



Romania ❖

– Dorin Rat†

Romania¹ is located at Southeastern Europe bordering the Black Sea between Bulgaria and Ukraine. Communists dominated the Government until 1989, when they were swept out of power by a fractious coalition of centrist parties.

In 2000, the centre-left Social Democratic Party of Romania (PSDR) became Romania's leading party, governing with the support of the Democratic Union of Hungarians in Romania (UDMR). The opposition centre-right alliance formed by the National Liberal Party (PNL) and the Democratic Party (PD) scored a surprise victory over the ruling PSD in December 2004 presidential elections. The PNL-PD alliance maintains a parliamentary majority with the support of the UDMR, the Humanist Party (PUR), and various ethnic minority groups. In 2008, a part of the National Liberal Party (PNL) formed a coalition with the Democratic Party (PD), becoming the Democratic Liberal Party (PDL). The coalition had a majority in Parliament until 2012, when the centre left Social-Party (PSD) associated with the National Liberal Party acquired the majority in Parliament.

Romania joined North Atlantic Treaty Organisation (NATO) in March of 2004 which had brought more security and stability in the region. Romania completed accession negotiations with the European Union (EU) in December 2004 and finally became a Member State of the EU in 2007. The Accession Treaty has made it mandatory for the country to make further efforts in its fight against the phenomenon of corruption and ensuring the real independence of the judicial power. The corruption problem in Romania decreased after the EU accession in January 01, 2007, especially as an effect of the several programmes in this field developed jointly by EU and national institutions.

Economy

After Romania's Communist regime was overthrown in late 1989, the country experienced a decade of economic instability and decline, led in part by an obsolete industrial

PROFILE	
Population:	21.3 million****
GDP (Current US\$):	174 billion**
Per Capita Income: (Current US\$)	8,140 (Atlas method)** 15,780 (at PPP)**
Surface Area:	238.4 thousand sq. km
Life Expectancy:	71 years (male)*** 78 years (female)***
Literacy (%):	97 (of ages 15 and above)**
HDI Rank:	57****
<i>Sources:</i>	
- World Development Indicators Database, World Bank, 2013	
- Human Development Report Statistics, UNDP, 2013	
- EU Employment and Social Situation, European Commission, 2013	
(**) For the year 2011	
(***) For the year 2012	

base as well as a lack of structural reform. Starting from 2000, however, the economy was transformed into one of relative macro-economic stability, high growth, low unemployment and increasing foreign investment, and is currently among the most developed in South-eastern Europe. Economic growth since 2000 has averaged 4-5 percent, rising to 8.3 percent in 2004. This has characterised Romania as a boom economy and one of the fastest growing in Europe.

Romania was granted in October 2004 the much desired 'functional market economy' status by EU officials. The economic and financial crisis affected all the countries of the world and Romania was no exception. The economic growth has reduced considerably in the recent years, being 2.5 percent,² in the period 2010-11 and tending to stagnate thereafter.

Strong aspects of Romania are the technologically advanced market economy with substantial government

❖ Original paper submitted in August 2004. Revised in April 2006. Updated in September 2012 and in May 2013.

participation. Having its own natural resources, Romania has intensively developed its agricultural and industrial sectors over the past 20 years. Romania is largely self-sufficient in food production. Clothing and textiles, industrial machinery, electrical and electronic equipment, metallurgic products, raw materials, cars, military equipment, software, pharmaceuticals, fine chemicals, and agricultural products (fruits, vegetables, and flowers) are leading exports. The majority of Romania's trade is oriented towards the countries of the EU.

Since the late 1990s, there have been several economic reforms, spurred on by the country's bid to join the EU, including the liquidation of large energy-intensive industries and major reforms in the agricultural and financial sectors. In comparison to its neighbours, Romania has a high number of SME's. Foreign investment has increased significantly since 2003, reaching €5.1bn in 2004.

The economic and financial crisis affected the foreign direct investment inflow, which in 2012 reached US\$2.7mn.³ After Romania became a Member State of the EU there are some non-tariff barriers that increase the cost of trade. Foreign direct investment is encouraged officially, but discouraged in practice by regulatory inconsistency, unpredictability and the lack of transparency.

An International Monetary Fund (IMF) standby agreement, signed in 2001, has been accompanied by slow but palpable gains in privatisation, deficit reduction, and the curbing of inflation. The IMF Board approved Romania's completion of the standby agreement in October 2003, the first time Romania successfully concluded an IMF agreement since the 1989 revolution. In July 2004, the Executive Board of the IMF approved a 24-month standby agreement for US\$367mn. The Romanian authorities do not intend to draw on this agreement, and are viewing it as a contingency step. Meanwhile, recent macroeconomic gains have done little to address Romania's widespread poverty, while corruption and red tape continue to handicap the business environment.

In the recent years Romania had signed two standby agreements with the IMF in 2009 and 2011. The last agreement was due to expire on May 30, 2013, but in March 2013 the Board of the IMF approved a three-month extension. Until the end of June 2013 Romania should meet the objectives set out by the IMF specialists in the current agreement. Romania should take measures in order to improve state corporate governance and has to finish the initiated structural and privatisation measures. The government recently announced its intention to enter into a new agreement with the IMF during the summer of 2013.

Competition Law: Evolution and Environment

Like most of the Central and East European countries who are Member States of the EU, Romania's Law on Competition No. 21 of 1996, effective since the 1st of February 1997, was modeled and subsequently harmonised with the provisions of the *articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU)*.

The alignment to the EU legislation in the field of competition and state aid was realised mainly through:

- the Law on Competition (Law no. 21/1996), modified and subsequently amended by the Government in 2004 (by the Government Emergency Ordinance no. 121/2003, approved by Law no. 538/2004), in 2009 (by the Government Emergency Ordinance no. 75/2010 approved by Law no. 149/2011) and in 2012, for the last time by Law no. 187/2012 on the implementation of the Criminal Code;
- The Law on State Aid modified and amended by the Law no. 603/2003.

Romania, as a candidate country in the EU enlargement process, promised to adopt and to enforce the *acquis communautaire* in the field of competition before the date of its accession to the EU. This was an important aspect in preparing the economy to cope with the competitive pressures of the European internal market. The accession process was long and difficult, especially under the harmonisation process regarding the competition policy. The negotiation chapter dedicated to competition was concluded among the last of the 31 chapters only in 2004.

The scope of the Romanian competition law is in perfect harmony with the objectives of the EU competition policy, namely to protect, maintain and stimulate competition and a normal competitive environment, with a view towards promoting consumers' interests.

The competition law sets forth broad substantive principles. It prohibits agreements in restraint of trade and the abuse of a dominant market position in all economic sectors except for the labour market. Its provisions do not, however, apply to agreements of minor importance because these are not capable of appreciably restricting competition by design or effect. Unless they lead to price fixing, market segmentation or bid rigging, agreements below a *de minimus* threshold – i.e. agreements where the market share of the parties is below five percent (if they are direct competitors on the same market) or below ten percent (if the parties are not competing in the same market) – do not fall within the scope of the competition law.

Romania's main regulator and enforcement agency for competition policy is the Competition Council. The Romanian Competition Authority started its activity on the September 06, 1996. The Council is an autonomous administrative authority and as a national competition authority of a Member State of the EU it ensures the application of the national and community rules on competition.

The Competition Council is integrated in the European Competition Network and it represents Romania before the European Competition Authority and cooperates with other competition authorities from the EU.

The mission of the Romanian Competition Authority can be synthetically defined as to protect and to stimulate the competition on the Romanian market so as to develop a normal competitive environment, finally ensuring a better promotion of consumers' interests.

The activity of the Competition Council fulfills two main functions: a preventive one, involving the surveillance of the markets and of the respective market players and a corrective one, aiming at re-establishing and developing a normal competitive environment.

The experience of the countries with developed market economy demonstrated that, in order to protect and develop competition and, consequently, consumers' interests, it is necessary to observe specific regulations; these aim at ensuring the freedom and the morality of the economic activity for all economic players.

To put it differently, the fight against anti-competitive practices and the control of economic concentrations protects mainly the existence of competition, while the fight against unfair competition protects especially the quality of competition. As these issues cross to a great extent, analysis of the facts is made, by taking into account both the aimed objective and the type of the methods used. The competition process is protected against unfair competition in Romania by the provisions of Law no. 11/1991, based on the French Law prohibiting unfair competition.

This explains the provision in the Law no.11/1991 concerning the prevention of unfair competition stipulating "the unfair competition cases that significantly affect the functioning of competition will be solved according to the provisions of the Competition Law no. 21/1996". Law no. 11/1991 was amended in 2012, by Law no. 187/2012 regarding the Criminal Code of Romania. The modifications operated by this law will be applicable from the February 01, 2014. The above mentioned law also disposes the republication of the Law no. 11/1991.

Competition Law governs the competition process on the market which contributes to the setting of prices and tariffs. The law ensures the correct functioning of a free market economy where the general rule for setting prices and tariffs is that they shall be determined freely, through competition, based on demand and supply. The establishment of taxes by the Government is part of the tax policy of the state and the Competition Council does not have any competence to judge their opportunity or their exact level. However, in what regards the functioning of the competition in a given market the Competition Council may develop recommendations to the Government and for the organs of the local public administration for the adoption of any measure which will facilitate the development of markets and the competition on them.

In the sectors of the economy which are closed to competition, or where the competition is precluded or substantially restricted by law the Romanian legislator has established sectorial regulatory authorities. In those sectors only this regulatory authorities have the possibility to verify the opportunity of changes operated in different price or tariffs level, because the Competition Council does not have parallel competencies in these sectors of activity.

In these specific economic sectors and in exceptional circumstances, such as: crisis situations, major imbalance between demand and supply and obvious market malfunctioning, the Government may enforce temporary measures to prevent or even block the excessive price increases. These measures may be adopted by decision for a period of six months, which may be successively extended for periods not exceeding three months, as long as the circumstances that justified the decision continue.

For the above-mentioned situations, the Government intervention shall be made with Competition Council's advisory opinion.

The analysis of all cases within the realm of competition law involves the definition of the relevant market(s). The concept of 'relevant market' is defined by the Competition Council's guidelines and refers to a product or a group of products (*the product market*) and to the geographic area (*the geographical market*) where these are produced and/or traded.

The identification of the relevant product market involves an analysis that considers specific factors, such as, substitutability, price and cross-elasticity of the product demand in comparison with other products' prices etc.

The geographical relevant market refers to the area where the undertakings involved in supplying the products included in the product market are located, the area in which the competition conditions are homogeneous enough and can be individualised among neighbouring geographical areas, especially due to certain significantly different competitive conditions.

Anticompetitive Business Practices

The Romanian Competition Law prohibits the following:

- Anti-competitive practices that include coordination behaviour, respectively: “Any express or tacit agreements between undertakings or associations of undertakings and any partnership decisions or concerted practices which have as their object or may have as their effect the restriction, prevention or distortion of competition in the Romanian market or on a part of it. (Art. 5 of the Law no. 21/1996 similar to Art. 101 TFEU); and
- “The abuse of a dominant position held by one or more undertakings on the Romanian market or on a substantial part of it, by resorting to anti-competitive deeds, which have as their object or may have as their effect the distortion of commerce or the prejudice of consumers”. (Art. 6 of the Law no. 21/1996 similar to Art.102 TFEU).

Both the theory and the practice in the competition field generally divide anti-competitive practices into agreements between undertakings and abuse of dominant position. Agreements between undertakings may be divided into *horizontal agreements* (between competitors acting in the same market) and *vertical agreements* (between undertakings in a buyer-seller relationship).

From the viewpoint of enforcing legislation concerning competition, agreements between undertakings and concerted practices are, in a way, considered differently. Thus, some of them are generally *per se* prohibited (as they are, by definition). This refers to horizontal agreements, between competitors. This means that their anti-competitive effects are so evident they do not need to be demonstrated anymore, the only proof necessary in these cases being the fact that they indeed occurred and had an anti-competitive object even if they did not produce such an effect.

The *per se* prohibition is reinforced by the provisions of Art. 8 par. (2) in Competition Law, according to which anti-competitive practices related to prices, tariffs, market division agreements auctions are not subject to the limits imposed by the Law concerning turnover and market share level and are consequently not exempted from the law.

If a company holds a dominant position, the anti-competitive effects are much more probable, and the specific legislation is more strictly enforced.

The dominant position occurs when an undertaking is able, to a significant extent, to behave independently towards its suppliers, customers and competitors on the market. One of the most important elements considered when evaluating the existence of a dominant position is how easy a producer or a supplier can enter the respective market. In 2011 a rebuttable presumption was introduced in Art.6. According to this, it is presumed that one or more undertaking has a dominant position if the market share or their market share are exceeding 40 percent. For under a 40 percent market share the competition authority needs to demonstrate the existence of other elements which can confirm the existence of a dominant market position (i.e. the existence of serious barriers of entry, the existence of a very fragmented market with one major producer, the existence of sunk costs or special advantages for one of the competitors from the market etc.).

Exempted Cases

As the general economic interest has priority, the Competition Law provides exemptions by comparing the anti-competitive effects to the positive one for consumers and the national economy both in cases of agreements and economic concentrations.

Not all agreements or concerted practices are illegal or generate harm; some of them may benefit from exemptions from the general rule because they may contribute to the enhancing of production or distribution; the promotion of technical progress; the enhancing of products’ quality and their competitiveness in the domestic and external market; the strengthening of Small and Medium Enterprises (SMEs) competitive position.

Agreements, partnership decisions and concerted practices falling under one of the exempted categories defined in the regulations adopted by the Competition Council are deemed legal and *there is no obligation to notify them or to obtain any decision accepted* from the authority; undertakings claiming for the categories exemption benefit have to prove that they fulfil the conditions and criteria provided by the law and regulations.

All the same, it is not prohibited to hold a dominant position on the Romanian market. Undertakings holding a dominant position in the relevant market fall under the scope of Law only if they use this position abusively by indulging in anti-competitive deeds.

Economic concentrations realised through mergers or direct or indirect acquisitions of the control upon one or more undertakings *are prohibited only if*, by creating or consolidating dominant positions, it leads or may lead to the distortion of competition in the Romanian market or in a part of it.

Provisions concerning economic concentrations do not apply “*when the aggregate turnover of the involved*

Box 1: Abuse of Dominant Position on the Romanian Telecommunication Market - the Orange & Vodafone decision

In February 2011 the Competition Council imposed the largest fine in its history against two of the most important competitors from the telecommunication market. Orange and Vodafone were fined €63.1mn for abuse of dominant position following an investigation started in 2006, after a complaint introduced by Netmaster Communications an alternative provider of fixed telephone services.

Netmaster accused the two operators of refusing to provide access to their network. As an effect of this behaviour the users of Netmaster could not call the users of the two large operators. During the investigations the Competition Council determined that in the period 2004-2006 Orange and Vodafone charged a fee higher than that established by the regulatory authority for the interconnection services for calls (15-18 cent for minute, instead of 10 cents for minute, the tariff fixed by the regulatory authority).

In the meantime Netmaster Communications had disappeared from the market. The two major operators from the telecommunications industry contested the decision before the court and requested the suspension of the decision. This latter application was approved by the court, but the appeal against the fines is still pending before the court.

Source: Competition Council
Web Site: <http://www.consiliulconcurrentei.ro/ro/docs/177/6364/competition-council-fined-orange-and-vodafone-companies.html>

undertakings does not exceed the equivalent in ROL of €10mn and there are not at least two undertakings involved in the operation realising each of them a turnover exceeding the equivalent in ROL of €4mn in Romania". The President of the Competition Council periodically updates the threshold based on the evolution of general price index but not more frequently than every six months.

The Competition Council is responsible also for enforcing the Competition Law on merger case, by promoting competition on the Romanian market. The Council, comprises 7 members (a president, two vice-presidents and 4 competition counselors appointed by the President of the country at the proposal of the Government for a 5 years mandate). Besides the Council competencies regarding the reviewing and clearing of merger operation, it initiates investigations, imposes administrative sanctions and makes final decisions on anticompetitive agreements and conduct.

In Romania only the Competition Council has powers of investigation. It may require information from any company when investigating an anti-competitive agreement or conduct. In the course of such investigations, agency officials may enter the premises of the investigated companies, search for 'smoking gun' evidence and examine business records and make copies of relevant documents. The officials may seal offices, cabinets, or documents to preserve evidence. The officials may also search the homes of managers, administrators, directors or officers of the investigated company. Agency officials must obtain a search warrant or permission before entering business premises or homes.

A modification in 2010 ensures a better right of defense for the undertakings accused for anti-competitive business behaviors. The accused undertakings have full access to the files of the case and the conversations and documents changed between the accused undertaking and its lawyer are confidential.

Penalties under the Competition Law can be severe. The Council may impose fines of up to 10 percent of the annual turnover in Romania of a company if by agreement or conduct the infringing parties restricted, hindered or distorted competition in the Romanian market or in part of it. A person who participates in conceiving, organising or implementing prohibited anti-competitive agreements or abuses of a dominant position may be imprisoned for six months to four years and/or fined. Besides administrative and criminal penalties, a company violating the Competition Law may be civilly sued by injured third parties and may be held liable for damages and attorneys' fees.

Up to date the Council's fines were generally not too heavy, but one can anticipate that in the near future the fines will become more substantial as the Council grows and becomes more sophisticated with experience. The recently applied fine against the major operators of the telecommunications industry confirms this trend. Voluntary reporting of violations or potential violations is not a widely used practice in Romania yet. Recently, the Council adopted a well defined leniency policy for the undertakings which helps the Council to discover anti-competitive practices or offer supplementary information for the investigators. These undertakings can qualify for immunity from fines or for a 20-50 percent fine reduction.

On a case-by-case basis, the Council may order the involved parties to stop the anti-competitive practices, make recommendations, and impose special conditions or obligations upon the involved parties. Further, the Council may impose penalties of US\$25 for each day of non-compliance with the Competition Law. In addition, the Council may decide that the proceeds earned by the parties as a consequence of their breach be confiscated and paid into the treasury.

Box 2: Cement Cartel Hit with Largest Fine

The Romanian Competition Council fined three cement producers €27mn for price-fixing – the second largest cumulative fine the authority has ever imposed.

Lafarge Romcim, a subsidiary of French company Lafarge, the world's biggest cement producer and the alleged ring-leader, was fined €10.4mn. Swiss firm Holcim production of concrete, cement and aggregates such as gravel and stone was fined €8mn for cartel activity and a further €1.4mn for breaking the conditions of a deal to buy a cement plant in 1999. The third company, Carpatcement, subsidiary of Heidelberg Cement, one of the world's biggest cement producers, was fined €8.7mn.

The fines constituted approximately 6 percent of the companies' annual turnover. The investigation, which began in 2001 but remained dormant for two years, based its conclusions on market data rather than directly incriminating evidence.

The three companies shared 98 percent of Romania's cement market. The probe found they had inflated the price of cement by as much as 38 percent.

Source: Global Competition Review, June 2005

If there are several infringing economic agents (i.e. undertakings), the Competition Law states that sanctions must be applied to each of these economic agents. Sanctions are always subject to judicial review.

Despite the existence of such wide investigative powers, to date the enforcement record in the antitrust field has been relatively weak. In 1998 the Council imposed a fine of approximately US\$225,000 for price fixing, while in 1999 it issued five sanctioning decisions for bid rigging, market segmentation, price fixing, and entry barriers. It is observed by many that the amount of fines imposed by the Council in these 1999 decisions was not significant. However, in a case where an independent shareholder registry company was involved, the fines amounted to approximately US\$130,000. The Council also ordered in that case the confiscation of profits.

There were two other sanctioning decisions issued in 2000, one in the pharmaceutical products market, where the professional association of pharmacists unduly imposed market barriers, and another in connection with the privatisation process, where the former State Ownership Fund had preferential arrangements with one of the bidders. In 2001, the Council fined a water company approximately US\$435,000 for price fixing, and another company approximately US\$30,000 for bid rigging during the privatisation process.

The decision against the two major companies from the telecommunication industry – Orange and Vodafone – announced a new trend in the history of fines, which was confirmed in 2012, when the Council has applied the biggest fine from EU for an agreement on the oil market. The fine was applied because between 2007-2008 oil companies from Romania decided to remove a product from the market. The fine was approximately US\$210mn (EUR 205mn) and represented almost 3 percent of the undertakings' turnover.

Sectoral Regulation

Energy Sector⁴

The Government of Romania's energy policy over the years has encouraged an efficient and sustainable development, focused on liberalisation in order to form an electricity sector that is appropriate to a market-oriented economy, with an associated need for restructuring of commercial arrangements supporting market transactions for the provision of electricity and ancillary services.

The progress made by Romania in the last years in the transition towards a liberalised electricity sector is significant. The key elements leading to such achievements are the development of the national legislation in accordance with the applicable EU legislation, and the setting up of a regulatory authority that independently makes decisions within the competencies granted by the law. Subsequently, the National Agency for Regulation of Electricity (ANRE) was established in March 1999.

A gas regulatory body, the National Regulatory Authority in the Natural Gas Field (ANRGN) has also been created. The current activity of ANRGN covers the whole scope of regulation in the natural gas sector.

Telecommunications Sector⁵

Romania is the second largest telecommunications market in Central and Eastern Europe and offers significant growth potential in the fixed, mobile and Internet sectors in the medium to long term as a competitive market becomes established. The telecom market has progressed significantly since 2001, closing gaps in the EU accession and establishing a new independent regulatory body in September 2002.

Since the market was fully liberalised at the beginning of 2003, some 670 providers have registered with the regulatory authority, National Regulatory Authority in Communications (NRAC) to offer a range of telecommunications services. However, very few of these companies have valid business plans and can actually be expected to enter the market. The head of parliament's IT Commission foresees no more than 10 real players operating in the market in the future.

Other than the incumbent RomTelecom and the country’s existing mobile operators, there are bigger players, such as cable operator Atlas, the telecom arm of the state electricity utility, Transelectrica (which will benefit from its own fibre-optic network), and ISPs such as pan-regional Euro web.

During 2002, the Council issued 12 sanctions. Most notably, apart from fines amounting to approximately US\$140,000, the Council imposed its heaviest fines ever on the national fixed-line telephone operator RomTelecom for undertaking non-compete obligations with Global One Communications Holding BV Holland in the Romanian market.

In 2011 two major mobile phone companies were fined for collective dominance on the telecommunication market. To the date, there are some on-going investigations on that market, related to denial network’s access or interconnection.

Interface between Competition Authority and Sectoral Regulators⁶

In principle, both the competition authority and regulatory agencies are focussed on protecting the public interest against monopolistic power, but the instruments used are different. The competition authority has an important role within the reform process of regulated sectors, as part of the privatisation process, by its vocation to impose measures of breaking the existing monopolies, of controlling or prohibiting economic concentrations that threaten the market structure.

The Competition Council concluded cooperation protocols with the National Authority of Regulation in Communications, National Authority in the Field of Natural Gas and National Authority in the Field of Electricity in July 2004. These aim at strengthening the cooperation based on an active partnership, promotion and achievement of the objectives, implementation of the strategy and policy in the field of competition.

Box 3: The Romtelecom Case	
<p>In 2002, the Council concluded an investigation that was launched in 1999 against Romtelecom, the national dominant fixed-line telephone operator, and Global One Communications for undertaking non-compete obligations in the data transmission market (X25, Frame Relay, TCP/IP, ATM) and ISP (Internet Service Protocol) services market.</p> <p>These companies entered into a joint venture in the form of a Romanian company, Global One Communications Romania (GOCR), whose articles of association prevented the parties from creating or participating in any way, directly or indirectly, in Romanian companies competing with GOCR, and from competing with GOCR, directly or indirectly, as long as they had an interest in GOCR, and for a period of five years from the date when they ceased to be shareholders.</p> <p>The Council analysed the relevant markets, the market share held by the undertakings involved, the duration of the anticompetitive practice in question, and its structural and possible effects on the market. Although in effect for eight years (1993-2001), it was admitted that the non-compete clause produced harmful effects only during the years 1999 and 2000, when GOCR had a leading 78 percent market position in the data transmission market, and RomTelecom had the financial and logistical means to enter this market.</p> <p>As GOCR was considered to have only 7.04 percent of a highly competitive ISP market throughout these years, the Council further concluded that the non-compete clause affected only the data transmission market (with only two competitors in 1999, i.e. GOCR and Logic Telecom).</p>	<p>The Council took the view that the non-compete clause affected the competition environment by artificially creating market barriers and appointed a committee to impose sanctions. Based on guidelines issued by the Council on determining the amount of fines (similar to the EC guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No. 17/1962 and Article 65(5) of the ECSC Treaty (98/C9/03)), the appointed committee factored into its decision the duration of the infringement (medium-term), its gravity (very serious), the economic and financial situation of the infringing parties, their position on the market and their ability to influence it, the attitude of the infringing parties toward their conduct and its consequences, i.e. whether or not the behaviour had been committed with intent to breach the law, and the scope and the frequency of it.</p> <p>As a mitigating circumstance, the Council noted that the non-compete clause was entered into when the Competition Law was not in force, and therefore, the parties had no intention of breaching any legal provisions. Also, the Council took consideration of two other mitigating circumstances:</p> <ul style="list-style-type: none"> • RomTelecom itself voluntarily informed the Council as the new owner following privatisation wished to withdraw from the joint venture; and • RomTelecom finally withdrew from the joint venture. <p>However, the Council ultimately imposed fines on RomTelecom of approximately US\$24.5mn, representing 3.3 percent of its 2001 annual turnover. Global One Communications got off more lightly: a fine of approximately US\$480,000 was levied.</p>

In the telecom sector, for instance, the Competition Council participates, on a regular basis, at the NRAC's Consultative Committee meetings. The Consultative Committee has the role to support the harmonisation of different parties' interests, and to assess the impact of NRAC's regulations on the market. Furthermore, the Competition Council gives mandatory opinion on the draft acts to be adopted by NRAC that may have anti-competitive impact. In this respect, the Competition Council gave its opinion on the following normative acts adopted by NRAC:

- regulation on identifying the relevant markets from electronic communications sector; and
- regulation on carrying out market analysis and on determining significant market power.

At the same time, the Romanian Competition Council has prepared *Guidelines on the application of competition rules to access agreements in the telecommunications sector*. In this respect, the Competition Council had asked for the NRAC's opinion on these guidelines. Thus, the cooperation between the competition authority and regulatory agencies is reciprocal in nature.

Whenever the Competition Council investigates an alleged infringement of the Competition law by companies acting on a regulated market, the NRAC is asked to participate in the procedure. Also, whenever the behaviour of the companies acting on these markets has the characteristics of an anticompetitive practice prohibited by the Competition Law, the Romanian Competition Council can intervene and impose the sanctions provided for by the Competition law.

In sum, the cooperation between Competition Council and Regulatory Authorities is oriented to:

- preventing and discouraging anticompetitive practices in these markets;
- market monitoring activities;
- disseminating and informing undertakings about measures taken in case of infringement of Competition Law no. 21/1996; and
- mutual consultation about sensible competition problems.

Consumer Protection⁷

Since the first consumer association was formed in Romania back in 1990, and the issue of a governmental ordinance on consumer protection issued in 1992, things have somehow improved. The 1992 Consumer Protection Act laid down the main rules and created the Consumer Protection Office (CPO).

The media does not confuse 'consumer' with 'buyer' anymore, which in Romanian sound very close. The people are aware of the validity of terms found on food packs and have even begun making complaints to the relevant bodies. The sad news is that there is a trend to understand

consumer protection only as penalties applied by enforcement inspectors; it offers hot news for the media. However, the other side, prevention by education, has been quite neglected.

Concluding Observations and Future Scenario

Romania is currently negotiating the Competition Law chapter in view of accession to the EU. Romanian competition legislation, especially the bulk of antitrust and merger control rules, is considered to be broadly in line with the EU *acquis communautaire* provisions. However, the EU has indicated in its Regular Report on Romania's Progress Towards Accession dated October 09, 2002 that issues remain to be addressed relating, in particular, to the enforcement of Romanian competition rules.

Although the EU remains concerned about the enforcement capabilities of the Council, there is growing pressure in Romania on the competition bodies to harmonise their regulations and enforcement procedures with EU practices as part of the Government's general policy of complying with EU accession requirements.

Given Romania's aim of joining the EU by 2007, the Romanian Government is trying to close the chapter on competition as quickly as possible. To that end, it adopted on July 10, 2003 and sent to the Parliament for debate a draft law to amend the Competition Law. Its most important features are:

- Merger of the Council and the Competition Office into one regulatory and enforcement agency, the National Competition Agency;
- Abolition of the notification system. As noted earlier, agreements and concerted practices deemed to restrict competition within the meaning of the Competition Law must be notified to the Council for either exemption under the block exemption rules or individual clearance. Under the new system, companies will not be required to notify agreements that are drafted so as to fall within the terms of a group exemption conferring an automatic exemption;
- Expansion of the investigative powers of the Council, notably by empowering Council officials to question company employees about factual matters when conducting investigations;
- Substantial increase in the level of fines that the Council may impose in respect of procedural matters (e.g. obstruction of investigations, providing false information, failure to comply with orders of the Council), while maintaining the existing provisions concerning fines for infringements. The maximum fine for substantive infringements remains unchanged, at 10 percent of turnover in Romania in the preceding business year. The maximum fine for giving false or incomplete information in response to written requests for information or during inspections is fixed at one percent of turnover in Romania in the preceding

business year. Under the proposed draft law, the Council may impose periodic penalty payments to a maximum amount per day of five percent of average daily turnover in Romania during the previous business year in order to compel a company to comply with a decision ordering it to terminate an infringement, to supply information requested or to submit to an inspection; and

- It confirms in clear language the power of the Council to order interim measures to prevent imminent serious damage to the competition environment.

Five years after the accession of Romania to the EU, the competition law has been successfully enforced. There were a lot of fines on pharmacy industry, telecom, and energy. In 2011 a new procedure was introduced in the

Competition law and now undertakings may use commitments to close an investigation. There is a market test to be conducted by the Competition council, but it enjoys a large margin of discretion in accepting or rejecting the commitments. Against the decision accepting or rejecting commitments, undertakings may use a judicial review.

To the date, there was no private enforcement of competition law in Romania, but there are some important steps in this field at the EU level, the most important being the attempt to find the right method of quantifying harm. Another problem is the *locus standi* of the Competition Council. In follow-on actions, it may intervene as an expert or *amicus curiae*, the problem is the stand alone actions.

Endnotes

- 1 <http://cia.gov/cia/publications/factbook/geos/ro.html>
- 2 World Development Indicators, World Bank, 2013.
- 3 See for more details the 2013 Index of Economic Freedom made by The Heritage Foundation in partnership with The Wall Street Journal, available Online on <http://www.heritage.org/index/country/romania>.
- 4 http://www.worldenergy.org/wec-geis/publications/default/tech_papers/17th_congress/1_4_21.asp
- 5 <http://www.osec.doc.gov/obl/romaniabulgariatrademission/Romania%20Telecommunications.htm>
- 6 The Relationship between Competition Authorities and Sectoral Regulators, Contribution from Romania, OECD Global Forum on Competition, 2005
- 7 www.norden.org/nicemail/issues/four/romania.htm

† *Dorin RAT is a young Competition Lawyer. After receiving a Law degree in Romanian and French law from the University of Bucharest and University Paris 1 Pantheon-Sorbonne, Dorin followed an LLM in EU Law at the College of Europe, Brugge. While focussing on antitrust law, he assessed the interplay between EU Competition Law, network industries (electronic communications, energy, aviation) and other fields of regulatory law (pharmaceuticals, IP, environmental law). His master thesis focussed on the necessity of reducing the overlaps between ex ante regulation and EU Competition Law in telecom sector.*