

ESSENTIAL ASPECTS CONCERNING THE APPLICATION OF THE COMPETITION LAW IN THE FIELD OF TELECOMMUNICATIONS, POSTAL SERVICES AND RAIL TRANSPORT

FLORENTINA CRISTINA BÂLDAN¹

¹*University of Pitești, baldan.cristina@gmail.com*

The paper presents essential aspects on the application of the competition law in the sector of telecommunications, postal services and rail transport. These regulated sectors have a number of elements in common with those in the European countries, a significant part of the institutional and regulatory environment being modelled based on the legislation of the European Union. The postal service sector has a more varied image, markets being completely deregulated. Although the competition in certain sectors, such as the express deliveries and parcel and freight delivery services seem to function appropriately, the existing company dominating the letter delivery services, and the performance indicators show low quality levels. Competition has strongly penetrated the rail goods transportation, where the market share of the company already existent in the market has decreased below 50%.

Key words: *postal service sector, railroad sector, telecommunication sector, competition, market deregulation*

INTRODUCTION

The provisions of the Competition Law concerning restrictive agreements, control of economic concentrations and individual behaviour largely follows the provisions of the competition legislation of the European Union and the implementing regulations, but with several exceptions. Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFUE) are applicable in the case of actions before courts and before the European authority, because Romania is a member of the European Union. At the same time, the Competition Law regulates at article 9 the cases when the Romanian Competition Council (CCR) may intervene against acts of public institutions that prevent, limit or distort competition. This gives the Romanian Competition Council the right to prepare endorsements on how public acts, including draft laws proposed, influence competition.

The Romanian Competition Council is an independent governmental authority, with legal personality, as provided in Article 16 of Competition Law. For the other institutions in charge with matters related to the competition law and the competition policy in Romania, the Council is the central institution. Besides the law enforcement mandate, the Competition Council is also in charge with topics related to the competition policy, as well as regulations and the assessment of law proposals, and also with additional mandates, as well as unfair competition, the regulation of the railroad sector.

MATERIALS AND METHODS

This paper was prepared based on the report published by the Romanian Competition Council concerning the application of the competition law in the sector of telecommunications, postal services and rail transport.

In this paper, I presented essential aspects related to the application of the competition law in the above-mentioned sectors and I highlighted that all regulated sectors have a number of elements in common with those in other European countries, a significant part of the institutional and regulatory environment being modelled based on the legislation of the European Union.

REDEARCH RESULTS

1. Application of the competition law in the telecommunication sector

The regulatory framework leading the telecommunication market, including the institutional framework to a certain extent is largely set by the legislation of the European Union. Romania introduced the Framework Directive for all the other sectoral directives.[8]

Part of the market assessment and the approach of the regulation of the National Authority for Management and Regulation in Communications follows the standards harmonized with the European Union. Several telecommunication markets are regularly reviewed with the purpose of establishing whether they are competitive or whether the competition is not efficient and ex ante regulations are still needed. The decisions of the Authority for Management and Regulation in Communications are submitted to the European Commission for analysis. The competition degree in the telecommunication markets in Romania corresponds to those in other member countries; Romania made bigger progress in the implementing and maintaining competition on several telecommunication markets than any of its peers. [9]

The fixed telephony service Romtelecom, who had previous monopoly, was privatized and many of its shares are currently owned by OTE, a telecommunication company in Greece, where the majority shareholder is Deutsche Telekom. Romtelecom still provides services in several retail markets, including fixed and mobile telephony, as well as access to internet. In 2012, the National Authority for Management and Regulation in Communications analyzed and intensified the separation rules, in order to provide cost and price transparency and to separate the activities of Romtelecom, as network operator and supplier of access services, from the activities on the retail market.

Due to its slow adaption to the increasing competition, Romtelecom's position, as telecommunication service supplier, decreased. The company continues to account for a high fixed telephony share, but cable television networks underwent a consolidation period and is currently supplying a solution of reliable, alternative network, especially in certain metropolitan areas. Romtelecom was subject to efficient regulations of the National Authority for Management and Regulation in Communications, on access. Following this evolution, there are many fixed telephony alternative service suppliers, both at wholesale level, as well as at retail level. [2] Between the years 2010 and 2012, switching from one fixed telephony service supplier to another using the portability of the number increased.

After many years of debates, in 2012 a new law was passed on the access to the telecommunication infrastructure. This law implies the access to the public as well as to the private property, for the installation or maintenance of network elements, and for the joint use of the telecommunication infrastructure. At the same time, the law allows the National Authority for Management and Regulation in Communications to order the joint use of elements composing the network infrastructure. The new law is also expected to provide more clarity and the legal framework required to support the construction of telecommunication networks.

In recent years, the mobile telephony market continued to grow, leading to the existence of six mobile telephony service suppliers, and the largest have foreign shareholders. The penetration rate based on active SIM cards is almost 120%. The internet access service market has also grown significantly, but tariffs remain much lower than the European Union average.

In 2009, the National Authority for Management and Regulation in Communications was established as autonomous authority, reporting directly to the president, as a result of institutional changes and mergers of regulatory authorities in the telecommunication field. The president is appointed for 6 years, and his/her mandate may be renewed only once,

but he can also be dismissed for incompatibility. The National Authority for Management and Regulation in Communications is a large institution, having almost 600 employees, and is a respected authority perceived as an authority that uses its regulatory powers effectively with the purpose of contributing to a competitive environment in the Romanian telecommunication markets.

Although it is allowed, under the law, to take the necessary steps to prevent and eliminate actions that limit, prevent, or distort competition, or can have this effect in the in the field of electronic telecommunications, the National Authority for Management and Regulation in Communications does not have the power to apply the Competition Law in the sectors it regulates. [13]. Sectoral regulations do not limit, on the other hand, the powers of the Competition Council to apply the provisions of the Competition Law, and thus the two authorities have jurisdiction that coincides for the sectors of telecommunications and postal services.

The cooperation between the Competition Council and the National Authority for Management and Regulation in Communications is provided by the law, and the two authorities signed in 2009, a detailed memorandum of agreement. The relationship between the two authorities is efficient and very good. Regular meetings at employee level debate subjects of mutual interest, such as, for example, setting termination rates and defining the market within the regulatory powers of the National Authority for Management and Regulation in Communications. In 2012, the most recent example of efficient collaboration between the Competition Council and the National Authority for Management and Regulation in Communications was recorded, more specifically, the spectrum auction in Romania. The National Authority for Management and Regulation in Communications requested the assistance of the Competition Council in order to express a mandatory opinion in relation to the proposal of regulatory framework for the planned tender. Moreover, the contribution of the National Authority for Management and Regulation in Communications was also requested by important players in the industry, due to the fact that they deemed that the conditions in the regulatory proposal were restrictive, unnecessarily. The collaboration of the two authorities and their joint intervention in this case were successful, and this auction brought approximately 700 million euros to the government budget, and its results are expected to increase the degree of competition, to improve services and to bring new services in the underserved fields in Romania.

The Competition Council also collaborated with the National Authority for Management and Regulation in Communications for competition cases in telecommunications. During its investigation concerning the practices of Orange, Vodafone and Romtelecom related to call completion in their own, the Competition Council requested the contribution of the National Authority for Management and Regulation in Communications, especially for the termination rates regulated by the latter, and Vodafone and Orange allegedly evaded the maximal rates required under these regulations.

2. The application of the competition law in the field of postal services

At the same time, the regulatory framework leading Romanian postal service markets is determined by the legislation of the European Union, including the market liberalization speed, the essential institutional characteristics, and the appointment of a single service supplier. The National Authority for Management and Regulation in Communications is the regulatory authority for the postal service sector too.

In the field of postal services, market liberalization took place gradually, the first to be liberalized being parcel and freight delivery services and the express mail. Until recently, the postal service operator in the market, The Romanian Post, maintained its monopoly rights for certain types of letters. In 2012, Romania opened the last segments of

the postal services market to the competition, being among the member states that received a two-year derogation from the liberalization programme.

Following liberalization, many service suppliers penetrated the respective segments. In 2012, in Romania there were more than 200 authorised postal service suppliers, although many of them were small sized. This degree of competition is different from one sector to another, thus, for letters, the Romanian Post has an 80% market share, for parcel and freight delivery services, its market share dropped below 10%, and for express postal services, its market share is below 40%.

Certain surveys show that the letter delivery service market, where the Romanian Post holds the dominant position, does not operate well. Due to the substantial increase of tariffs for the respective services in the past five years, Romania became one of the countries with the least accessible tariffs, compared to the general wages levels. Between 2010 and 2012, the quality of services measured by delivery speed and reliability decreased.

As in the case of other services, the letter delivery service is subject to the obligations related to the universal service. According to the European Union principles, the Romanian Post was declared in the past a universal service supplier. The National Authority for Management and Regulation in Communications provided the ex officio renewal of the mandate of the Romanian Post until in 2018, because no company requested to become the next universal service supplier. The services within the universal service obligations have regulated tariffs and are subject to additional regulation requirements in order to prevent anticompetitive behaviour. Even before total liberalization, the National Authority for Management and Regulation in Communications noticed that there were entries of services from the scope of the universal service. [2]

The weak performance indicators show that the company already existing in the market underwent the reforms and regulations that would lead to an increase in the competition and quality of service. In a proportion of 75%, the Romanian Post is owned by the state, while the remaining 25% is owned by a public fund. The government has expressed its intention to sell 51%, although the plans have been stopped immediately after the first announcement. In Romania, the Romanian Post is a major employer, with nearly 35,000 employees, and fears of social issues can affect the speed of privatization, but also the willingness to transform it into a more efficient service provider

The Competition Council analysed the Romanian Post for the use of discriminatory tariffs that eliminated competing pre-sorting service suppliers, which was also investigated by other competition authorities in Europe.

3. The application of the competition law in the rail transport sector

Another regulated sector, where the restructuring of the industry comes from the European Union legislation, is the rail transport. This was successfully opened for the competition, but not the same thing happened with the passenger rail transport.

In 1998 the foundations were laid for the present structure of the industry, when SNCFR, a vertically integrated railway company, was divided into five independent companies: the CFR infrastructure company, the passenger transport company called CFR Travellers and the freight transport company called CFR Merchandise.

Competition was installed with the restructuring, in the freight transportation sector, where there are more than 20 private competitors, although not all of them perform large-scale operations. In 2011, the market share of CFR Merchandise dropped at almost 45%. In the same period, despite increased competition, the freight rail transport decreased by more than 20%, highlighting the investments in the maintenance, development and repair of the infrastructure and an increased competition of the road transport.

Although the introduction of the competition was a success, there was a fear that CFR Merchandise continued to verify important auxiliary services, such as storage

services, depots and fuel supply services. The Romanian Competition Council discovered that CFR Merchandise applies discriminatory tariffs to its private competitors for the access to the auxiliary service markets and fined it with 7 million euro.

The Government moved, in 2011, the Railway Supervision Council (CSF) at the Competition Council, in response to the requests made by the European Union to provide the regulation component and the independence of the access regulations. The Competition Council had previously feared that the regulation of the access through the Ministry of Transport, which was the interest of the government in CFR Merchandise and CFR Travellers, might lead to a less favourable treatment of the competitors of CFR Merchandise at the allocation of the rights to access the railway network. [7]

The members of the Railway Supervision Council are appointed by the President of the Competition Council from among its members, and are five. The only responsibility of the Railway Supervision Council is to provide transparent and non-discriminatory access to the rail infrastructure. AFER, the regulation authority within the Ministry of Transport kept its other regulation functions: safety regulations and issuing operating licenses. It is expected that within the Competition Council, the decisions related to the access to the infrastructure will improve due to the high level of expertise within the Council and to its possibility to cooperate with the members of the Railway Directorate in charge.

CONCLUSIONS

The regulated sectors have a few elements in common with those in other European countries, a significant part of the institutional and regulation environment being modelled on the European Union legislation. The competition in the telecommunication market functions quite well. Due to the fact that the state-owned company already present in the market had a slow reaction to the market evolution and demand, and competitors established a significant presence in the market, Rumania has a less concentrated market structure compared to other countries. The regulatory authority took steps to provide the accounting separation, in order to delimit the wholesale activities of the company already present, from those in the retail markets, although there was no mandatory vertical separation. The surveys carried out by the European Commission show that the competition in the telecommunication market is at the same level with that in other European Union member countries.

The sector of the postal services presents a more varied image, the markets being completely liberalized. Although the competition in certain sectors, such as express deliveries and parcel and freight delivery services, seem to function appropriately, the company already present seems to dominate the letter delivery services, and the performance indicators show low quality levels.

In the telecommunication and postal service sectors, the Competition Council adopted a few decisions, including decisions on the violation of the legislation, by which it applied significant fines to the postal service company existent in the market and to two telecommunication operators.

In 1998, the structural separation was introduced in the railway sector, the infrastructure management being separated into two operational entities for transport and freight services. Initially, all regulatory functions remained to the Ministry of Transport. Nevertheless, recently, the management of the access to the network was transferred to the Railway Supervision Council, an institution established within the Competition Council, in order to observe the legal requirements at European level.

Competition strongly penetrated the freight railway transport sector, where the market share of the company already present in the market decreased below 50%. A great difficulty is represented by the investments in maintaining, developing and repairing the

infrastructure, which destroyed the competitiveness in the rail sector compared to the road transport.

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