

Competition Policy and its Implementation in Romania

Gabriela Gheorghiu

Elena Cerasela Spataru

"Ovidius" University of Constanta, Faculty of Economic Sciences

gabrielag3110@yahoo.com

Abstract

This paper aims to highlight the importance of competition policy for the operation of a free market economy at optimal parameters. Compliance with its provisions by Romanian companies is supervised nationally by the Competition Council, authority whose activity during the period 2012-2015 is analyzed in the frame of the present paper.

Key words: competition policy, anti-competitive practices, infringement, investigations, Competition Council

J.E.L. classification: K21, L40

1. Introduction

In an era of globalization, characterized by a reduction or disappearance of barriers to free movement of goods, services, capital and people, governments still have an obligation to act to ensure the safety and welfare of consumers, on the one hand, and the existence of a predictable and friendly competitive environment for companies, on the other hand.

Nowadays, competition is regarded as a factor of prime importance, whereby companies are forced to become effective and to provide a wider range of products and services at lower prices, thus facilitating consumer welfare and optimal allocation of resources in the society.

2. Why a competition policy is necessary ?

The main reason for the existence of competition policy is determined that the market can not, naturally, to operate normally, requiring thus outside intervention to ensure its smooth progress. Market and competition play a fundamental role in ensuring consumer welfare, in achieving optimal resource distributions and providing strong incentives on improving the efficiency and quality and technical level of production. The principle of an open market economy does not imply a passive attitude towards the functioning of markets, but on the contrary, requires maintaining a constant vigilance to allow market mechanisms to work properly. (Muşetescu, 2006, p. 8)

But, despite market imperfections, there are reasons that companies in certain sectors want to cooperate or associate, or that a certain company wishes to obtain a dominant position on a certain market segment. The desire of gaining or maintaining high profits, a productive stability on the market, the independence of coordination in certain actions or of making decisions, the benefits resulting from a singular position, here are some reasons that may lead companies to fixing prices, sharing markets or other forms of anti-competitive practices.

Competition policy points the dominant behavior economic agents could have after the promotion of various unfair practices, as the conclusion of restrictive agreements which aim the price fixing or the division of markets, the abusive exploitation of the power held on the market by big companies or the effectuation of acquisitions or mergers that may lead to the monopoly of a specific market. The final goal of competition policy is that of promoting free, unbiased competition as a modality of establishing markets which are responsive to consumers' signals, of assuring the optimal allotment of the resources in the economy and of offering a powerful motivation regarding the increase of efficiency and of the technical and qualitative level of

production. (Gheorghiu, 2012, p. 81)

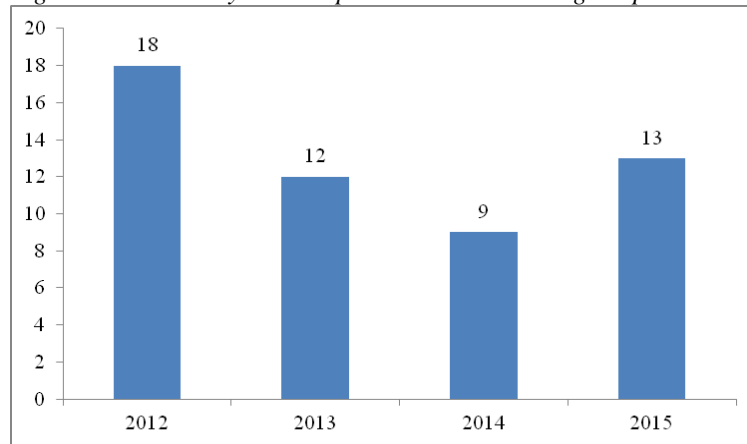
On these lines, remains memorable the comparison used by Michel Didier with the road police that watches the implementation of the regulations so that no driver constitutes an encumbrance or a danger to the other participants in road traffic. In the same manner following economic crimes allows the producers and buyers to co-exist on the same market without attacking each other for the economic survival of some or other, these attacks being baneful to all the consumers in the end. (Didier, 1998, p. 73)

3. Effects of the implementation of competition policy in Romania

The objective of the Romanian competition authority – the Competition Council - is to protect and foster competition on the Romanian market in order to develop a normal competitive environment, and, ultimately, to ensure the best possible promotion of consumer interests. Romanian competition authority's role is to ensure the normal and fair functioning of the markets through the effective implementation of the competition rules designed for optimum satisfaction of the consumers.

Most of the investigations initiated by the Competition Council regarding possible violations of competition law in the period 2012-2015 aimed the most harmful anti-competitive practices - cartels: 58% in 2012, 50% in 2013, 34% in 2014, and 39% in 2015.

Figure no. 1. Investigations initiated by the Competition Council during the period 2012-2015



Source: Competition Council, 2016, p. 8

Of the 18 investigations of possible infringement of competition law initiated in 2012, most of them have targeted the road construction sector, followed by people transportation. In 2013 most investigations have focused on road construction sector, milk processing and cinema.

If the main sectors targeted by the proceedings initiated by the Competition Council in 2014 were the media, the sale of foods and electricity sector, in 2015 the target markets were in the services sectors, as: notary services, services provided by private security agencies; insurance services; maternity hospital services; taxi transport services; electricity meters and electricity metering services.

As in the case of investigations initiated by the Competition Council, of all investigations on the possible infringement of competition laws completed in the period 2012-2015 (see Figure no. 2), cartels were the most important, with the exception of the year 2015 when only 14% of inquiries were about a cartel, such as: the cartel on fuels marketing; the cartel on electricity production and selling; the on postal services; or the cartel for the supply of dairy products.

Figure no. 2 Investigations completed by the Competition Council during the period 2012-2015

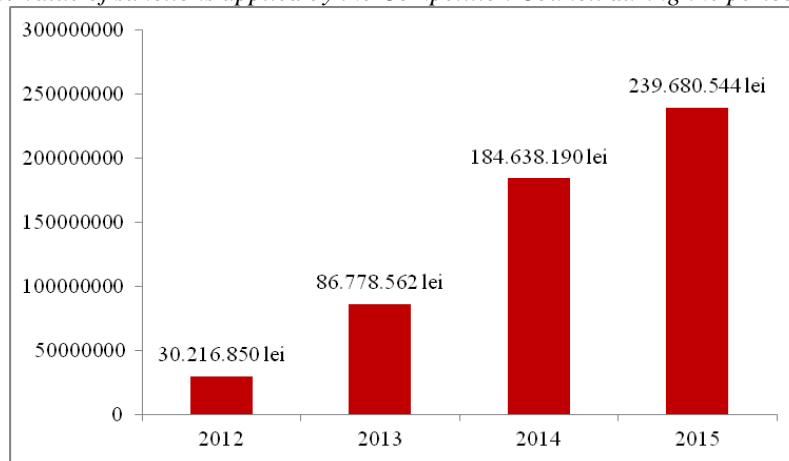


Source: Competition Council, 2016, p. 10

Average length of investigations on possible infringement of competition law is strongly influenced by their structure depending on the practice under investigation. Using the database containing information regarding the investigations completed by the Competition Council between 2010 and 2015, the average duration of investigations concerning cartels is 2.8 years for an investigation.

In 2015 there were better results compared to previous years (see Figure no. 3). The fines imposed in 2015 were about 54 million euro (value calculated at the average National Bank of Romania exchange rate in 2015), up to 30% compared to 2014 when the Competition Council sanctioned 53 entities with the total amount of 41,542,138 euro (more than 2 times higher than in 2013 and 6 times higher than in 2012), highlighting a tightening of policy to sanction anti-competitive acts.

Figure no. 3 The value of sanctions applied by the Competition Council during the period 2012-2015



Source: Competition Council, 2016, p. 11

Correct justification of Competition Council decisions was confirmed by the Romanian High Court of Cassation and Justice. Final judgments on competition cases were 100% in favor of the Romanian competition authority, even if in some cases, fines were reduced by the court. Also, in cases where effective competition could be restored on the market quickly and effectively, the competition authority used the instrument of acceptance of the undertakings. Compliance with the commitments is closely monitored and their violation entails punishing, as happened for the first time in 2014, with prepaid phone cards and marketing rights to broadcast football events.

4. Conclusions

Increasing occurrence of abuse and anti-competitive practices in the struggle for economic power, for market dominance, has made the issue of compliance and defense of real competition subject to legal regulations and procedures for tracking and sanctioning repression of abuse of the rules of fair competition.

The lack of an articulated and coherent policy, or worse - the existence of a non-functional one, creates the premise for unfair competition, thus generating inefficiency in production and in allocation of production factors.

At the national level, the Competition Council – the Romanian authority supervising the implementation of competition policy - carried out extensive work in recent years to detect and sanction anti-competitive practices. According to its latest report, for the work carried out in 2015, were penalized 3.8 times more companies than the previous year and the total amount of fines exceeded the amount of 239.6 million lei (53.9 million of euro). The level of these penalties has made thus a considerable increase to the overall level of sanctions imposed in previous years (1.3 times higher than in 2014, 2.76 times higher than in 2013 and 7.93 times higher than in 2012).

5. References

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