

Competition - Romania

State of the Nation: Competition Council Report Examines Key Sectors

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Introduction

On October 6 2009 the Competition Council issued an innovative report for consultation. Prepared in partnership with the Romanian Academic Society, a leading independent think tank, it examines seven key sectors of the Romanian economy: banking, food retail, public procurement, energy, pharmaceuticals, professional services and taxi services.

The report is the first official document on which the national competition regulator has collaborated with a organization to which it has no political or administrative links. Its main function is to draw attention to several key factors that are likely to affect the functioning of the national markets and may reduce the competitiveness of Romanian enterprises within the European Union. The report is not exhaustive, but it seeks to take a qualitative approach to the problems that it identifies and the remedies and actions that it proposes. The economic sectors were chosen on the basis of their overall importance to the economy and because any distortion of competition in these areas may have adverse effects on other upstream and downstream markets and across other sectors, ultimately damaging consumer welfare.

Banking

The council's experts have identified that the problems of captive consumers, the exchange of sensitive information among competing banks and excessive pricing for retail banking services give rise to competitive concerns. The proposed solutions primarily involve ensuring that clients can change banks whenever their economic interests are no longer well served. The report also proposes greater transparency in setting prices for retail services and a prohibition on competitors exchanging sensitive information at Romanian Bank Association meetings. This last measure is particularly significant in the context of the Competition Authority's ongoing investigation into the retail banking market in Romania.

The report indicates that although the deadline for implementing measures on consumer credit contracts under EU Directive 48/2008/EC has almost expired, no measures have been taken. The council would like to see broader transposing legislation which encompasses bank commissions and fees that are not expressly covered by the directive, as it considers that greater regulation would benefit consumers.

Energy

The report expresses concerns relating to Romania's much-debated reform of the energy sector, which has been proposed in various forms in recent years. The main concerns relate to plans to create two integrated energy companies comprising the main energy producers in the nuclear, hydroelectric and geothermal sectors. This is

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likely to facilitate anti-competitive practices, the most significant being cross-financing between member companies and the writing-off of the substantial debts owed by Termoelectrica and the National Coal Company to the state.

Moreover, the report draws attention to other factors that may distort competition, such as the failure to achieve full market liberalization and the successive efforts to subsidize industry sectors with cheap gas. The report states that entry into the gas market is limited by the fact that each project must be approved by a certified expert. The report also presents solutions that may mitigate competition risk. These envisage a comprehensive restructuring of the sector on the basis of a thorough analysis of the energy market in order to:

- ensure real benefits for consumers;
- prevent the award of illegal state aid by means of debt write-offs;
- apply similar conditions to all energy producers;
- finalize the reforms for the liberalization of the sector; and
- complete the separation of vertically and horizontally integrated activities.

Pharmaceuticals

The council is planning an inquiry into the pharmaceutical sector that will be completed by the end of 2010. In the meantime, the information in this chapter of the report seems to follow the trend set by the European Commission in its report on the pharmaceuticals market in July 2009.

The council's experts believe that once patent exclusivity expires, the market entry of generics should not be unjustifiably delayed by the need to obtain administrative approval. This opinion may shed light on the council's likely approach to the commercial behaviour of innovative companies on the Romanian market. Nonetheless, the council has recently conducted dawn raids on four major pharmaceutical companies in Romania. Moreover, the council strongly indicated that an intensification of enforcement in the pharmaceuticals market is likely if the activities of innovative companies are found to distort competition.

The report hints at a repeal of pharmacies' monopoly on sales of over-the-counter drugs, suggesting that the trade may shortly be opened up to other entities in order to ensure broader availability of non-prescription medicines. The council is known to support the establishment of a European patent institution and an EU-wide patent jurisdiction that would limit this area of IP litigation. The report indicates the forthcoming implementation of a policy for the rapid assimilation of generics and the stimulation of competition. It also recommends repealing quantitative criteria for the establishment of pharmacies to ensure the widespread distribution of medicines.

Food Retail

The council has recently issued 200 pages of preliminary conclusions on an inquiry into the food sector. The food retail chapter of the report draws attention to several problem areas, such as:

- consumers' weak negotiating position;
- the manner in which prices are determined;
- the discount policies implemented by leading retail chains; and
- the vertical agreements entered into by retail chains and producers.

The report states that concerns in this field could be greatly allayed by:

- repealing taxes that have no direct connection with retailers' activities;
- requiring the removal of most favoured partner clauses in agreements between producers and retailers; and
- giving producers responsibility for arrangements on allocated shelf space.

Public Procurement

The public procurement sector has numerous significant connections with competition law. With a view to eliminating distortions of competition in tenders organized by public authorities, the council recommends:

- non-discriminatory access to licences;
- a requirement to provide prior notice to, and obtain advisory opinions from, the council for privatizations that involve concessions for the exploitation of mineral resources; and
- rigorous control over concessions by the Romanian authorities.

Professional Services

The report also addresses certain practices relating to professional services that may not comply with competition rules. It identifies the existence of barriers to entry, such as:

- mandatory affiliation to a professional body;
- limits on the number of professionals according to demographic and geographic criteria, including limits on trainee numbers; and
- restrictions on ownership rights.

Moreover, the report notes that the professional services in question are generally governed by their own regulatory bodies, which are vested with powers to determine the parameters within which they are carried out. Such self-governance may lead to the restriction of market activities, such as the setting of tariffs, the imposition of certain unjustified criteria for advertising and limits on associative deals between professionals. Moreover, the report draws attention to the consolidation of monopolies held by professional bodies. All such practices potentially breach the rules of free competition and may be found to contravene rulings at EU level in recent years.

Taxi Services

The final chapter of the report focuses on taxi services, a sector in which many disputes have arisen in recent years. It notes the barriers to entry, such as the limited number of practice authorizations issued by the local authorities and limitations concerning the number of vehicles that can be used by a certain operator. The report criticizes restrictions on access for certain taxi companies in certain areas - especially airports - which tend to lead to the creation of local monopolies. The authors of the report recommend the removal of administrative restrictions on the number of taxi authorizations issued by local authorities. They also propose that:

- vehicles be authorized for use as taxis purely on technical criteria;
- administrative restrictions on taxi operation around airports be removed; and
- the imposition of maximum prices be based solely on the client's comfort and economic interests.

Comment

The report has been widely welcomed for its review of several key sectors of the economy and its general guidance on the application and legality of a number of practices that are either encountered or envisaged on the markets in question.

However, for all its laudable initiative, the report presents only brief findings and proposes limited action. It does not support its assessment with a thorough economic analysis of each key sector; nor does it present final or incontrovertible conclusions. However, in launching a public debate, it gives interested third parties an opportunity to express substantiated points of view to amend or correct the council's view. The council chose to focus on the areas in question because it considers that impaired competition in such areas may have a knock-on effect in related markets. Given these concerns, the council has announced its intention to launch an inquiry into the energy market soon.

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