



Romania: The Romanian Competition Council releases its annual report on competition developments in key sectors

On 1 November 2012, the Romanian Competition Council (the “RCC”) launched a public debate with the publication of its fourth report on competition developments in certain key sectors of the Romanian economy. The publication of this report is part of the RCC’s efforts to monitor and assess competition in those key sectors.

The report named “Competition developments in key sectors” (the “**Report**”) focused on six sectors that are particularly important for the national economy, namely: the electricity sector, the rail freight sector, the telecommunications sector, the food retail sector, and the insurance and banking sector.

The RCC divided these fields into (i) those areas which it monitored for their impact on the economic environment as a whole (e.g. energy, transport, and telecommunications) and those areas which it monitored for their impact on individual consumers (e.g. food and retail).

The extent of the Report is in stark contrast to the RCC’s 2011 annual report, for the purposes of which it only monitored and assessed three essential sectors: (i) the banking sector, the pharmaceutical sector and the public procurement sector.

The Report employs indices for measuring the development of competition in the electrical energy, railroad freight transport, insurance, and banking sectors. It also presents relevant aspects of the evolution of competition in the food retail sector and highlights legislative issues in this sector.

The Report also emphasises the involvement of the RCC in the various measures undertaken by the national telecommunications regulator (ANCOM) within the context of the tender procedure for radio frequencies.

The indices for assessing the level of competition in the key sectors covered by the Report were: (i) sectorial indices and (ii) relevant market indices.

This article aims to summarise the main conclusions of the RCA Report, focusing on both the actions of the RCA in different sectors and the conclusions drawn in the RCA Report.

Electricity sector

The Report noted a significant number of actions implemented by the RCC in the electricity sector, namely: (i) an investigation of long-term contracts concluded by Hydroelectrica S.A. with its clients, (ii) an investigation of the possible abuse of dominant position on the part of CEZ Distribution S.A. on the electricity distribution market, (iii) a sector enquiry into the functioning of the Romanian electricity market and (iv) an analysis of the restructuring of the electricity production sector.

The following conclusions reached by the RCC regarding the electricity sector are worth underlining:

- (i) The concentration of the Romanian electricity market is not as advanced as in the rest of the European Union;
- (ii) The amount of the electricity imported/exported annually is insignificant, meaning that, from the geographical perspective, the electricity market will continue to be national in scope. This is due to the limited level of interconnection facilities, which serves to buttress the market power of those enterprises that are already active on the market;



- (iii) The structure of the electricity production sector, which is based on mono-source manufacturers, is atypical compared to other countries in the European Union;
- (iv) The size of the competitive segment has shrunk compared to the degree of legal liberalisation attained in Romania in other words, from a legal point of view the sector has been liberalised, but in fact, the level of genuine competition is still reduced;
- (v) The regulation of the transport tariff significantly affects competition in various segments of the electricity sector.

The rail freight sector

The RCC concluded in its Report that Romania has an important number of private operators managing rail freight transport as it appears that since 2001, the market share of the former state monopoly freight transport firm C.F.R. Marfa fell from 100 per cent in 2001 to 49.9 per cent in 2011.

The evolution of rail freight transport means that private operators are exercising significant competitive pressure on C.F.R. Marfa, and customers for these services now have the opportunity to choose the carrier that provides the best price.

The telecommunications sector

The brief review of the competition in the telecommunications sector revealed that an important aspect influencing the degree of long-term competition in the sector was the relatively high impact of technological innovation.

The RCC noted that it is expected that the transition from analogue terrestrial TV to digital terrestrial TV and the implementation of multimedia services at national level may lead to increased competition and innovation. The RCC emphasised that the migration to IP technology and the recent acquisition by mobile operators of licences for radio frequencies will allow the provision of mobile broadband services, including television services.

The RCC intervened in the legal framework governing the auction for radio frequencies by making observations and recommendations which it sent to ANCOM. The Report underlined the positive impact of this intervention.

Food retail sector

As mentioned in the Report, the RCC has continued to monitor the food retail sector, particularly in respect of the following matters: (i) the impact of the legislative recommendations outlined over the past year; (ii) proposals from players in this field for a change in the legislative framework and (iii) the competitive pressures imposed on domestically produced products by imported products.

The RCC observed that apart from on some production markets, food retail activity is subject to stronger competitive pressures due to the existence of a significant number of competitors.

One of the objectives of competition policy is to correct through the legal framework possible deficiencies in the market. The RCC stated that state intervention should not impede free decision-making and the actions of private companies. The RCC concluded that the effects of overregulation have had a negative impact on final prices and on consumers.

The Report noted several recent RCC initiatives against the relocation of stores to sites outside towns and cities and against legislative proposals to (i) mandate the provision of documents specifying the production costs of products or services sold, and (ii) oblige supermarkets and hypermarkets to ensure that at least 80 per cent of their goods comprise Romanian products.



A separate section of the Report is devoted to products bearing a trade mark that is owned by the retailer. The RCC noted that in 2011, an increase of about 37 per cent in the value of sales of “own brand” products took place within the portfolio of the largest national food retailers.

Insurance sector

As regards the insurance field, the RCC gave a brief presentation of the sector, pointing out the relevant markets within the insurance industry and concluding that the values of concentration ratios for both the top five and the top ten companies in this sector showed that the concentration ratio in this market has registered a relative growth over the past three years.

The banking sector

The banking sector was monitored both in the 2011 report on developments in essential sectors and in the 2012 Report. A very important issue analysed by the RCC in its previous 2011 report was the impact of the revision of the early reimbursement fee on consumer credit and the transposition into the Romanian law of Directive 2008/48/CE on credit agreements for consumers.

In the Report, the RCC analysed the impact of the financial crisis on the Romanian banking sector and particularly on lending activity. RCC considered that the banking sector is probably the most carefully regulated sector of the economy.

The RCC divided the main relevant banking markets into: (i) the consumer credit market where consumers are represented by individuals; (ii) the commercial credit market this includes several types of credit, but consumers are represented mainly by businesses, corporations or authorised individuals, (iii) the mortgage/real estate market; (iv) the deposits market; (v) the current account/savings and short-term deposits market; (vi) the factoring market; (vii) the financial leasing market and (viii) the Interbank Money Market.

The RCC paid special attention to the market of non-cash payments. The RCC noted that following interventions by the EC and concerns raised about the activity of two international payment organisations (Visa and MasterCard), the RCC in 2011 launched a sector inquiry into the market of payment cards.

The identified target group for the investigation consisted of: 28 banks, 22 undertakings with business activities in various different sectors (hypermarkets, supermarkets, travel agencies, restaurants); and the Visa Europe and MasterCard organisations.

Conclusion

The RCC highlighted as a priority for 2013 the need to continue to monitor competition in some of the sectors that have already been assessed, as well as embarking upon assessments of several new sectors which have been deemed highly important for the national economy.

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