

COMPETITION POLICY IN THE EUROPEAN CONTEXT: EVOLUTIONS AND PERSPECTIVES

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ABSTRACT

Knowledge of the stages within the establishment of national competition policy allows people to understand the current context and challenges that the state will have to answer. The present paper captures milestones in the history of competition policy's establishment and analyses selectively the contribution of this field at a macroeconomic level in an attempt to demonstrate that there is not a simple slogan "competition gives birth to welfare", but a long-term economic goal. This is the result of a long process with currently visible consequences.

KEYWORDS: *Competition, State Aid, Institutional Model, Energy, Environment*

JEL CLASSIFICATION: *H23, H62, K21, L78*

1. INTRODUCTION

In a world of globalization and deregulation by means of gradual liberalization processes, market forces govern the economy as a whole by manifesting free competition. At the level of the European Union, by favouring the freedom of movement, good governance involves the reduction of state interventionist measures. And this could happen by ensuring that state aids granted at national level are compatible with internal market as well as with the declared strategic objectives.

2. BRIEF HISTORY OF LEGISLATIVE EVOLUTIONS

In the international context, the year 1890 marked the moment at which the Sherman Act was adopted by the federal government of the United States of America. These were provisions applicable even at present, which established the competition policy in the antitrust field. Subsequently, the named act was completed by means of Clayton Act in 1914, at the beginning of the First World War. The aim of Clayton Act was to give the state leverage for maintaining competition in terms of mergers or control acquisitions in American companies. In Europe, the exercise of free competition is mentioned for the first time in 1957 by the Treaty of Rome, which announced the establishment of the European Economic Community, with the obvious purpose of annihilating certain states' possible belligerent desires as well as of acting for a harmonious economic development together with the increasing of living standards. Manifesting free competition was possible under Articles 85 and 86 which involved express provisions relating to antitrust, by prohibiting cartels or concerted practices as well as the abuse of dominant position. Moreover, the Articles 92 and 93 referred to the incompatibility between state aids and a normal competitive environment, listing the exempted categories. Subsequent amendment treaties led at present to renumbering of these articles. Thus, we are able to find these provisions in the content of the Articles 101 and 102, respectively 107 and 108 belonging to the current Treaty of the Functioning of the European Union.

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In Romania, since the nineteenth century, trade exchanges and private property have been the premises of free competition. The inviolable right of private property has been enshrined in the Constitution of Romania since 1866, under the democratic principles. After the monarchical regime had been replaced by the communist one, the concept of private property became ridiculous by virtue of the forced nationalized process imposed at that time. The year 1989 brought to the fore the fundamental liberal principles guaranteeing democracy within Romanian state law. According to the Constitution in force, Romanian economy currently operates as a market economy, based on free enterprise and competition.

With the revolution which took place in December 1989 and the establishment of a democratic regime, the protection of competition in Romania became an objective of government policy. Until 1996, the Ministry of Finance had clear duties in competition field, as being part of macro-economic policy. The year 1996 announced the adoption of Competition Law establishing the prerogatives of the two public authorities: Competition Council and Competition Office. The government program of that time, namely that of 1997-2000, adopted a flexible policy in the field of competition protection for limiting entry barriers on the market. That policy also intended to deregulate market and to boost innovation and research. By accumulating a certain experience in implementing the competition policy, there were objectively, particular uncertainties. The Government considered, however, that those uncertainties were removed by the pro-competitive and supportive attitude of authorities in conjunction with market mechanisms. In accordance with its ruling program, the Government pledged to support the economic liberalization as well as the free competition between manufacturers and individual consumers following that, as the privatization process, state monopolies should have been abolished without being replaced by private ones. The same programmatic document stated the intention to avoid mergers within holdings, with a questionable viability, as well as the forced devolution of existing enterprises.

The consistency and efficiency of competition protection policy supposes the existence of a macroeconomic stability, whereas, under the circumstances of a high inflation and especially a volatile one, it is hard to make the differences between price increases determined by businesses' anticompetitive behaviours and those due to the general increase in prices as a result of the inflation.

The policy promoted within the competition field intended to respect a number of fundamental principles, as we outline below:

- The principle of efficiency in law enforcement: the two institutions acting in the field will focus on the anticompetitive practices affecting in greater line market structure;
- The principle of political independence: authorities in the field of competition will be independent politically in order to avoid discretionary intervention in the selection of cases to be investigated. This fact will also avoid the pressure of certain interest groups when they realize that competition policy could affect certain profitable initiatives.
- The principle of transparency: the requirement of transparency imposed to publish or make publicly available, on all possible channels, all relevant regulations and other acts of secondary legislation adopted by the competition authorities, as well as the potential sanctions or those effectively applied in certain cases.
- The principle of consistency: the purpose of this principle consisted in preventing malfunction in the collaboration of the two institutions, the Competition Office (having an investigative role) and the Competition Council (having an investigative and deliberative role as well) in order to ensure the consistency of interpretation and application of law in all areas of the country.

In the perspective of Romania's integration in the European Union, the stated objectives were to identify, monitor and treat the problem of state aid in the European spirit. State aid refers to any measure or action by which an enterprise gets some benefits that they would not have had access under market conditions. The Government considered an emergency to perform an inventory of the multiple economic policy measures which had been taken. Those measures were likely to be

included in the named category (subventions, premiums, subsidized interest rates, debt cancellation and postponement of debt). Based on these analyses, it followed to adopt a coherent state aid policy, in the spirit of respecting competition principles through a fair and open cooperation with the authorized bodies of European Commission, in the letter and spirit of the Association Agreement and of implementation rules, previously signed by Romania. This fact needed strong actions with a priority character especially in the field of competition protection policy in terms of the alignment of energy prices. They also referred to the actions of reducing the number of autonomous enterprises as well as of monopoly progressing weakening, of division and privatization in the case of particular activities within these entities.

Although the objectives of the governing program from that time were ambitious, in a concrete plan, the process of effective application in the case of competition law proved difficult during the first years of institutional functioning. The major impediment was due to how the two institutions were designed to have a similar role as well as overlapped responsibilities. From that point, an inefficiency in the application process resulted because of the investment in supplementary resources for achieving the same results. Decisional inconsistency and the lack of cooperation between the two institutions led to the necessity of modifying competition law, by emergency ordinance at the end of 2003. The legislative amendment had the support of the European Commission which recommended the existence of one competent authority in the field of competition, namely the Competition Council, with an administrative capacity adequate to its role and responsibilities and with a separation of work execution (investigation) from the decision-making activity.

Along with the competition law, the year 1999 is the moment of adopting state aid law, namely Law no 143/1999 which regulated the modalities of authorization, granting, control, inventory, monitoring and reporting of support measures. According to the national legislation and to the European law, state aid does not fall within the exempted categories; it is considered incompatible and therefore, its granting becomes illegal under the conditions of a lack in authorization decision. Prior to joining the European Union, the Competition Council in Romania was able to authorize measures which represented state aid for research and development, for small and medium enterprises, for environmental protection, for employees training as well as for job creation, for regional development, for saving restructuring, for promoting exports and culture, for the preservation of cultural heritage or for large investment projects.

Romania's accession to the European Union brought substantial changes in the competition field as well as in state aid. If competition concerns investigation tools and decisional powers able to ensure the effectiveness of actions developed by competition authorities in applying the law and the treaty, in terms of the state aid, decisional powers are transferred from the national area to the responsible European institution which is the European Commission. Therefore, the responsibilities of the Competition Council which continues to remain in force, are only those specific to the analysis prior to the notification phase, to the reporting, control and monitoring ones, while the decisional authorization for granting state aids comes to the European Commission.

National developments were dictated by the Treaty of the Functioning of the European Union which, within the 3rd Article states the fifth areas in which the Union has exclusive competence, competition being part of this list. European legal order is based on the principle of direct applicability and priority (Fuerea, 2003). As a consequence, state aid authorisation lies strictly within the European Commission competence. The categories of aids for horizontal objectives mentioned above as being part of an authorisation decision made by competition authority are currently declared compatible with internal market, being exempted from notification.

However, when national antitrust law is applied by the competition authority, this could apply in parallel the provisions of the Treaty of European Union Functioning when investigating anticompetitive agreements on the national territory, with potential of affecting trade between Member States.

It has been recently noticed that Member States begin to agree with the idea of applying common standards in order to be consistent and uniform with the interpretation of European competition law, although in practice there is a variety of national jurisdictions. Creating common tools and applying the same standards at the level of the European Union in the competition field, has become a reality, not only designed to help the practitioners but also the economic environment, as otherwise it is outlined in various papers (Eliantonio, 2009).

3. CHALLENGES AND PERSPECTIVES

Institutional models adopted currently by Member States of the European Union are monistic and legal, according to the decisional competence of the institution in the respective state. Most public authorities in competition field works under the one-tier administrative model, with investigation and decisional powers, reunited under the same umbrella. Belgium was the last state that, in 2013, adopted the one-tier model, prior to this moment the country had two institutions with separate responsibilities. The current legal available model in some Member States such as: Austria, Denmark, Estonia, Finland and Ireland supposes that consequently to the investigations made by the authorities, decisions should be taken by the specialized national institutions. The institutional construction is particularly important in developing a healthy policy, representing premises for a functional market economy (Stiglitz, 2002). Competition policy does represent a key factor within the macroeconomic policy of a capitalist state, with an essential role in all economic sectors and an impact on final consumer. Therefore, its proper coordination in decision-making plan is essential for a sound long-term economic construction (Eliantonio, 2009).

Exemplifying in the energy field, the impact in the European Union is visible through the adoption of the third package of the Single Market. Energy price is one of the main concerns for national and European competitiveness, especially in sectors that are intensively energy consumers (Schaub, 2002). The three major challenges identified in such a way take into consideration the growing dependence on imported energy, the increase of energy prices and the lack of investments. Investing in infrastructure, improving energy efficiency and encouraging the granting of aid for renewable energy sources, efficient and market-oriented, do represent the answer to these challenges. Investments to reduce emissions of greenhouse gases have a positive impact on the environment, with social benefits and last but not least, with a positive impact on the long-term growth.

Next, we are going to present the statistical data that reflects the amount of state aid granted to certain economic objectives and to highlight those aid measures granted under the schemes on renewable energy. We are going to analyse these data in the perspective of the evolution corresponding to the general budget deficit.

Table 1: The share of aid for horizontal objectives in total aid granted in Romania

	Employment	Environmental protection, including green energy	Export promotion	Regional development	Research	SMEs
2002	0,25%	0,86%	2,12%	18,68%	0,00%	3,80%
2003	0,62%	0,71%	1,04%	9,28%	0,00%	0,62%
2004	0,01%	0,58%	0,76%	6,05%	1,39%	0,10%
2005	0,03%	1,69%	0,00%	9,36%	3,59%	0,26%
2006	0,02%	1,38%	0,05%	9,77%	3,25%	1,06%
2007	0,22%	2,86%	0,00%	8,74%	11,66%	0,03%
2008	0,22%	5,00%	0,00%	17,87%	21,39%	0,00%
2009	0,10%	0,01%	0,00%	25,64%	14,65%	1,91%
2010	0,00%	0,00%	0,00%	48,46%	16,32%	3,04%
2011	0,01%	61,15%	0,00%	35,17%	1,18%	1,11%
2012	0,03%	76,20%	0,00%	14,26%	1,41%	0,18%

Source: Eurostat

Table 2: The share of aid for horizontal objectives in total aid granted in UE

2002	1,80%	10,98%	1,46%	14,91%	7,55%	9,27%
2003	3,35%	15,33%	1,85%	14,95%	9,01%	8,71%
2004	3,96%	21,93%	0,92%	16,25%	9,67%	10,77%
2005	6,17%	24,88%	1,18%	17,37%	10,69%	11,15%
2006	4,68%	18,78%	0,87%	13,56%	8,57%	7,47%
2007	5,37%	23,47%	0,76%	18,66%	14,88%	10,79%
2008	5,12%	21,84%	0,55%	21,52%	14,84%	10,44%
2009	4,19%	22,59%	0,44%	23,33%	16,99%	7,92%
2010	4,56%	23,02%	0,45%	21,58%	17,91%	6,67%
2011	4,89%	23,11%	0,56%	22,04%	18,16%	6,39%
2012	4,83%	24,72%	0,48%	20,80%	16,69%	5,87%

Source: Eurostat

The data in the table shows, at a national level, a high amount of aid measures granted by national schemes for renewable energy, for research and development as well as for regional development. It could be noted that these fields do not present significant fluctuations in aggregate percentage at the level of the Union. We are going to exemplify in the chart below the developments in state aids for renewable energy in Romania, compared to the data registered in the European Union.

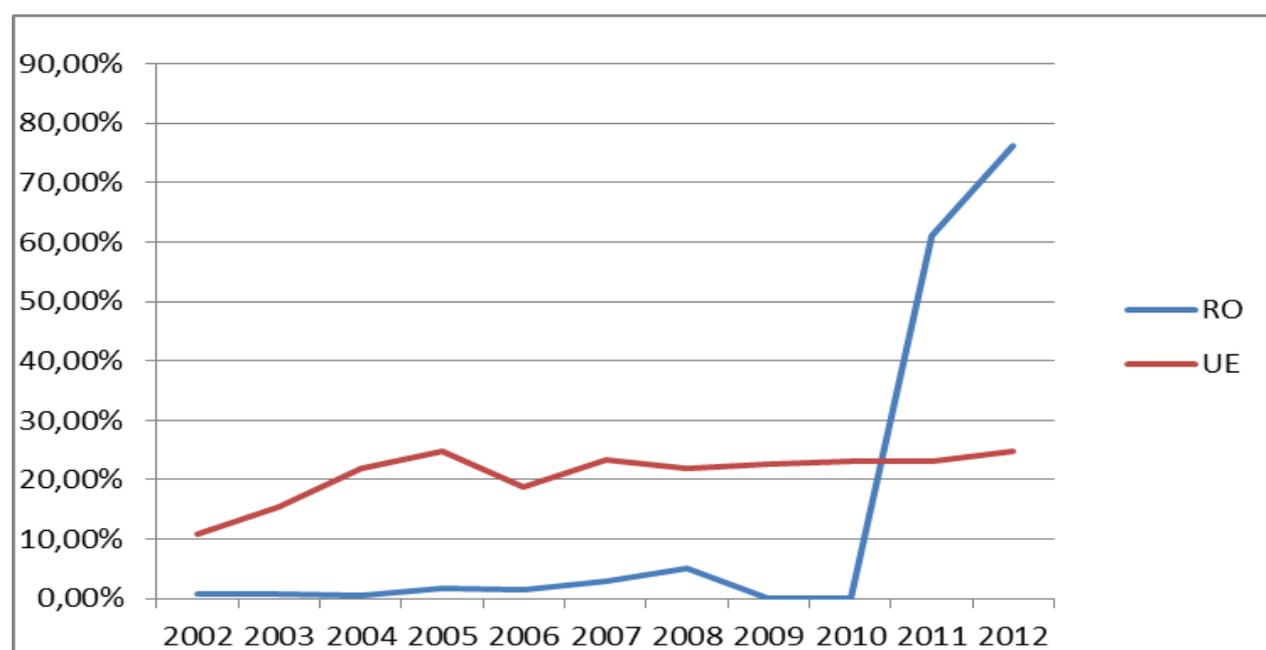


Figure 1: The share of aid for horizontal objectives in total aid granted in Romania and the European Union

Source: chart adapted on the basis of data provided by Eurostat

Recent developments registered in Romania in terms of green energy, become very important and advantageous for Romanian economy, as a whole. We could notice from the chart above the significant share of this category in total aid at the national level, compared to the aggregate values, without major fluctuations at the level of European Union. Renewable resources' valorisation became an important component of national energy policy at the beginning of the decade, as a consequence of overcoming the economic crisis. Green energy has a positive impact not only on the

environment but also for the economic development as well as for employment (Ministry of Economy, Energy Strategy of Romania for 2007-2020).

In the following lines, we present data for the general budget deficit and for state aid granted in Romania and at the level of the Union; data is available for the period 2002-2012 and it is used to see to what extent the developments of the two indicators overlapped the analysed period. Graphs were made based on the statistical data provided by Eurostat in the tables below.

Table 3: Budget deficit and global state aid as % of GDP in Romania and EU

Year	Budget deficit as % of GDP at the level of EU	Budget deficit as % of GDP at the level of Romania	State aid as % of GDP at the level of EU	State aid as % of GDP at the level of Romania
2002	-2,6	-2	0,791	1,924
2003	-3,2	-1,5	0,69	2,302
2004	-2,9	-1,2	0,613	2,616
2005	-2,5	-1,2	0,563	0,566
2006	-1,5	-2,2	0,749	0,67
2007	-0,9	-2,9	0,521	1,19
2008	-2,4	-5,7	0,579	0,626
2009	-6,9	-9	0,628	0,654
2010	-6,5	-6,8	0,568	0,231
2011	-4,4	-5,5	0,508	0,485
2012	-3,9	-3	0,521	0,629

Source: Eurostat

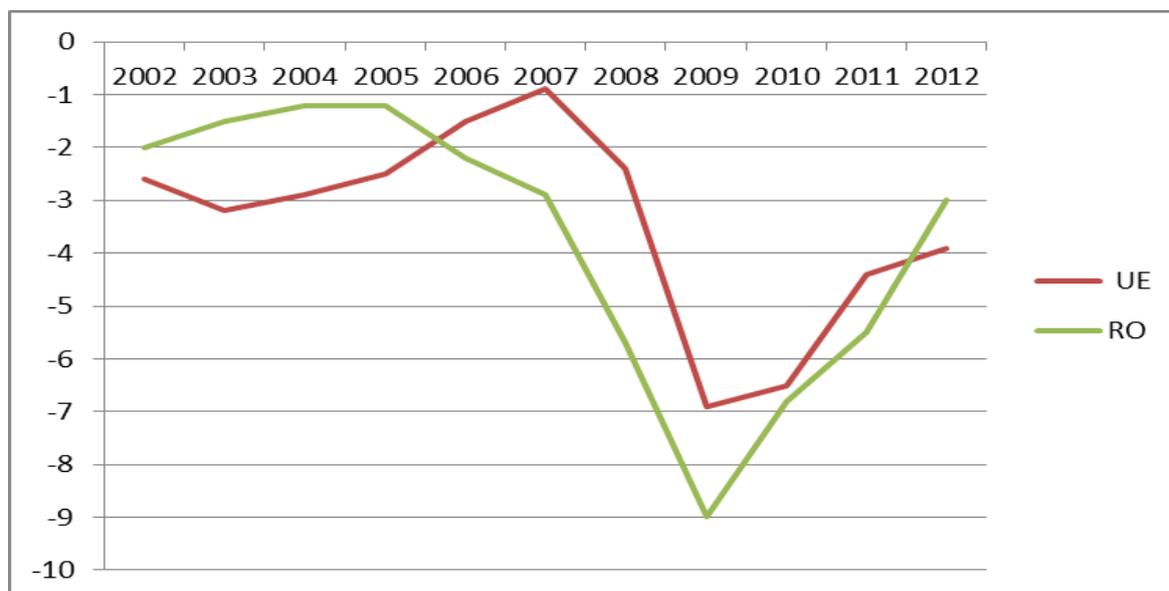


Figure 2: Budget deficit in the period 2002-2012

Source: chart adapted on the basis of data provided by Eurostat

Budget deficit in Romania, relatively reduced prior to EU accession, this being the conditions for stability and integration, does receive significant values starting with the year following the access, namely the year 2008. It achieves a maximum value during 2009, at the beginning of the economic crisis. During 2009-2012, it follows a gradual recovery, on the basis of state's interventions through measures of administrative reform, under the circumstances of assuming Governmental commitments by means of the program closed with the International Monetary Fund (IMF). In terms of budget deficit level, the year 2012 brings into discussion this deficit under reasonable limits, available prior to the beginning of the economic crisis.

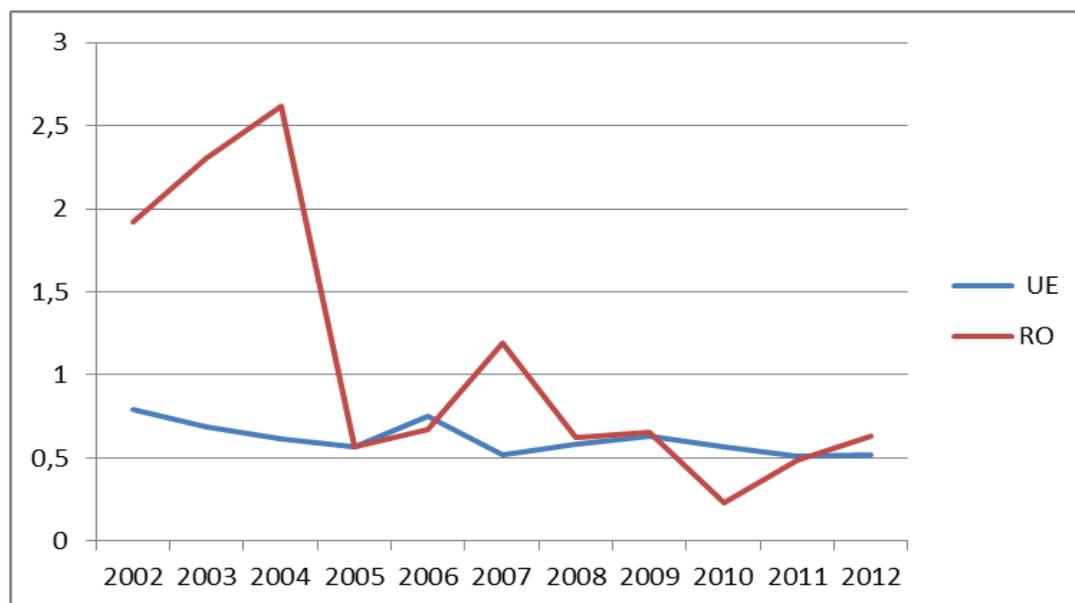


Figure 3: Global state aid in the period 2002-2012

Source: chart adapted on the basis of data provided by Eurostat

Regarding the level of the overall state aid, we could notice from the chart a consequent reduction in the amount of aids granted after the integration, when the European Commission becomes the decisional factor. Correlating the two indicators, state aid and budget deficit, on the basis of data provided by Eurostat, it could be highlighted different trends over time. Although aid is recorded as a budgetary expenditure or as a reduction of budget revenues, these were not due to the increased values of deficit recorded during 2008-2010. If the year 2008 was a year of elections, with increased spending on social security because of the underground economy, of high unemployment rate correlated with an aging population and increases in expenses recorded as early retirement or pension points, the year 2009 marked the beginning of the economic crisis in Romania. Measures of the economic recovery by reducing the administrative expenses in the short term contributed subsequently to the gradual return into normal operational parameters, with a budget deficit limit of 3% of GDP during 2012 (Ministry of Public Finance, Quarterly reports on budget execution).

Although, by means of the definition enshrined in the Article 107 of the Treaty on the Functioning of the European Union, state aid is incompatible with a normal competitive environment, aids granted for horizontal objectives are compatible with internal market. Therefore, the effects of their granting on a medium and long term are advantageous at the economic level. The issue of green certificates, in the exemplification which has been made previously, does have positive consequences in a strictly economic plan as well as in the social one, in the field of environmental protection and health.

4. CONCLUSIONS

Consumer's freedom of selecting from a wide range of goods is an eloquent expression of effective competition in a capitalist and democratic state, with a functional economy. Built on a well-founded model, an institutional and strategic one, competition policy may lead to real and tangible benefits, in the case of market functioning. It also leads to positive externalities for employment, research, innovation, education, health and environment, without this list being exhaustible. The consistent application of competition law helps to maintain a culture of competition, known to market players by its dissuasive effects in the case of non-compliance, but also through its role of market stimulation and protection, in general.

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