

Romania: The Romanian Competition Council closes an investigation without imposing a fine in the market for the management of waste electrical and electronic equipment market

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Introduction

The Romanian Competition Council (the “**RCC**”) recently finalised an investigation into the market for the management of waste electrical and electronic equipment (WEEE). In Romania, waste markets are relatively new markets, which have come into being only after Romania became a member of European Union and implemented the relevant European legislation package.

Background

In March 2011, following a complaint submitted by GreenWeee International SA (“**GreenWeee**”), the RCC launched an investigation in order to assess whether the practices of one of the collective system associations active on the market (Environ Association – “**Environ**”) had the effect of restricting competition in the relevant investigated markets.

Under Romanian waste legislation, collective systems and individual solutions organise the collection and recovery of waste. Collective systems offer their services to companies that are obliged to recycle their waste under the national laws implementing the Directive on Waste Electrical and Electronic Equipment (“**WEEE**”)¹ – usually producers and importers. Instead of taking part in a collective system, obliged companies may also opt for an individual solution and organise the collection and recovery of waste produced by their own products.

The complainant, GreenWeee, is an authorised operator active in the collection and treatment operations of waste. GreenWeee owns the largest integrated treatment facility for WEEE in Romania. GreenWeee’s turnover is achieved through treatment services, through sales of the secondary materials that remain after the treatment process and through collecting services.

Environ is a collective waste management organisation acting on behalf of producers and importing undertakings, and aims to take over those responsibilities of producers and importers that relate to the annual collection, treatment, recovery and environmentally-sound disposal of WEEE.

The relevant markets

The RCC identified the following relevant product markets:

- (i) the market for the organisation of WEEE management systems;
- (ii) the market for collecting services; and
- (iii) the market for the treatment and selling of secondary materials.

¹ Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE).

As regards the relevant geographic market, the WEEE management market and the market for collecting services – the RCC considered them all to be national in scope.

The market for the treatment and selling of secondary materials was considered to be transnational in scope, as treatment operations may also be undertaken outside Romanian territory or European Union territory.

Competition concerns

Under Article 5, par. (1) g) of Romanian Competition Law no. 21/1996 (the equivalent of Article 101 TFEU), agreements not to purchase or sell from an undertaking without any reasonable justification could be prohibited, as they are considered to constitute practices that may result in the restriction of competition.

The complaint referred to Environ's decision to refuse to supply WEEE to GreenWee within an ongoing contractual relation.

The RCC observed that the fundamental distinction between a waste collective association and a classic association is that the collective association will undertake the obligations of the participating members, with the consequence that members will no longer operate on the respective market (in this case the WEEE management market).

The RCC referred to the *European Night Services v. Commission* case law related to the restrictive effect of competition stating that “*in assessing an agreement under [...] account should be taken of the actual conditions in which it functions, in particular the economic context in which the undertakings operate, the products or services covered by the agreement and the actual structure of the market concerned [...], unless it is an agreement containing obvious restrictions of competition such as price-fixing, market-sharing [...]*”².

The RCC investigated whether Environ's refusal to purchase treatment services for collected WEEE has as an effect the restriction of competition on the relevant market.

The RCC observed that commercial relations between GreenWee and the Environ organisation represented less than 4 per cent of the revenues obtained in 2009 and only 0.5 per cent in 2010 respectively.

From a volume standpoint, the quantity of WEEE originating from Environ amounted to [0-3] per cent of the aggregate quantities in 2009 and [0-1] per cent in 2010. The market position of GreenWee was not affected by Environ's decision, as GreenWee had access to alternative sources of supply. In addition, GreenWee processed in 2010 approximately 80 per cent more WEEE than it processed in 2009, while the quantity of WEEE received from Environ significantly dropped.

Therefore, Environ's decision had no significant effect on its WEEE treatment business or its competitive position on the market.

Conclusion

Despite the fact that the investigation was closed without any fine being imposed and with the complaint being rejected, the RCC issued certain recommendations with respect to Environ's future conduct.

RCC recommended that Environ, in its capacity of WEEE collective management system operator, refrain from implementing a commercial decision that restricts competition between undertakings active on the connected markets of WEEE management activities (i.e. the market on which the parties are active as producers or distributors).

² Joined cases T-374/94, T-375/94, T-384/94 and T-388/94.

Obligated companies are entitled to co-operate in order to establish waste management systems. However, such co-operation may give rise to certain competition concerns. Collection/recycling agreements may relate to and have effects on the market on which the parties are active as producers or distributors (spill-over effects).

Source: Ioana Tirca, The Romanian Competition Council closes an investigation without imposing fine in the management of waste electrical and electronic equipment market (GreenWeee, Environ), 8 novembre 2013, Bulletin e-Competitions November 2013, Art. N° 61107, www.concurrences.com

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