Editorial: Looking forward to meeting the challenges of an assessment of regulatory constraints on competition in three key sectors

On October 15, 2014, The Organization for Economic Co-operation and Development (OECD) announced that a pro-competitive regulatory review of three key sectors was launched in Bucharest by the Romanian Prime Minister Victor Ponta and OECD Deputy Secretary General William Danvers. This significant project (using the method of the OECD’s Competition Assessment Toolkit) will be carried out by an OECD project team involving staff of the Romanian Competition Council and input from the Romanian Government and relevant ministries. The analytical competition assessment report will be completed by the end of 2015 (by making recommendations for revisions to certain laws and regulations aimed at improving competitive conditions), after reviewing laws and regulations in food processing, transport and construction. This assessment will take place in five stages: initial mapping of all relevant legislation for the three sectors; in-depth scan of legislation to identify potential obstacles to competition; analysis of the selected regulations to assess the harm to competition (qualitative and, where possible, quantitative to demonstrate the potential economic benefits from lifting any identified barriers to competition); formulation of recommendations for the redesign or even abolition of regulations shown to be harmful to competition; publication of a final report with recommendations for redesigning regulations (please see: http://www.oecd.org/competition/romaniacompetitionassessment.htm).

Prime Minister of Romania, Mr. Victor Ponta gave a speech at the special event
Mr. William Danvers, Deputy Secretary-General of the OECD, gave a speech at the special event.

The launch event of this significant project took place at the Chamber of Commerce and Industry of Romania. Mr. Victor Ponta, Prime-Minister of Romania, underlined the efforts made by Romania lately to meet high standards of competitiveness, transparency, operation of public institutions and legislation that OECD established very clearly, the intention and determination of Romania (written in the Government' strategic documents) at government and institutional level but also at the private environment level not only to meet all the standards of OECD and to become full-fledged member, and expressed his opinion that a fair, transparent competition represents in fact Romania’s development chance, a competitive and open economy being the only right basis on which we can further build, including from the point of view of the role that Romania can and should play in this difficult period in our region, considering economic competitiveness standards, operating standards of public institutions, standards of transparency, specifically those promoted and kept by OECD (please see: http://www.noodls.com/view/023C6DBFA9EDF989DF29AA9E1677F8E827D9902C?5908xxx1413395600#sthash.HPvoH3Ev.dpuf).

On October 15, 2014, at the Chamber of Commerce and Industry of Romania.
It is also worth to remember, within this context, that on April 8, 2014 the Romanian Competition Council launched the **OECD Report** entitled “Peer-Review of competition law and policy in Romania”, **the event being attended by the Prime Minister of Romania, Mr. Victor Ponta**. On this last mentioned occasion, Mr. Frederic Jenny, Professor of economics, ESSEC Business School, Chairman OECD Competition Committee, confirmed that the Romanian Competition Council (RCC) is focused on improving the enforcement regime, and approached the “Future directions of Action Following the OECD Peer-Review of Romania’s competition law”, highlighting the necessity of ensuring continuity and the systematic implementation of reforms of the competition regime, and underlining different policy recommendations such as: on cartel enforcement, on mergers, RCC’s independency, reconsidering the RCC’s enforcement powers in unfair competition law, possible reforms concerning territorial offices of the RCC, providing a relatively more competitive salary scheme in order to retain crucial staff, keeping focus on electricity and gas markets and strengthening RCC’s expertise, building a positive work relationship with ANRE.

**Romanian Distribution Committee actions, enrolled in a common endeavor for the normalization of the competitive environment**

It is well-known that Romanian Distribution Committee (CRD) actions were enrolled in a common endeavor for the normalization of the competitive environment, to prevent inefficiency and to increase the overall level of performance, for partnerships and loyal competition in the distribution process, to increase welfare by offering the possibility of options. It is worth remembering, in this context, the aspects mentioned in the 1997 Report (p. 561), 1998 Report (p. 66-67), 1999 Report (p. 53) and 2001 Report( p. 64 ), of the Competition Council, concerning the collaboration with the CRD.

The formation, in 1996, of the Romanian Distribution Committee as a **Scientific Association – Romanian legal private non-governmental person, apolitical, non-profit, open-associative type** (through the association of 42 founding members) represented a milestone (CRD is mentioned in “European Marketing Information Sourcebook”, 1st edition, Euromonitor International, p. 132; following, reference is made to CRD in the study “Marketing issues in transitional economies”, Springer, 1st edition, August 31, 1999, Rajeev Batra, **William Davidson Institute**, Business & Economics, p. 167) for acknowledging the specific Romanian undertakings of adapting to European and world economic structures. Otherwise, even in the „virtual world”, this fact was recorded in „*Position Paper, Chapter16*”: SME (http://www.mie.ro/Negocieri/Romana/Documente_pozitieRom/CAP16-DP), at point 3 – „Capacity to implement the acquis communautaire”: „that in the field of commerce and distribution, in 1996, the Romanian Distribution Committee was established as a a legal association, affiliated to the International Association for the Distributive Trade” (scientific and pedagogical association – A.I.D.A. Bruxelles). Since the second half of 1996, CRD already published (in a partnering relation with the Romanian Foreign Trade Center) a Documentary Summary (opening the Collection “Information and Documentation Synthesis in the distribution field” “Distribution in Europe”, as a Supplement of the Journal “Romanian Trade Monitor”(please see: [http://www.crd-aida.ro/originsvocation/](http://www.crd-aida.ro/originsvocation/)).
Paying tribute to all those who were involved in the continuous promotion of the competition culture in Romania

Within this framework of continuous promotion of the competition culture in Romania (starting with some significant messages such as: “An intersection towards future, competition – consumer protection”, in “Adevărul Economic”, no. 51-52/17-31 dec.1994; “There are chances for a normal competitive environment”, in “Adevărul Economic”, no. 48(194)/25 nov.-1 dec.1995; please see: http://holisticmarketingmanagement.ro/wp-content/uploads/2014/09/Theodor-PURCAREA-CV-English.pdf), it is also worth recalling some reflections made seven years ago on the occasion of Council’s 10th Anniversary (http://www.crd-aida.ro/2007/09/romanian-competition-council%E2%80%99s-10th-anniversary/). On that special occasion we underlined that: September 6, 2007 represented a real marker to determine how much farther it is to go yet while reaching the milestone of Romanian Competition Council’s 10th Anniversary, within its huge ethical dimension of protecting competition, not competitors in the evolving competition environment; this was a good time to reflect on progress made toward building a sound institutional framework, in designing effective competition regime, in enforcing the competition law and also looking on the windows of opportunity provided for an in-depth substantive European and global conversation on competition policy and acting accordingly (considering, for example, the progress made at the level of the International Competition Network concerning the techniques to improve competition law enforcement); in 2002, the annual Report of the Romanian Competition Council has been sent to all key stakeholders in Romanian economy, including, for the first time, academics (also considering that Competition Council must continue to co-operate better with all our Universities in ensuring the adequate training of the future lawyers and economists (including also “the long life learning”) who will join the “Competition Family”; competition policy approach in the context of present international challenges it is supposed to consider both, national objectives (competitive markets; consumers’ protection), and international challenges (globalization of markets; economic disparities between countries), competition policy being one of the main issues discussed within EU Commission, OECD, WTO, and UNCTAD and so on, while key stakeholders in an economy (politicians, government officials, the business, labor and legal communities, sectorial and other regulators, academics and the press) must understand the benefits of competition and be willing to support it; in a letter sent on October 9, 2003 to Frederic Jenny we showed that Professor’s letter published on Financial Times as a post-Cancun reflection represented a new challenge for the worldwide competition family to recall the past, to learn from the most recent experience and to reflect about the future, being important to discuss and to establish the rules for the future economy within the multilateral negotiation framework; Romania has now in place the institutional framework it needs to go farther by ensuring on the market a fair playing field where efficiency and innovation are encouraged to prosper, also taking care in using the phrase “competition on the merits”; it is now largely agreed that the objective of antitrust is consumer welfare and it is incorporating sound economics into the antitrust analysis, while developing an adequate analytical framework for applying an administrative system; there is a continuous debate about the goal of competition policy, “over whether consumer or total (consumer plus producer) welfare is the right standard for competition policy”; competition (the process), as argued by Dr. Kenneth Heyer, is the most effective means to promote consumer welfare and efficiency (the goal) is a cornerstone of sound antitrust policy; we also have to look more at the so-called “Attention Diversion Ratio” (ADR, defined by
Michael Katz as the percentage of effort that should have been spent on competitive effects but instead was spent on defining the relevant market); Romanian Competition Council’s people, that were professional developed owing to both their professional commitment and technical assistance ensured by Italian, German and last but not the least American Advisors, have proved the necessary competences to protect competition on the Romanian market and to contribute farther to the progress of the “International Competition Family”; in the same time we must remember all those “Romanian Competition Family” members who are no longer with us, like: IOAN BUDA, NICU TANASE, PETRE TARU.

Theodor Valentin Purcărea

*Editor - in - Chief*

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*The following picture presents European Commissioner Mario Monti and Theodor Purcarea, in 2002. It is worth mentioning that in a letter sent by Professor Monti on November 6, 2002 it is pointed out that: “It is issue of real, effective, full independence of competition decision-making. Independence from business pressures and independence from political pressures. This regards anti-trust and also State aid.”

The picture shows the room where the First Annual ICN’s Conference took place, in Naples, Italy, 2002.*

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Dear Prof. Jenny,

Your letter published on Financial Times as a post-Cancun reflection represents a new challenge for the world wide competition family to recall the past, to learn from the most recent experiences and to reflect about the future.

In this context, I dare to write a few lines as my personal reflection thoughts on these events.

I wrote about a “competition family” and I like to believe that it is not only a political expression of a utopian desire. Sometimes the families are the same of various different opinions and these are, I am sure, the engines of the progress.

Someone tried to speak about the “Cancun’s disaster” but I think that we should look beyond this. I think that it is more useful to talk about “Cancun’s lessons”. There are opposite opinions between developed and developing countries and there are opposite opinions within the developed and developing countries on competition issues. We do not have to forgive other elements of the equation: multinational companies, civil society, anti-globalisation movements and media. But as you underlined, their aims are the same: the economic growth and the welfare of the consumers.

It remains to discuss the actions. So, it is important to discuss. The dialog is the only response that could be offered for both opponents to negotiating commitments within the future WTO round and anti-globalisation movements.

But the time of collective apologies is gone. We have to establish the rules for the future economy within the multilateral negotiation framework. We are challenged to prove that applying the competition rules around the world it is not a null sum game but a potential opportunity for all the actors to win.

I support your message that it is the time of mature actions.

I remain sincerely yours,

Theodor Valentin Purcarea
Dear Mr. Purcărea,

Thank you very much for your cordial letter of 2 October 2002.

I greatly appreciate your willingness to engage in a direct international dialogue.

It is in my view extraordinarily reassuring to see that so many countries world-wide have recognised the centrality of competition policy to the proper functioning of a market economy. Romania, like many of these countries, has only recently adopted market-based economic systems. I believe that the pursuit of a robust competition policy by Romania is a key ingredient in any market-driven reform: it encourages industrial competitiveness by rewarding efficiency and innovation, thereby fostering investment, raising incomes and creating wealth in the process.

However, the establishment of a market-based economy is dependent on a wide range of factors: political stability, encouragement of trade, and capacity building in both the public and private sectors so that advantage can be taken of new trade opportunities.

Capacity building at the public level is, in itself, an incentive for much-needed private investment as private investors are anxious to ensure that their rights are protected and that investment risks are reduced. Competition policy can play an essential component in ensuring that economic liberalisation takes place in a way that allows markets to develop towards free and fair competition. In this context, the competition policy capacity is part of a wider effort of integration into the world trading system.

As you pointed out in your letter, it is the issue of real, effective, full independence of competition decision-making: Independence from business pressures and independence from political pressures. This regards anti-trust and also State aid. And an effective competition policy definitely requires a well-organised and competent organisation as well as an efficient interaction between the Romanian national Competition Authorities, the business community and the Romanian Government. This being said, I know that Romania still has a way to go and I greatly appreciate your commitment to building up an effective competition policy.

Yours sincerely,

[Signature]

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Theodor Purcarea speaking at the opening ceremony of KFTC, OECD, and UNCTAD Forum on Competition Policy, Seoul, 2002

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Working Group with the importance to monitor progress on national undertakings pursuant to paragraph 29 of the Declaration, relevant undertakings by the WTO Secretariat, other intergovernmental organisations and by Members acting through bilateral and regional channels.

5. ELEMENTS CONTAINED IN PARAGRAPHS 29 OF THE Doha Ministerial Declaration, WITH FOCUS ON THE SUPPORT FOR PROGRESSIVE IMPLEMENTATION OF COMPETITION INSTITUTIONS IN DEVELOPING COUNTRIES THROUGH CAPACITY BUILDING.

6. The representatives of the United States, Japan, Korea, Thailand, Korea and Singapore submitted written contributions relevant to the issues addressed. WTO/GC/2001/11 Rev. 3, 141, 144, 146, 148, 157, 159, 167, 169, 179 and 181, were received by the Working Group. On 26 February, the Working Group had held a background note by the Secretariat (document WTO/GC/W/121) to the topics which aimed to explain a synthesis of the issues raised and points made by Members on the subject of support for progressive implementation of competition institutions in developing countries at previous meetings of the Working Group. The representatives of the Russian Federation, the Republic of Korea, the Russian Federation, the Republic of Korea, the Russian Federation, and the Russian Federation, respectively, and representatives of the EC and of the United States of America, provided an update on relevant activities of their organizations.

With regard to capacity-building needs and the challenges and difficulties encountered in implementing competition policy in developing and transition countries, the representatives of the Russian Federation, the Russian Federation, the Republic of Korea, and the Republic of Korea, noted that in the twentieth century, both rich and poor countries faced a new challenge of globalization, including a changing economic environment and increased competition. The current environment is simultaneously competitive and asymmetric. To meet the challenges, a system was needed that could both regulate and liberalize, a system that facilitated fair and sustainable development and that provided for interventions between governments, markets, and civil society. To preserve the benefits that had been gained in terms of opening markets, it was essential that competition not be thwarted in some restrictive agreements or through other market forces. Moreover, increasingly, the work of competition authorities was needed to ensure that competition was not being distorted by restrictive practices and abuse of market power, either by firms in these countries or by firms in other jurisdictions and after a decision had been made, there was the problem of enforcing the decision. International agreements included various competitive rules and provided for cooperation between competition authorities. Such agreements unified the responsibilities of enforcement authorities and set new frameworks for issues such as markets and possible remedies. Cooperation had been well established in the pre-merger cases, where the subject had been the competition. In the current environment, there was a need for the WEO to negotiate and conclude a new set of agreements, including issues of cooperation between authorities. These agreements were an important part of the governance framework of States. In the context of an evolving competitive order, it was seen that the implementation process might be accelerated or delayed by the actions of private parties or by the State itself. Furthermore, competition policy could advance not only the national economy but also the global economy as a whole.

De la stânga la dreapta: Allan Fels, președinte al Autorității de Concurență din Australia; Deborah Majoras, asistent al procurorului general al Departamentului Justiției din Statele Unite ale Americii; dr. Ulf Böge, președintele Autorității de Concurență din Germania; Bärbel Dieckmann, primarul orașului Bonn; dr. Theodor Valentin Purcărea, președintele Consiliului Concurenței din România; dr. Kurt Stockmann, vicepreședintele Autorității de Concurență din Germania; Andrej Plahutnik, șeful Autorității de Concurență din Slovenia.

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