2014. Alro brought an action for annulment of Decision No 82/2015, which was dismissed as unfounded by the Bucharest Court of Appeal, a judgment under appeal by ALRO.

The High Court of Cassation and Justice dismissed as unfounded the appeal lodged by ALRO against the judgment of the Bucharest Court of Appeal, against the conclusion of the hearing, by which the court of first instance found that the minutes of deliberation was not an administrative act in its own right which could, independently, be the subject of an action in dispute, as well as against the conclusion of the hearing, rejecting the request for a point of view by the European Commission. With regard to that last point, the Supreme Court held that, in so far as RCC has not applied European law, the request for such a point of view can only be optional, the court hearing the substance being entitled to reject such a request as meaningless. The final decision of the Supreme Court also held that, by adopting Decision 82/2015, RCC did not infringe the TFEU by not acting in an area of shared competence and in which the EU authorities had legislated, adopting their own legally binding rules or acts. Thus, the court held that ‘the development at European level of documents which could ultimately have led to the adoption of European Commission guidance on the assessment of long-term energy supply contracts was not such as to paralyse for an indefinite period the steps taken by the national competition authorities aimed at detecting and penalising anti-competitive acts.

At the same time, the court confirmed that the finding of an anticompetitive act, solely in the light of the Competition Law, was correctly justified by the fact that, during the period under review, there was no possibility of significantly affecting cross-border activities by concluding and carrying out the long-term contracts analysed. As regards the infringement found and sanctioned by ALRO, the Supreme Court confirmed the analysis of RCC, including that carried out in the light of the

effects produced.

Box 10. Court proceedings – Amazonen case

By Decision No 72/2020, RCC found and penalised the infringement of national and Community competition law by concluding an anti-competitive cartel aimed at coordinating commercial conduct with regard to fixing the sale price charged for the sale of Amazonen-branded equipment, fertilising machines in Romania, by seven undertakings, including Amazonen-Werke H. Dreyer GmbH & Co. KG (hereinafter Amazonen). For the infringement found, RCC penalised Amazonen with a fine of RON 28.746.093.

Amazonen brought an action for annulment before the Bucharest Court of Appeal against the decision of RCC. The court of first instance rejected the applicant's application, maintaining in its entirety the contested decision, both in terms of the existence of the anticompetitive act and the individualisation of the penalty imposed. The Bucharest Court of Appeal found that Amazonen's infringement of the competition rules had been proven to the requisite standard of proof, the documents in the file demonstrating the agreement of intent of the undertakings penalised, in the sense of concluding the cartel setting the prices at which the Amazonen-branded machines were to be marketed.

The Court established that the undertakings party to the cartel, including Amazonen, indirectly fixed the minimum selling price for machinery purchased under settlement from European funds, as well as for machinery purchased from other sources of financing, since the practice of lower prices than those fixed by the cartel entailed the risk of lower reference prices by the Rural Investment Financing Agency. The purpose of the cartel in question is to distort free competition on the market by setting a minimum price for the marketing in Romania of a catalogue of more than 200 Amazonen marks. The Court of Appeal concluded that there are double commercial relationships between Amazonen and its dealers, in the sense that dealers can act and sell in their own name and also sell on Amazonen's behalf and receive a commission for those sales. Since Amazonen and the six other sanctioned undertakings may independently sell the same product, they are competitors in respect of that product. As regards the individualisation of the penalty imposed, the Court held that, correctly, RCC had established that the anti-competitive cartel falls within the category of high gravity, having an average duration.

Amazonen appealed against the decision of the Bucharest Court of Appeal. The High Court of Cassation and Justice dismissed the company's appeal, with the consequence of maintaining as legal and sound the decision of RCC, both with regard to the deed and guilt of the company and the fine imposed. The appeal court held that the act penalised by the decision of RCC had been proved to the standard of proof required in the field, demonstrating that there was a cartel between the 7 competing undertakings, the conduct of the parties concerned demonstrating their clear choice not to compete in the determination of the pricing policy, thus distorting an essential parameter of the market, namely competition, the competitive process being replaced by a form of cooperation which excludes uncertainties about their future market behaviour.

The High Court of Cassation and Justice noted that the agreement took place between competing companies, distorting competition on the market by vitiating the conduct of the undertakings and thus affected the competitive process which should have generated the best offer for the customer, the conclusions of the court being that there was no doubt as to the standard of proof in the field of competition law. As regards the fine imposed on Amazonen, the Supreme Court held that the competition authority had correctly individualised the penalty by not imposing a reduction in its amount.

Box 11. Court proceedings – TAROM SA case

By Decision No 56/2020, RCC found and penalised the infringement of national and Community competition law by the Romanian National Air Transport Company Tarom SA (Tarom), as facilitator of the anti-competitive practice established and sanctioned by RCC Decision No 76/2018.

In particular, it was noted that Tarom facilitated the cartel established by the travel agents by committing actions refusing to contract charter flights directly with certain agencies which did not join or did not respect the aspects agreed within the cartel, made it difficult for those agencies to access charter flights and/or favoured certain travel agencies in the allocation of flights, between 6 June 2013 and 25 September 2015.

By Decision No 56/2020, Tarom was penalised by a fine of 16.619. 888 lei, representing 1.22 % of the turnover achieved by the enterprise in 2019.

TAROM brought an action for annulment of Decision No 56/2020, seeking, in particular, the annulment in whole of Decision 56/2020 and the partial annulment of Decision No 76/2018 in respect of Tarom, which was the basis for the continuation of the investigation against Tarom, and an order for the competition authority to issue a decision amending Decision No 76/2018 in such a way that, in order to continue the investigation, to remove all the irregularities with the solution of RCC Plenum contained in the minutes of the deliberations of 20 December 2018, as well as all the considerations contained in Decision No 76, relating to the alleged act imputed to Tarom which, according to Tarom, were liable to prejudice and/or prejudice the outcome of the investigation and to constitute a preliminary ruling on the case.

In the alternative, Tarom sought the partial annulment of Decision 56/2020 as regards the fine imposed, namely a reduction in the amount of the fine imposed on Tarom.

The Bucharest Court of Appeal rejected the claim as unfounded.

The High Court of Cassation and Justice dismissed Tarom's appeal against the judgment of the court adjudicating on the substance, dismissing the complaints relating to the illegality of Decision No 76/2018 in so far as, by its operative part, the decision of RCC Plenum as regards the continuation

of the investigation against Tarom was altered and conclusions were drawn which would undermine the decision to continue the investigation with regard to it.

At the same time, the Supreme Court's solution confirmed that Tarom's arguments that its actions were not such as to facilitate the conclusion of an anti-competitive cartel between travel agents were unfounded. In particular, it was noted that the evidence and analysis of RCC demonstrated that, as regards Tarom's conduct, namely the refusal to contract charter flights directly with certain travel agencies, their access to charter flights and/or by favouring certain travel agencies in the allocation of charter flights, it was such as to facilitate and support the anti-competitive infringement found on the part of some travel agencies, by Decision No 76/2018.

58. In 2023, RCC had 287 case proceedings before Romanian courts, of which 220 cases concerned the field of competition. The percentage of decisions favourable to the RCC, handed down by the first-instance court, the Bucharest Court of Appeal, was 79 %, which maintained 38 % of the number of sanctions challenged in court cases closed in 2023.

59. 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 51 % of the amount of sanctions challenged in court cases closed in 2023.

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

60. In 2023, 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.

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

61. In 2023, the Government, the Parliament and the competent institutions sent 258 draft normative acts or reworked forms of draft normative acts to the competition authority, out of which 147 projects at the level of the Government and 111 projects drawn up at the level of the Parliament. Also, 20 answers were sent to questions/interpellations received from senators/deputies.

62. 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.

63. RCC has made several recommendations to improve the solutions 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.

64. 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.

65. The main areas of interest that were the subject of the analysis of the RCC are presented below:

- As regards the mandatory car insurance (RCA) sector, the competition authority constantly monitors the activity of the economic operators operating in this market, as well as the legislative dynamics specific to this area. In 2023, RCC was actively involved in the regulatory process in the RCA sector, to identify the best legislative solutions regarding the adoption of immediate measures to remedy market failures, in particular as regards the price cap measure proposed by the Ministry of Finance, the criteria for the selection of the RCA insurer and the regression mechanism between insurers. Thus, during the reference period, the competition authority approved, with recommendations, a draft Government Decision aimed at regulating measures to freeze premium tariffs applied by RCA insurers for 6 months, as well as two draft Government Decisions by which the measure was successively extended by periods of 3 months.
- RCC has provided support to the relevant ministries to develop and promote the best legislative solutions for the proper functioning of the construction materials market, contributing to ensuring a fair and pro-competitive legal framework for the benefit of the final consumer. Thus, RCC was consulted on the approval and financing of the National Programme for the Development of Domestic Production of Construction Products and Materials (CONSTRUCTPLUS Programme), recommending, in this regard, to carry out an opportunity analysis on the promotion of the present state aid scheme, financed from national funds, to support the sectors of activity in the production of construction products and materials, given the existence of other public support measures covering these sectors.
- At the same time, as regards the food market, given that food prices have increased significantly in recent years as a result of a combination of direct and indirect factors, including the increase in production costs, in particular for energy and raw materials used in the food industry, the competition authority analysed a draft GEO setting out temporary measures to combat the excessive increase in prices of 14 basic food groups, pointing out several risks the clarification of which can help achieve the final purpose of the draft legislative act. Also, RCC approved the draft Government Emergency Ordinance on the implementation of the National Program for the Development and Modernisation of the Food Industry INVESTALIM, which establishes a state aid scheme with the objective of regional development of production capacities in the food industry.
- RCC has been involved in the process of consolidating a fair and pro-competitive regulatory framework in the field of energy and natural gas, marked by the volatility of energy markets, driven by the post-pandemic recovery of world economies and amplified by the armed conflict in Ukraine.

The recommendations of RCC regarding this sector focused mainly on energy efficiency measures, security of gas supply, decarbonisation of the energy sector, mining sector, etc., the purpose of the recommendations being to ensure the competitive functioning of this market, as well as the existence of a regulatory framework to discourage possible opportunistic behaviours of economic operators operating on these markets.

- The amendments to the timber regulatory framework were another subject of interest for the competition authority, analysing draft legislative acts aimed at amending and supplementing the provisions of the regulation on the recovery of timber, in particular concerning the superior exploitation of timber, on supporting rural development through local wood processing or on the priority of allocating wood materials resources from publicly owned forests, necessary to warm up the population, in which sense clearer mechanisms have been created through which producers in the furniture industry can exercise their right of pre-emption to purchase wood materials.
- At the same time, the energy sector is, both at the European level and in Romania, in the process of transition to green energy, with changes in the legal framework aimed at decarbonising energy systems, reducing greenhouse gas emissions and promoting clean energy from renewable sources and developing a circular economy. In this respect, in 2023, the competition authority analysed several draft legislative acts on the implementation of investment projects for hydropower development, wind farms and photovoltaic parks, with European funding, through the RePowerEU action plan, as well as the development of investments in offshore wind energy in the Black Sea, in the current context, marked by the accelerated expansion of global production capacities.
- The competition authority proposed the best measures from a competitive perspective regarding the proposals for amending the regulatory framework in the field of transport, analysing draft legislative acts concerning rail transport, technical inspection and supervision through technical inspection actions in the field of rail, metro transport, light metro, monorails and urban, suburban and regional transport by rail, heritage railways, museum or touristic railways, the establishment, organisation and operation of new public entities subordinated to the Ministry of Transport and Infrastructure (Romanian Railway Authority – AFER and the Romanian Railway Safety Authority – ASFR, as well as a legislative proposal on taxi and rental transport, stressing the need for this public service to take place in a competitive market properly regulated in the light of citizens' interests.
- The competition authority contributed to the implementation of the guarantee-return system (SGR) by analysing draft legislative acts aimed at setting up the Supervisory Committee for the implementation of the SGR, consisting of representatives of producers, traders and public authorities with responsibilities in the field, regulating the deadline for the fulfilment by producers and traders of the obligation to register in the SGR, as well as the model of the contracts to be concluded by manufacturers and traders with the manager of the SGR, the administration tariff, the management tariff, the value of the guarantee for products placed on the national market, as well as the prohibition on the export or intra-Community sale of products inscribed under the provisions of Government Decision No 1074/2021.

- Also, during the reference period, RCC analysed a series of normative acts that contributed to shaping the economic support measures and the other steps of the state aimed at finalising the measures contained in GEO No 124/2021 establishing the institutional and financial framework for the management of the European funds allocated to Romania through the RRF, as well as for amending and supplementing Government Emergency Ordinance no.155/2020 on certain measures for the development of NRRPs, necessary for Romania to access repayable and non-reimbursable external funds under the RRF.
- In order not to distort competition or impair 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 as least intrusive as possible and to be targeted, in particular, at vulnerable consumers in difficulty.
- The aim of the recommendations made by the competition authority was to ensure that the markets under review operate on a level playing field and to ensure that there is a regulatory framework that discourages possible opportunistic behaviour by economic operators acting in these sectors of the economy.

Table 1. Advisory opinions, points of view and opinions transmitted to the Government, 2018-2023

Type	Competition	State aid	Competition and State aid	TOTAL
2019				
Points of views	—	1	1	2
Advisory Opinions	4	14	12	30
Opinions	19	38	59	116
Total responses:	23	53	72	148
2020				
Points of views	—	2	4	6
Advisory Opinions	2	17	7	26
Opinions	17	89	53	159
Total responses:	19	108	64	191
2021				
Points of views	—	—	—	—
Advisory Opinions	—	6	1	7
Opinions	22	44	51	117
Total responses:	22	50	52	124
2022				
Points of views	—	—	—	—
Advisory Opinions	1	7	5	13
Opinions	22	67	91	180
Total responses:	23	74	96	193
2023				
Points of views	—	—	—	—
Advisory Opinions	3	5	—	8
Opinions	21	50	68	139
Total responses:	24	55	68	147

Note: ‘Formal Advisory Opinions’ adopted by the RCC Plenum per Article 7 (6) of Government Emergency Order No 77/2014. ‘Formal points of view’ adopted by the RCC Plenum per Articles 25 (1) (l) and 28 (c) of the Competition Law. RCC replies (letters) communicating its opinion on draft legislative acts submitted to RCC for analysis.

Table 2. Legislative endorsement and representation of RCC at Parliament level, 2018-2023

Indicator	2019	2020	2021	2022	2023
Points of view to the specialized committees	15	32	88	174	111
Number of participations and interventions in specialised committees/plenary	60	18	28	52	43
Answers- interpellations/parliamentary questions	1	19	13	72	20

2.2. Legislative acts co-initiated by RCC

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

67. The main legislative acts are presented below:

2.2.1. Draft GEO amending and supplementing Competition Law no. 21/1996, as well as other normative acts (ECN+).

- The draft legislative act, co-initiated by RCC and the Ministry of Economy, Entrepreneurship and Tourism, aims to transpose into national law Directive (EU) 1/2019 on empowering competition authorities of the Member States to be more effective in enforcing the law and ensuring the proper functioning of the internal market.
- The main measures are aimed at strengthening the investigative powers of RCC, namely improving the administrative mechanism for conducting investigations and enforcement of sanctions, the possibility to carry out preliminary examinations/inspections at the request of the Government, mutual assistance and cooperation with EU competition authorities, as well as the establishment of additional powers for the competition authority deriving from the application of the Foreign Subsidies Regulation and the Regulation on contesting digital markets (DMA).

2.2.2. Draft Government Decision on the organisation and functioning of the Industrial Licensing Office, as well as for the completion of Annex 1 to Government Decision No 832/2022 on the establishment of duties, organisation and functioning of the Prime Minister's Chancellery.

- The draft legislative act was co-initiated by RCC, the Ministry of Economy, Entrepreneurship and Tourism and the Prime Minister's Chancellery and aims to create the legal framework for the organisation and functioning of the Industrial License Office (OLI), a specialised body of the central public administration, with an efficient organizational structure that guarantees speed and fairness in the process of granting the single industrial license.
- The project clarifies the main objectives, tasks and functions of ILOs as set out in GEO 140/2022 on the Single Industrial Licence, namely: strategy, regulation, methodological guidance of the competent authorities in the process of reviewing the procedures and formalities applicable to the single industrial licensing process, approving measures to simplify the procedures applicable to the issuance of administrative acts, single industrial licensing, assistance and advice, representation, state authority, administration and management, including the Single Electronic Contact Point, communication, implementation and management

of projects financed from European funds, as well as programmes and projects financed from national funds and other legally constituted sources.

- The draft legislative act was approved at the Government meeting of 8 December 2023 and became Government Decision No. 1251/2023 on the organisation and functioning of the Industrial License Office, as well as for supplementing Annex 1 to Government Decision No. 832/2022 on the establishment of the duties, organisation and functioning of the Prime Minister's Chancellery, published in the Official Gazette of Romania, Part I No 1126 of 13 December 2023.

3. Resources of competition authorities

3.1. Annual budget

68. RCC's budget for 2023 was EUR 16.61 million (EUR 14.83 million from the State budget and EUR 1.78 million from its own revenues).

69. The budget expenditures for the two sources of funding in 2023 were 89,3 % of public funds and 10,7 % from own revenues. Thus, the overall budget expenditure rate was 90,45 % at the end of 2023.

3.2. Human resources

70. In 2023, the staff of the Romanian competition authority was comprised of 362 employees - civil servants, public managers and contractual staff. The competition staff represented 49 % of the total number of staff.