

## ECONOMIC COMPETITION ENVIRONMENT IN ROMANIA

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### **Abstract:**

*For realizing the paper “Economic Competition Environment in Romania”, I considered the analysis of antitrust norms appliance, the economic concentration control and the control of state aids in Romania. In 2010, the Council activity was impacted by a series of important changes from a legislative point of view, but also by the internal organization. In his modified form, the Competition Law and the new adopted secondary legislation offers to the Competition Council the necessary instruments for efficiently acting in ensuring the market functionality on competition bases. In 2011, the competition authority efforts will be focused on improving the appliance of completion legislation, mainly, by concentrating the analysis on very big violation of law and by finalizing the investigations older than 3 years, on the intensifying the cooperation with implied institutions from the state aid domain, but also on implementing some internal measures, designed to develop the administrative capacity of the institution.*

*The legislative modifications of the Council expected since 2010 for 2011, have like final output the adoption of a new variant of Competition Law 211/1996, some of the adjustments being made since last year, by O.U.G. no. 75/2010, and in 2011 this was approved.*

**KEY Words:** normal competition environment, anti-competition practice, economic concentration, state aid.

**JEL CLASSIFICATION:** D42, D43

### **1. Introduction**

The competition in Romania is regulated by the organic law no. 21/1996 known as the Competition Law with awareness role for economic agents on what the freedom of competition means, but also on a state politics, promoted by the right authorities concerning normal conditions in which the competition can develop, having like final target the development of a more balanced, efficient and competitive economy on the global market.

As an administrative autonomous authority, part of central public administration specialty, Competition Council develops his activity on the base of conferred attributions by the Competition Law no. 21/1996 republished, having as target protection, maintaining and stimulating a normal competition environment, for promoting consumer’s interest.

In 2010, the activity of Competition Council was marked by a series of important changes from a specific legislative point of view, but also from an internal institution organization. In his modified form, Competition Law and new adopted secondary legislation offers to Competition Council the necessary instruments for efficiently acting on assuring the functionality of markets based on competition.

In 2011, the efforts of competition authorities will be focused on improving the appliance of competition law, mainly, by concentrating the analysis on the most delicate violations of law and by finalizing the investigations older than 3 years, on the cooperation intensification with the implied institutions in the state aid domain, but also on implementing new internal measures, with the scope of developing the administrative capacity of the institution.

Legislative modifications of the Council expected in 2010 for 2011, have been materialized by adopting a new version of the Competition Law 21/1996, some of the adjustments being made since 2010, through the OUG no. 75/2010, and in 2011 this was approved by the Parliament, with some amendments. By modifying and completing the Competition Law have been adopted national procedures at the community provisions in the competition domain. In the same time, have been created the premises of institutional consolidation of Competition Council and efficiency in intervention when are signals on the market, regarding possible anti-competition practices. (<http://www.consiliulconcurenței.ro> – Press Release-Competition Council Activity 2011)

Competition represents a mobilizing factor of the market next to the demand, offer and price. In a free economy, this notion is looked as a global concept which determines an alignment of all competition laws to a common scope: the one to ensure a high degree of production quality and products that are designated to the final consumers.

In the contemporaneous market economy, the competition and his protection problem is a pretty complex subject and of high actuality. Being a progress factor, the competition needs to be known, understand and mainly maintained in legal limits by the economic agents from the economic competition environment, were they develop their activity. (Bâldan C., 2007)

From those hypothesis it is necessary to be promoted a competition policy that needs to be adapted to the market rules, which offers next to an efficient utilization of specific instrument for combating especially anti-competition practices, protection of participants at the economic life and also bringing to the knowledge of them the risks that are expose to for not being victims of non-respecting the competition laws.

Today, a competition protection through knowledge and promoting the culture in this domain present a special interest at national economic level but also at European level that has documented and will document abuses of dominant position, anti-competition agreements, economic concentrations, non-loyal practices that are negatively impacting the normal competition environment. (Bâldan C. & Ungureanu E., 2009)

## 2. Competition cases finalized in the period 2007-2011

Consequent to the principle of activity efficiency, the Competition Council has intensified the monitoring activity of economic agent's behavior on the Romanian market with a series of investigations started by themselves, or due to an auto-initiative, or concerning some possible anti-competition practices or some sector investigations.

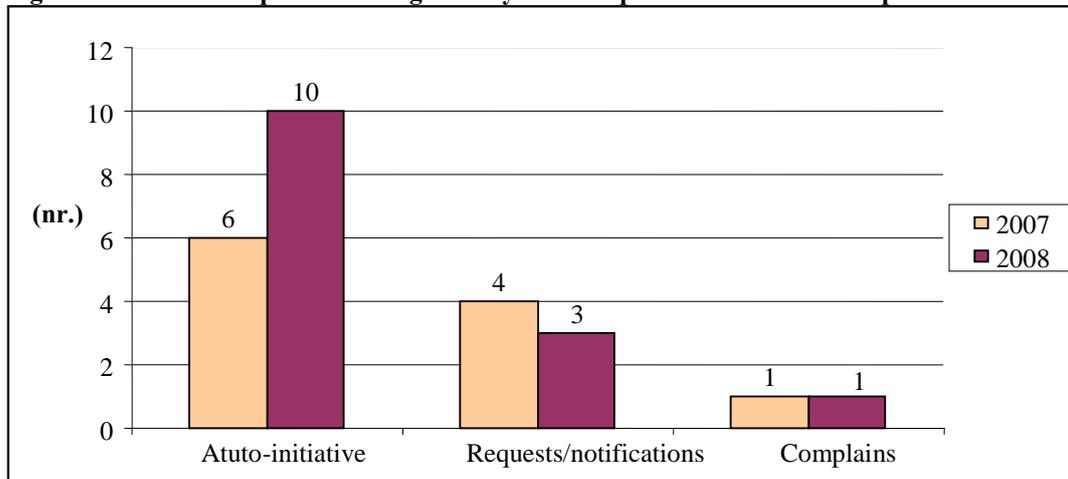
In 2007, the Competition Council finalized from a number of 11 open investigations at the beginning of the year, 6 investigations: (<http://www.consiliulconcrenței.ro> – 2007 Annual Report of Competition Council)

- 3 investigations started by themselves;
- 3 investigations started after some requests/notifications.

During 2008 have been opened 14 investigations, more with 28% comparing with 2007, especially due to auto-initiative of Competition Council for certain practices with potential anti-competition impact on a big number of cases. (<http://www.consiliulconcrenței.ro> – 2008 Annual Report of Competition Council)

The evolution of opened investigations by the Council of Competition in the period 2007-2008 is presented in the Figure 1 below:

**Figure 1. Number of opened investigation by the Competition Council in the period 2007-2008**



Source:<http://www.consiliulconcrenței.ro> – 2008 Annual Report of Competition Council, page 12.

After the 14 opened investigations at the beginning of 2008, have been finalized at the end of the year a number of 8 investigations, by which:

- 5 opened investigations due to auto-initiative;
- 3 investigations due to requests/notifications.

Comparing with 2007-2008, in 2009 the Competition Council has intensified the monitoring activity on the market, the number of opened investigations being 27 at the beginning of 2009, from which 23 have been auto-initiative and 14 complains. (<http://www.consiliulconcrenței.ro> – 2009 Annual Report of Competition Council)

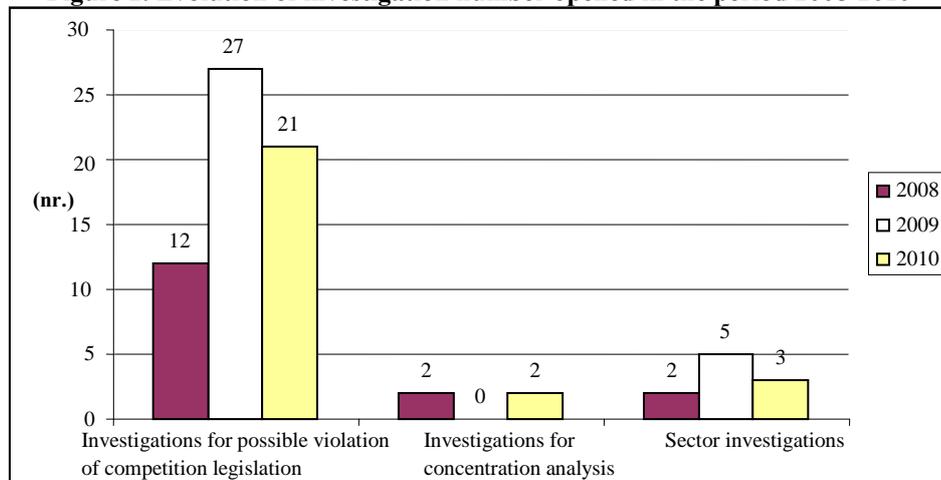
At the end of 2009, after opening the 27 investigations, 6 have been finished, from which: 4 opened investigations due to monitoring; 2 opened investigations due to a request/notification.

The 25% reduction of the finalized investigation number in 2009 comparing with 2008 is the output of analyzed market complexity, high volume of analyzed information, but also de number of economic

agents that are active on the analyzed markets. (<http://www.consiliulconcurenței.ro> – 2009 Annual Report of Competition Council)

In 2010 have been opened 26 investigations. The evolution of investigation number opened in the period 2008-2010 is presented in the bellow figure:

**Figure 2. Evolution of investigation number opened in the period 2008-2010**



Source: <http://www.consiliulconcurenței.ro> – 2010 Annual Report of Competition Council, page 24

Excepting the investigations concerning economic concentration (initiated due to notifications), comparing with 2009, in 2010 we can notice a decrease of opened investigations, in the case of the ones concerning the possible violation of legislation with 6 investigations and 2 investigations in the case of sector investigations. Mainly, this evolution notes the fact that, in 2010, the competition authority has accentuated the efforts on finalizing the cases that are already in place.

Comparing with 2008, we can notice a significant increase of the number of investigations concerning a possible violation of competition legislation and sector investigation opened in 2009 and 2010, which denotes an evident intensification of investigation activities made by the institution in the last 2 years.

After opening the 26 investigations, have been finalized a number of 20 investigations from which:

- 16 investigations concerning possible violations of competition legislation;
- 2 investigations concerning analysis of economic concentration;
- 2 sector investigations.

Comparing with the last 2 years, 2010 have been documented a higher number of finalized investigations.

The number of investigations concerning the possibility of violating the legislation sums a number of 16 finalized investigations. Comparing with 2008, their number has increased by 2,7 times, and comparing with 2009 by 3.4 times.

Concerning the sector investigations finalized in 2010, their number has decreased comparing with 2009 with aprox. 33%, mainly, due to high number of this kind of procedures being opened in 2010 and because of the direction of Council resources that has been focused on finalizing the cases for violating the competition law. (<http://www.consiliulconcurenței.ro> – 2010 Annual Report of Competition Council).

In 2011 have been opened 24 investigations for possible anti-competition practices, comparing with 23 opened investigations in 2010. Also, in 2011 have been opened 3 sector investigations.

After opening the investigations at the beginning of the year, have been finalized a number of 24 investigations concerning the law violation, comparing with 18 investigations from 2010, and 2 sector investigations, same as in 2010.

### 3. Decisional activity of Competition Council

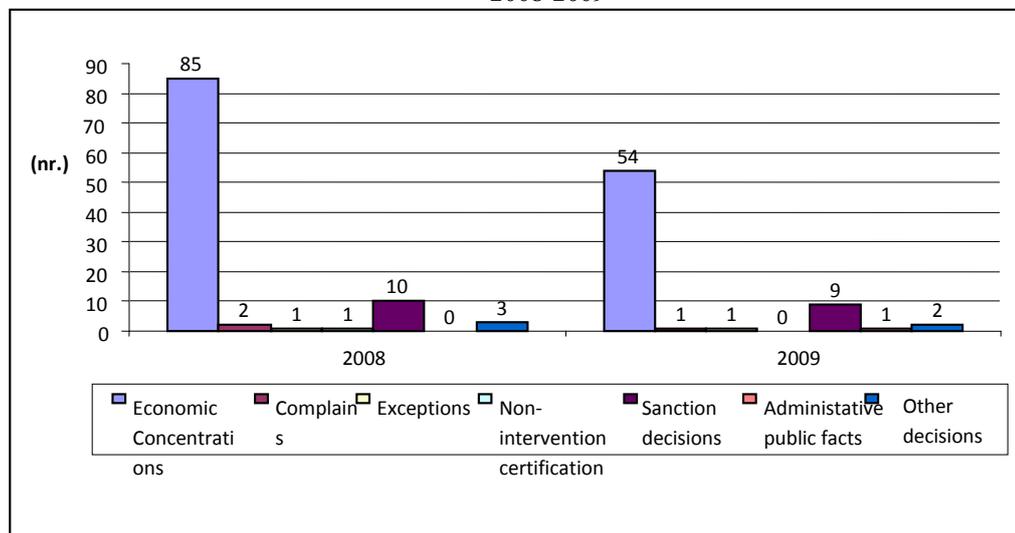
The Law of Competition no. 21/1996 prohibits anti-competition practices which sum the monopolistic behaviors as some express or hidden arrangements between different economic agents, abusive use of dominant position, economic concentrations that have as effect the creation or consolidation of a dominant position, This is why, the role of Competition Council implies managing those specific aspects of antitrust domain by applying a policy of unity, homogeneity and validity guarantee of the market and of preventing distortions of competition rules by certain economic agents being in direct touch with other economic agents through decision application and fees.

Decisional activity in the competition domain has been materialized, in 2007, by adopting a number of 64 decisions, the high share of those being on the afferent decisions for economic concentration

operations, 71.4%. Excluding this significant share we can document also a series of structural decisions as following: 7.9% other decision; 6.3% complains; 6.3% certification of non-intervention; 4.8% penalties; 1.6% individual exceptions; 1.6% auto-initiatives. (<http://www.consiliulconcurenței.ro> – 2007 Annual Report of Competition Council)

In 2008 and 2009, comparing with 2007, the Competition Council has intensified the activity by adopting a high number of decisions, 170. An evolution of decisional activities of Competition Council in the period 2008-2009 is given by the Figure 3.

**Figure 3. Evolution of decisional activities of Competition Council in the period 2008-2009**



Source: <http://www.consiliulconcurenței.ro> – 2009 Annual Report of Competition Council, page 52.

In the above figure we can notice a reduction of decision in 2009 comparing with 2008, in the concentration domain due to the reduction of economic concentration on the market and also in the case of complains, exceptions, non-intervention certification, sanction decisions, concerning papers from public administration or from other decision category.

In 2010, have been released 59 decisions, from which the majority of 65% have targeted operations of economic concentration. The decreased number of taken decisions, comparing with 2009 was due, mainly, to the actual economic-financial context, which influenced the process of fusions and acquisitions of companies in the Romanian economy, having as result the reduction of analyzed economic concentrations by the Competition Council. (<http://www.consiliulconcurenței.ro> – 2010 Annual Report of Competition Council )

Beginning of 2001 documented the emission of 20 decisions, from which 2.3 from the total concerned cases of economic concentration. Comparing with the first semester of 2011, the last part of the year documents a higher intensity of decision making, double number of taken decisions, from which  $\frac{3}{4}$  of them representing sanctions applied for not offering asked documents and information from 2 investigations of knowing the market. (<http://www.consiliulconcurenței.ro> – Buletin II\_2011)

#### 4. State aid - assumed obligations and achievements during the period 2004-2009 in Romania

In 2009, the Competition Council's activity in the field of state aid has considered Romania's obligations as a member state and obligations to fulfill specific tasks acquired after the competition authority on January 1, 2007. In this regard, the Competition Council has encouraged the collaboration between institutions to develop projects of state aid schemes, so there were presented the following reports: ([http://www.renascce.eu/documente/Raport%202009\\_619ro.pdf](http://www.renascce.eu/documente/Raport%202009_619ro.pdf) - 2009 Yearly Report , published by the Competition Council)

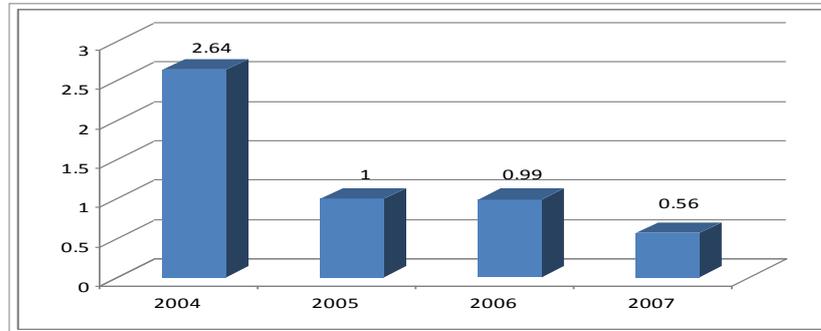
a) Reports on Romania's obligations when joining the European Union in 2009, issued by the Competition Council and regarding:

- The situation of the existing state aids;
- Half-yearly reports on monitoring the state aid beneficiaries from the field of motor vehicles and which are operating in disadvantaged areas and open zones;
- Report on monitoring the state aids granted to businesses operating in open zones;
- Report on fulfilling all the conditions for granting state aids in the disadvantaged areas and measures imposed for the cases of breaches of award criteria;

- Situation of the state aids for research - development - innovation.
- b) Reports made according to the running national legislation.

During 2009, the Competition Council elaborated the Report for the state aids granted in Romania in the period 2004-2007, in accordance with the provisions of Art. 19 of O.U.G. no. 117/2006 on national procedures for state aids, approved with amendments and addendums by Law no. 137/2007. The report shows that, in 2004-2007, national aid recorded a downward trend that continued with 2.08 percentage points from 2.64% (2004) to 0.56% (2007). ([http://www.renascce.eu/documente/Raport%202009\\_619ro.pdf](http://www.renascce.eu/documente/Raport%202009_619ro.pdf) - 2009 Yearly Report, published by the Competition Council)

**Figure 4. The evolution of the state aid balance in GDP during the period 2004-2007**



Source: [http://www.renascce.eu/documente/Raport%202009\\_619ro.pdf](http://www.renascce.eu/documente/Raport%202009_619ro.pdf), - 2009 Annual Report of the Competition Council, page 48.

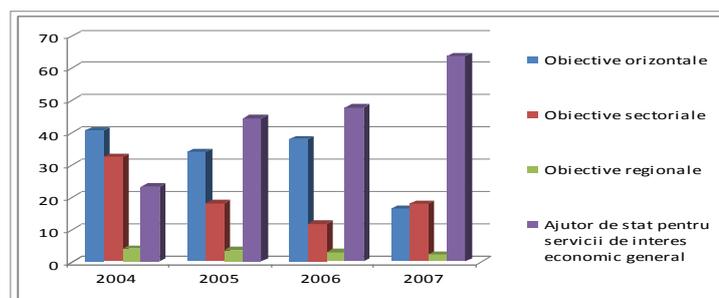
It was found that the amount of state aid granted in 2007 represented a quarter from the percentage of the year 2004 (24.7%).

The high level recorded in 2004 was due, in particular, to the increasing process of restructuring and privatization of companies owned by the state and also due to the fact that it was the last year when the steel industry in Romania received state aids. As regards 2006 the explanation for the high level of state aids, compared with the year 2007, comes from the fact that it was last year when state aid measures could be authorized by the Competition Council.

In terms of objectives, the state aid report highlighted the following conclusions: ([http://www.renascce.eu/documente/Raport%202009\\_619ro.pdf](http://www.renascce.eu/documente/Raport%202009_619ro.pdf) - 2009 Yearly Report, published by the Competition Council)

- In 2007, the state aids granted for services of general economic interest had the highest value, this being due to the investments made by public local authorities and to the subsidies given in this area (thermal heat, drain water – sewage), which increased year over year;
- State aids granted for horizontal objectives in 2007 had a low share of 16.45% as a result of a reduction of the rescue aids - restructuring, which had a higher degree in the distortion of competition, and due to the fact that most part of the state aids given to small and medium enterprises were granted in the form of the minimum aids, aids that were easier obtained by business agents;
- State aids granted for sectorial objectives decreased, accordingly to the EU public policy in this field;
- Share in the case of national state aids for regional development has recorded a steady decline because of the smaller number of business agents eligible for a tax relief in the disadvantaged areas, by reaching a maximum intensity or ceasing the existing period of the disadvantaged areas.

**Figure 5. The evolution of the state aid structure as a percentage from GDP/target during the period 2004-2007**



Source: [http://www.renascce.eu/documente/Raport%202009\\_619ro.pdf](http://www.renascce.eu/documente/Raport%202009_619ro.pdf) - 2009 Annual Report of the Competition Council, page.52.

In 2009 was issued by the Competition Council "The report on monitoring rescue and restructuring aids granted to companies in difficulty", containing data and information on the implementation of restructuring programs completed during 2007 -2008, and also reviewing the progress of those programs implementing restructuring with deadline in 2009.

Its purpose was to evaluate the implementation of the measures foreseen in the restructuring plans which constituted the reason of authorizing the respective state aid; another purpose was to analyze the economic and financial developments of the 62 beneficiary companies, and the measures that had to be taken for those companies that have not implemented the plans in question ([http://www.renascc.eu/documente/Raport%202009\\_619ro.pdf](http://www.renascc.eu/documente/Raport%202009_619ro.pdf) - 2009 Yearly Report, published by the Competition Council).

In 2009 there were recovered illegal state aids in the amount of 15,021.00 LEI and the value of the total cumulative recoveries made during 2005 to 2009 was of 256,742,945.81 LEI.

## 5. Conclusion

In 2007, the activity of Competition Council has been concentrated on the cases that can lead to a significant distortion of competition environment by starting 11 investigations in the antitrust domain and by adopting a series of decisions that will lead to a good development of economic activity from a competition point of view.

Comparing with 2007, 2008 brings an intensification of decisional activities and also penalties, their quantum being 113.204.308,82 Lei. The biggest share was applied after sanction decisions and in a small extent due to verbal-processes made by competition inspectors. Also, the value of authorization taxes established on the basis of authorization decisions in the domain of economic concentrations has risen to aprox. 12.754.793 lei, contributing together with the penalties at the national budget, and bringing a plus of 125.959.102 lei, according to data from the annual reports of Competition Council from 2008.

In 2009, have been applied contraventions of 8.755.512 lei, a smaller value than in 2008, from which 90% represents the contravention applied due to investigations in the cases "driving school" and "bread market". The value of authorization taxes of economic concentrations was 8.577.085 lei which cumulated with the applied contraventions impact the national budget with a positive amount of 17.332.597, according with the annual report from 2009.

In 2010 have been applied contraventions and their value was almost 14 times higher than in 2009, their quantum reaching 132.5 millions lei, where a number of 49 companies and a professional organism have been sanctioned for anti-competition practices and a company for offering wrong information. In the economic concentration operations, have been authorized a number of 39 operations, the value of taxes reaching the level of 6.805.772 lei, according to the annual report from 2010.

The contravention activity has increased the aria in 2011, when were applied for the first time fees for not receiving information of some investigations of better knowing the market. Have been sanctioned a number of 39 companies, the value of contravention being 2.470.648 lei from a total of 354,96 millions lei, documented in 2011. Also, has been documented a reduction of sums collected for the national budget from authorization taxes comparing with last year, their value being 2.956.103 lei.

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