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Global Forum on Competition

CARTEL CASE STUDIES

Case submitted by Romania

-- Session III --

This case is submitted by Romania in view of its discussion in GFC Sub-Session 2 on Thursday 9 February 2006 (from 9:15 am).

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THE INVESTIGATION

INITIATED ON THE ROMANIAN CEMENT MARKET

1. The investigation was initiated *ex officio* on March 19, 2001 by the Romanian competition authority, upon observing significant and simultaneous increases of the price of cement by local cement producers, beginning on January 1, 2001.

1. The involved parties

2. The involved parties are: Alfa, Beta and Gamma (member of a German group).

2. The cement sector configuration

3. In Romania, three companies, Alfa, Beta and Gamma, currently control the cement market. Together they own 9 cement plants (three plants each), uniformly spread throughout the country. The three enterprises are each vertically integrated. Until the end of 2002 there was a fourth enterprise operating in the market, Delta, which operated one cement plant, Epsilon. In 2002, however, Delta sold Epsilon to Gamma.

3. The relevant Market

3.1 The product Market was defined as the gray cement market.

4. Cement is a homogenous product used to manufacture concrete, capping and mortar, and prefabricated concrete products for civil and industrial public works, roads, railways, bridges, dams and hydro-electric power stations. Cement is used in some fashion in virtually all types of construction projects.

3.2 The geographic Market

5. In order to establish the geographic market it must be taken into account that because of the geographic dispersion of the plants of each of the three enterprises, each company could serve the entire country. The Competition Council considered that the relevant geographic market for each cement producer was the combined market of the all cement plants that they operated.

6. Thus, the relevant geographic market is the entire territory of Romania.

4. Market analysis

7. The Romanian cement market is oligopolistic. There are only three producers, each operating three cement plants, having roughly the same capacity and uniformly situated throughout the country. Their product is homogeneous. This structure is one that lends itself to various anticompetitive practices forbidden by the Romanian Competition Law.

5. Barriers to the entry on the Market

- The investments required for constructing a new plant are significant (over Euro 200 million).

- The incumbents possess a significant amount of excess production capacity. In Alfa's case, only approximately 33% of the utilised capacity is sold on the Romanian market. The remainder is exported. The other two producers produced only for the domestic market. This explains the fact that imports of cement did not exceed 2% of total consumption during the relevant period.

5.1 The findings of the Report: The investigative report contained the following findings and conclusions:

- Alfa, Beta, Gamma and Delta, which held control over Epsilon plant undertaking acquired in 2002 by Gamma, had infringed the provisions of art. 5(1)(a) and art. 6(a) from Romanian Competition Law (equivalent of art. 81 and 82 from EC Treaty), by participating in a price fixing cartel and by abusing their collective dominant position, imposing resale prices.

- Alfa also infringed the provisions of art. 6 (f) of law, regarding the "selling on the export market below production costs, recovering the losses by imposing increased prices to domestic consumers."

- Beta infringed the provisions of the Romanian Competition Law by failing to observe the conditions that Competition Council imposed in a conditional decision in 2000, when the Council authorised the acquisition by Beta of the Sigma plant from Alfa. The acquisition increased the number of cement plants owned by Beta from 2 to 3.

5.1.1 Collective Dominance

8. The following criteria, among others, indicate the existence of collective dominance in a market, according to decisions by the European Commission and European courts:

- Homogeneous product
  - As noted above, cement is homogenous product.
- Similarities in competitors' costs structures and in their production technologies
  - The production processes employed by the three cement producers are identical as result of standardisation imposed during the period of economic centralisation.
  - Their costs structures are consequently alike.
- Market transparency (regarding prices and sales volumes)
  - Transparency was facilitated by:
    - the exchange of information conducted within the CEMENT Committee of Romanian Cement Professional Association;
    - periodic publication of price lists and other economic and commercial data in industry journals.
- The existence of excess production capacity

  - All of the three undertakings possessed a significant amount of excess production capacity. Following are the percentages of installed capacity that the three actually utilised: Alfa-61%, Beta-39%, Gamma-59%. Moreover, as noted above, approximately 2/3 of the production from utilised capacity was exported, in Alfa's case.

- The symmetry of competitors' market shares

  - Alfa-34%, Beta-29%, Gamma-35%, imports–2%.

- The existence of professional associations through which competitors regularly exchange information

  - Within the Romanian Cement Professional Association (CIROM), a Committee entitled the Cement Committee was formed, having as main member's representatives of the three producers.

- Ongoing familiarity among competitors regarding one another's operations

  - information exchanges through the Cement Committee of CIROM, noted above;

  - identical production techniques across the three competitors, noted above;

  - the fact that working meetings of CIROM took place at headquarters of one of the three producers;

  - there were organised "Open Gates Days," when one of the three producers invited the other two to visit one of its plants.

- The existence of structural links between rivals

  - In 2000, Alfa sold to Beta the Sigma cement plant, resulting in both companies owning three plants. In 2002, Gamma bought the Epsilon cement plant from Delta, which also gave it three plants. Thus, the 9 Romanian cement plants were equally divided between Alfa, Beta and Gamma.

  - The three cement producers collectively owned the joint venture X company (described below).

  - Company is the president of CIROM.

- Previous unlawful conduct by the market participants

  - Case IV/33.126 and 33.322- cement (94/815/EC) finalised by the decision of November 30, 1994 (referring to participation in a cartel on the European cement market).

9. Thus, all of the above criteria were met, permitting a finding that the three cement producers were collectively dominant on the Romanian market.

5.1.2 Abuse of Collective Dominance

10. According to the co-ordinated effects theory, collective dominance is manifested by the emergence of a price leader, whose actions are closely followed by its rivals. In this case, the role of price leader role was initially played by Alfa, which, because it sold cement on the export market below cost, was compelled to recover its losses on the domestic market by means of increasing prices above competitive levels. In this way it infringed the provisions of art. 6(f) of the Competition Law no. 21/1996.

11. Alfa could not have sustained its prices on the domestic market without having reached an agreement with the other two producers which, if they had not raised their prices, would have won business from Alfa's customers and increased their market shares. Thus, the three cement producers infringed the provisions of art. 5(1) (a) of the Competition Law no 21/1996 by the concerted fixing of selling prices.

12. An important piece of evidence proving the co-ordination between the three producers was a holographic document written by the president of Beta in June 2001, in which he described the steps to be taken by each producer in order to comply with the arrangement.

13. If the customers of the three enterprises did not accept a price increase, the contracts were unilaterally annulled by the producers. In this event, the customers turned to other producers, but they were not able to negotiate better prices, since the price and discount policies of all of the producers were the same. Moreover, if customers chose to do business with a more distant plant they were faced with higher transport costs. This situation proved that cement customers were dependant upon the producers and were exploited by them, a result forbidden by the art. 6(g) of the Competition Law no. 21/1996.

14. There were additional acts by the three producers which supported the findings of collective dominance and anticompetitive agreements:

- **X** Case:
  - Company, through which they intended to further their control of the Romanian cement market.
- **Y** Case:
  - In December 2002, X company acquired control over Y Company, the sole harbour operator in Romania specialising in cement. Company could control the import of bulk cement into Romania.
- **Z** Case:
  - In January 2003, Alfa, Beta and Gamma jointly entered into an agreement with Z Company for the purchase of slag, a raw material used in cement output.

15. Thus, in all three cases, Alfa, Beta and Gamma engaged in collective activity which had as its object the restriction, prevention or distortion of competition on the Romanian cement market, to the consumer's detriment, conduct forbidden by art. 5 of the Competition Law no. 21/1996.

16. This abuse of collective dominant position, including coordination of prices, began before the initiation of the investigation by the Competition Council (the simultaneous and significant increase of the cement prices in January 2001) and continued during the proceeding.

17. Regarding Alfa, during the entire period of the proceeding, the prices on the domestic market increased, while the export prices diminished. This continuous drop of export prices occurred even under the conditions when relevant fixed costs were not covered, having been supported by prices on the domestic market.

6. The Competition Council Plenum decision

18. The Competition Council Plenum **did not uphold** the following violations alleged in the report:

- The accusation regarding the abuse of collective dominance position by means of imposing resale prices: first, because it is difficult to quantify the effect of such conduct, and second, in this case the report did not present a detailed economic analysis regarding the alleged violation.

- The accusation regarding Alfa's abuse of dominant position by "selling on the export below production costs, recovering differences by imposing increased prices to the domestic consumers." The market shares held by the three cement producers were almost equal, so, in consequence, Alfa did not have a dominant position on the Romanian cement market;

19. The Competition Council Plenum **decided** that:

- Alfa, Beta and Gamma infringed the provisions of art. 5 of the Romanian Competition Law, during 2000 - first quarter of 2004, by participating in a price fixing cartel on the Romanian cement market. The Council determined that Delta, the enterprise that sold its Epsilon plant to Gamma in 2002, lowered its prices after the initiation of the investigation by the Council in 2001, and kept them below the prices of the others until it sold the Epsilon plant. The Council therefore determined that it would not prosecute Delta for participation in the cartel.

20. The three firms were sanctioned with the following fines:

- Alfa - approximately 10,500,000 Euros;

- Beta - approximately 8,000,000 Euros;

- Gamma - approximately 8,600,000 Euros.

21. The Council also annulled the creation of X Company, its acquisition of Y Company and the joint purchasing agreement relating to slag (Z case above), requiring the three producers to sign individual agreements with Z-company, in order to purchase slag

- Beta infringed the provisions of art **56(1)(d) by failing to meet an obligation or condition imposed by the Council** in a Decision authorising the acquisition by Beta of the Sigma cement plant from Alfa in 2000. Beta was sanctioned with a fine of 1% of its total turnover achieved in the financial year preceding the year of the sanctioning, amounting to approximately 1,500,000 Euros. Beta’s sanctioning for the above mentioned infringement was the subject of another Decision.