

Competition - Romania

Regulator reports on boosting competition in key sectors

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Introduction

In what is quickly becoming a well-established tradition, the Competition Council has issued its third annual report on competition in key sectors of the Romanian economy. Although similar in form to its predecessors, the report marks a departure from the council's approach in the past. Rather than offering relatively extensive assessments of the state of competition in numerous sectors, the council has focused on three fields whose evolution has been deemed particularly significant for the overall development of the Romanian economy - namely, the banking, pharmaceutical and public procurement sectors. The report also contains a chapter on the indicators used by the council in assessing competition in relation to a particular sector.

Overall, the report provides a reasonably accurate reflection of the council's intentions and a useful indication of sensitive sectors that could be targeted for investigations.

Impact of legislation on banking sector

The banking sector has long been identified as a sensitive area from a competition law standpoint. The council has previously expressed a position on certain issues regulated by sector-specific legislation and has investigated the alleged anti-competitive conduct of some of Romania's leading banks. Furthermore, in recent years the harmonisation of national credit regulations with the relevant EU directives has been a significant matter of debate.

Acting on its concerns about contractual provisions in loan agreements which might restrict client mobility, the council intervened in the implementation of the EU Consumer Credit Directive (2008/48/EC) and recommended the elimination of early repayment fees. The government acted on this recommendation and Ordinance 50/2010 allows all credit holders to repay their debts ahead of schedule without paying a reimbursement fee or commission.

The council's assessment reveals that, less than one year after the implementation of the 'no reimbursement fee' rule, the number of refinanced loans has doubled to 160,000 and around 190,000 clients have made early repayments on loans, either wholly or in part. The result for consumers has been a total saving of around €7.8 million, which shows the council's intervention to have been an unqualified success.

Wholesale pharmaceutical distribution

The report presents the council's conclusions following its sector inquiry into the pharmaceutical wholesale distribution market in Romania.

Pricing of pharmaceuticals with an identical international non-proprietary name

One of the most sensitive aspects revealed by the inquiry relates to the determination of a price reference system for the sale in pharmacies of drugs with the same international non-proprietary name. In accordance with the legislation then in force, the National Health Insurance House reimbursed a fixed percentage of the retail price of the pharmaceuticals sold, but pharmacies were not required to honour prescriptions by selling the lowest-priced pharmaceuticals with the international non-proprietary name in question. List prices of pharmaceuticals with the same international non-proprietary name were found to vary considerably, but the National Health Insurance House was

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not in a position to take advantage of competition at either producer or distributor level.

The council proposed a new system that would introduce a reference price, defined as the lowest price for a pharmaceutical product within the same international non-proprietary name. The National Health Insurance House would assess its reimbursements in relation to the reference price, not the retail price for a specific pharmaceutical product, thus providing a direct incentive for producers and distributors to compete on price for pharmaceuticals with the same international non-proprietary name. Unsurprisingly, the Ministry of Health was receptive to the proposal and implemented it through Order 1275/2011. The council advocated its implementation, which it had estimated could lead to significant economies at every stage of the production and distribution chain, from producers to pharmacies and end users.

On a different topic, there seems to be no agreement between the council and the ministry on the method for calculating the reimbursement prices for medicines offered within national health programmes. The ministry envisages a system whereby the gross retail price would be the producer's price, reduced by 15%, with the distribution mark-up also included. However, the council has argued that the implementation of such a system would lead to a greater economic incentive to export such medicines, potentially resulting in a shortage on the Romanian market.

The council also raises the issue of whether this method of price calculation for medicines might result in the producers allocating lower quotas of their products to Romania. The council believes that it would be better to implement the desired pricing strategy by applying the 15% discount to the price reimbursed by the National Health Insurance House.

Organisation of tenders

Other notable aspects identified by the council relate to the organisation of national tenders and tenders by public hospitals. The report presents a number of recommendations regarding the organisation of such tenders to promote competition and ensure a better outcome for the organising authority (and, ultimately, its patients). The recommendations include:

- less frequent tenders for larger quantities, rather than frequent tenders for smaller quantities;
- the reduction of participation costs; and
- the establishment of tender criteria which do not artificially limit the number of participants.

Public procurement

In recent years the council has taken greater interest in public procurement procedures, as demonstrated by a number of investigations that have been opened in this area.

The assessment for the report was aimed at identifying possible malfunctions in procurement procedures undertaken by public authorities. The council found that prices offered by bidders in classic tender procedures involving public authorities or institutions were higher than those offered in relation to other buyers in traditional tenders, but they were lower in the case of online tenders. The council has recommended that the upper limit for online tenders be raised, and has argued that acquisitions of products should be made directly from the producers, not from intermediaries.

Considering the general outcome of the analysis, the council has warned that applying higher prices in dealings with public authorities or institutions than in dealings with ordinary private buyers could indicate vertical or horizontal collusion amounting to bid rigging.

In order to eliminate potential malfunctions in public procurement procedures and identify possible bid rigging, the council is finalising a guide to detecting rigged bids. This working document will be distributed to public authorities and institutions that undertake public procurement procedures.

Indicators for assessing competition in certain sectors

For the first time the council's report includes a separate chapter on economic indicators for assessing competition in general and in certain markets. The council lists four groups of indicators which can be easily determined because the necessary data is either generally available or available at an accessible cost:

- indicators of market structure and dimension, comprising market area, market volume, the number of market players and the number of products in the marketplace;
- market concentration indicators - namely, the concentration ratio, the Herfindahl-Hirschmann Index, the Hall-Tideman Index, the Panzar-Rosse Index and the Comprehensive Concentration Index;

- profitability-productivity indicators - namely, return on assets, return on equity, core business operating income and market power structural indices; and
- specific indicators - namely, interest rate differential indices, price formation and market power structural indicators.

The report presents a welcome explanation of the application of these indicators for determining competition in three highly significant economic sectors: banking, pharmaceuticals and road and motorway construction. Its exposition is especially valuable in the context of the ongoing inquiry into the last of these sectors.

Banking

The banking sector is described as sensitive and competitive. The application of the market concentration indicators reveals a higher degree of concentration on the market for company credits than for consumer credits or deposits. In terms of banking sector competitiveness, Romania is behind Austria and France, but ahead of Germany. The profitability indicators have registered a fall as a result of the financial crisis. Although this trend is unsurprising in itself, it may give rise to concerns about the potential for exclusionary practices with reference to small banks. In view of the interest rate differential index, the council expects to see higher interest rates in concentrated markets, given that a bank's profit margin is a good indicator of market power. Nonetheless, differences between interest rates indicate an intensification of competition in the market for banking services.

Road and motorway construction

The road and motorway construction sector is the subject of a sector inquiry that was initiated in 2010. The sector is regarded as being dispersed in terms of offer-side substitutability, with the largest market share being around 6%. The market structure fluctuates from year to year owing to the award of construction operations through tenders, which suggests a need for further monitoring to identify and eliminate rigged bids. On the demand side, substitutability is low, given that contractors are concerned with certain types of project that cannot easily be replaced; thus, the products and services offered in this market are determined by the contracting clients - that is, public authorities and institutions. The application of all four market concentration indicators demonstrates the low concentration level of the market; however, in a sector in which over 1,500 companies are active, the market power indicators show that 50% of the profit from the market is concentrated with the top five market players.

Comment

The report provides a useful insight into the future actions of the council. For the first time, it also outlines the indicators that the council uses in assessing levels of competition in a particular sector.

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