

COMPETITION POLICY IN ROMANIA AFTER THE EU ACCESSION

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Abstract

Prior to Romania's accession to the EU, the Competition Council's activity was mostly concentrated on the Romanian legislation's compatibility with European competition legislation. After January 2007, since the Competition Council has acquired the power to directly apply the common rules on competition, attention has shifted to its effective contribution to competition's protection on Romanian market by monitoring, identifying and sanctioning any distortive behaviour under competition law's provisions. In this context, the main purpose of this paper is to analyze Competition Council's activity during the pre and post accession period taking into account the number and also the types of issued decisions and comparing it with other European jurisdictions (Poland, Czech Republic, Hungary and Germany). Our analysis revealed that the Competition Council's activity has been concentrated mostly on mergers and acquisitions, the same situation being registered also in other new members states analysed. In Romania, decisions covering economic concentrations are still at a significantly higher level than those regarding other anticompetitive practices.

Keywords: competition policy, Competition Council, decisions

JEL Classification: F15, L40

1. Introduction

Competition policy's development and implementation represents a process by which governments seek to enhance competition and create the right environment for it by prohibiting or restricting certain types of commercial practices which may restrict competition. Thus, the objectives for any competition policy should be concentrated on the development of competitive markets and promote innovation, with implications for prices, welfare's determinants and sustainable economic growth. (OECD, 2007)

In the current context marked by deep economical and political changes determined especially by the challenges posed by the economic and financial crisis, the EU is designing a new model of competition policy which focuses on a coordinated set of group actions to ensure transparency and a level playing field both for countries and for companies operating within the single market. The regulatory and institutional framework's modernization requires an assessment of the

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implementation's results of the common competition policy at the group level but also at the level of each Member State.

Since Romania's accession to the European Union, once the Competition Council has the power to directly apply the Community rules regarding competition, attention has shifted from the efforts made by this institution towards Romanian legislation compatibility with European competition law to the effective contribution of this institution to protect and enhance competition in Romania in order to ensure a normal competitive environment.

If in terms of legal and institutional framework convergence with the EU *acquis*, studies have shown a high degree of concordance of Romanian legislation with the *acquis* in the field ever since the accession negotiations on Chapter 6 - Competition and State Aid, EU accession removing some incompatibilities due to compulsory full harmonization of legislation in this field, not the same can be said regarding the effectiveness of the competition policy enforcement and its effective contribution to improve the competitive behavior. (Fuerea et al., 2004)

The main conclusion of some recent studies highlighted that at the EU level there is a gap between the new member states and EU15 group in terms of the quality of actions undertaken to ensure a level playing field for companies. (Hölscher and Stephan, 2009; Ichim, 2010). Thus, for the newcomers to the EU, a more detailed analysis is required regarding national competition authorities' work by reference to criteria related to number of investigations initiated, training of personnel, financial resources or the coordination degree between actions undertaken by competition authorities and other public institutions towards improving the overall economic performance.

2. Competition policy's enforcement in Romania

Until Romania's accession to the EU, the Competition Council's activity was appreciated largely in positive terms only regarding the efforts made towards Romanian legislation's compatibility with the European competition law, contribution recognized by the European Commission in its monitoring reports. After January 2007, since the Competition Council has acquired the power to directly apply the common rules on competition, attention has been focused primarily on its effective contribution to protect and stimulate competition in Romania in order to ensure a normal competitive environment. Until January 2007, the Competition Council's work in this area, and other public authorities, was appreciated as deficient and lacking the support of business representatives and consumers. (Vass, 2007) In this context it cannot be considered surprising the results of a study carried out in 2007 which aimed to identify the level of knowledge and use of anticompetitive practices and which confirmed the low level of economic agents' knowledge regarding competition law's provisions and actions taken by the Competition Council.

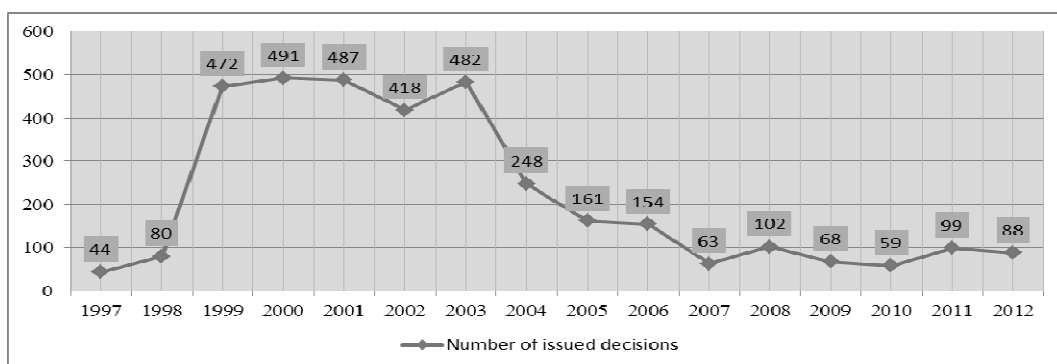
The same study highlighted, however, that the Romanian business environment expected some changes regarding the Competition Council's activity after the EU

accession due to the adoption of the EU standards, market size's increase and consequently competition, developing cooperation with the EU institutions working in the field of competition, lower influence of politics and higher transparency in Council's decision making process and not the least the improvement of Council's credibility among the business community. (Dima, 2007) This attitude of the Romanian business environment seems justified as long as in transition countries the legal and institutional framework is very dynamic and competition law is applied in an economic environment marked by the presence of the state both as public authority and economic player. (Oprescu, 2003)

After joining the EU and taking into account the membership at the European Competition Network, established under Regulation 1/2003, the main priority of the Competition Council was to provide the legal and institutional conditions in order to adapt the competition policy to the new status of Romania. This commitment had to be supported by coordinated activities of the Romanian Competition Council with other Member States' competition authorities and more compelling actions regarding the preventive and corrective Council's role in maintaining a normal competitive environment by monitoring markets and supervising companies' behavior.

An overview of the number of decisions taken by the Competition Council since the entry into force of the Competition Law no. 21/1996 shows a significant increase of the number of decisions issued by this institution since 1999, with an average of about 450 decisions per year until 2003. After 2003 a downward trend started with a minimum number of decisions, 59, registered in 2010. These changes in the number of decisions issued by the Competition Council can be related to several economic and political aspects that were required by the acceleration of privatization process, national competition law compliance with EU acquis, as an accession criteria during the negotiation process on Chapter 6 regarding full harmonization of the Romanian legislation with the European competition law until the completion of the negotiations, the results of the negotiation process on different chapters and the economic reforms programs launched during this period. (Fig.1)

Fig. no.1: Number of issued decisions, 1997-2012

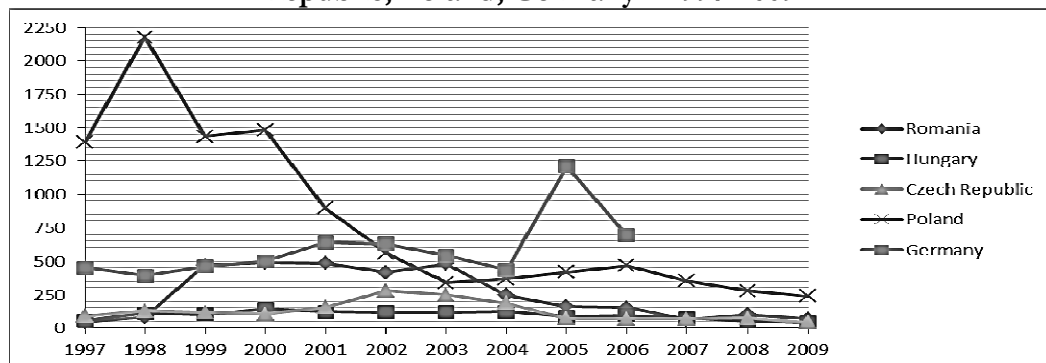


Source: Competition Council, Annual Reports, 1997-2012

Comparing the situation of Romania with other three newcomers in the EU (Poland, Czech Republic and Hungary) it can be seen that the activity of the Competition Council assessed through the number of decisions issued has the same trend with other three jurisdictions analyzed, a large number of decision adopted being characteristic for the pre-accession period, Poland registering a total of 2178 decisions in 1998, much higher than the average of any other new member states analyzed, and more than the number of decision issued in Germany, a jurisdiction with tradition in this field, taken as a basis for comparison from the EU15 group. During 2004-2009 all new Member States analyzed registered a stabilization of the number of issued decisions in the field of competition. (Fig.2)

It should be noted that the comparison based on the number of issued decisions has a some limitations determined on one hand by the impact of the economy's size on the number of decisions and on the other hand by the particularities of the investigated cases and decisions' implementation in each jurisdiction. However, what seems to be defining for the the new member states is the fact that the competition authorities focused their work especially on the control of mergers and acquisitions, a normal consequence of the privatization program launched and increasing FDI flows after EU accession. The number of decisions regarding the cartels, abuses of a dominant position and state aid was considerably lower in the pre-accession period than those covering mergers, the situation being opposite in the EU15 group. After joining the EU, specialized agencies, due to a lower number of notifications of mergers and acquisitions, have redirected their resources towards other areas of competition law enforcement. Thus, in Poland, the Office of Competition and Consumer Protection granted priority to the investigations regarding abuses of dominant positions, in Czech Republic, in addition to the increasing number of decisions on abuses of dominant positions investigations have concentrated on cartel, while in Hungary the number of decisions sanctioning the participation in cartels or bid rigging increased.

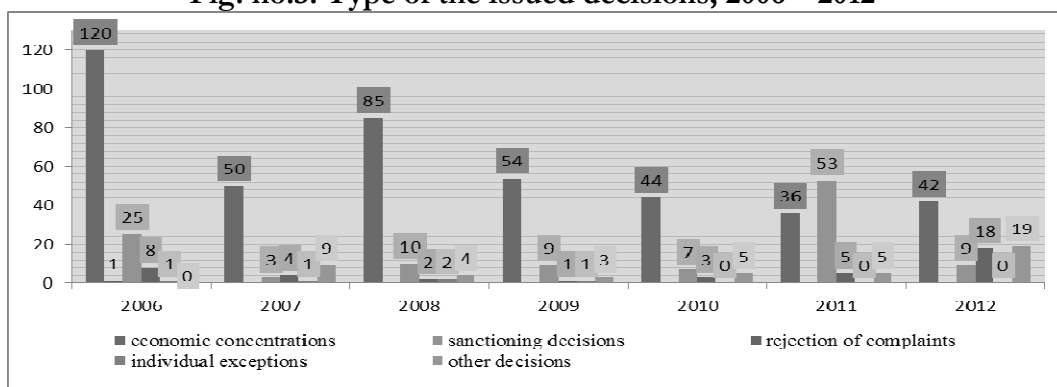
Fig. no. 2: Number of issued decisions - Romania, Hungary, Czech Republic, Poland, Germany – 1997-2009



Source: Annual Reports, national competition authorities, 1997-2009

A more detailed analysis of the structure of decisions issued by the Competition Council during 2006 - 2012 shows that it still focuses primarily on mergers, the number of decisions authorizing, non-objection or nonintervention covering mergers being at a significantly higher level than the number of decisions sanctioning abuses of dominant position or other anticompetitive agreements. The only exception was in 2011 when the number of sanctioning decisions was higher than the number of decisions on economic concentrations. (Fig.3) Also, during 2010-2011 the Competition Council imposed the highest fines for the abuses of dominant position of Orange and Vodafone and Romanian National Post Company. Before and after 2011 the value of the sanctions was significantly lower.

Fig. no.3: Type of the issued decisions, 2006 – 2012



Source: Annual Reports, Competition Council, 2006-2012

If we take into account only these figures, we can conclude that the competitive environment in Romania is not distorted by serious anticompetitive behaviors and consumers benefit of a fully functional competition. However a series of reorientations in the activity of the Competition Council, launched since 2009, concentrated on intensifying market monitoring actions can be a sign of suspicion regarding the quality of the competition process on certain markets. The main analyzed markets were those of shipping services, the Romanian drug distribution market, automotive parts, electricity market, banking sector, telecommunications, food retail sector, insurances, pharmaceutical sector and public procurements. All these fields are very important for the Romania business environment and their fluctuation can affect significantly the overall evolution of the national economy.

Many of these initiatives can be correlated with the challenges posed by the economic and financial crisis that has forced the market surveillance authorities, and the Romanian Competition Council also, to be more vigilant regarding the behavior of economic agents on the market, taking into account that during this period companies are likely to resort to practices that can distort competition as a means to mitigate the effects of the economic crisis. Even if these sectors were positively

assessed by the Competition Council's analysis in terms of competition policy framework, consumers' perception regarding competition on different markets may provide some additional warning likely to confirm that consumer welfare is affected and therefore new measures to stimulate the competitive process in these markets might be required. Identifying and sanctioning anticompetitive behaviors in these sensitive sectors may be difficult for the Competition Council which hasn't yet the required expertise and institutional maturity in order to launch some ample investigations on these markets mainly characterized by the existence of a limited number of big companies.

3. Conclusions

After the EU accession, as the above analysis revealed, the Romanian Competition Council's activity concentrated mostly on economic concentrations, the same trend being also registered in other European jurisdictions like Poland, Czech Republic and Hungary. During 2004-2009 all new member states analyzed registered a stabilization of the number of issued decisions in the field of competition, for the Romanian competition authority decisions covering mergers being still at a significantly higher level than those regarding other anticompetitive practices. The only exception was in 2011 when the Competition Council issued a higher number of decisions than in the previous years sanctioning abuses of dominant position or other anticompetitive agreements. Although the number of decisions in this field is still at a lower level than those covering economic concentrations, the Competition Council proves to be more active on the Romanian market in terms of monitoring, identifying and sanctioning anticompetitive behaviours both of private actors and public institutions.

For an operational competition authority, the promotion of a proactive competitive behavior, which gradually becomes a fundamental pillar of the new competition culture, should be a key component of competition policy as a whole. On one hand, such actions should be directed towards public authorities to convince them not to adopt anticompetitive measures that have negative effects on competition and consumers, and on the other hand to the business environment and consumers in order to familiarize them with the competition rules and its benefits on their welfare

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