



COMPETITION COUNCIL

**Annual
report** **2011**

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Forward

For the Competition Council, 2011 was a period of intense activity, marked by numerous challenges. We intensified our activity and created mechanisms so as to be more dynamic and rapid in identifying and sanctioning anticompetitive practices. A proof in this respect is the increase in the number of on-going investigations at the end of 2011 (73), with 22% more if compared to 2010 and with 43% more if compared to 2009. At the same time, last year we finalised 22 investigations, out of which 32% were older than three years, considering that in 2010 20 investigations were finalised, and in 2009 only 9.

We cannot talk about 2011 without mentioning that it was the year we applied the largest sanctions in the history of the Competition Council, of around EUR 300 million, representing double the fines applied from the establishment of the competition authority until the end of 2010. Following the conclusion of the investigation on the concerted practice concerning the withdrawal of Eco Premium gasoline from the market, we applied record fines of over EUR 200 million. Important sanctions, of over EUR 63 million, were applied for the abuses of dominant position of Orange and Vodafone, thereby restricting access on the market of a smaller competitor.



In 2011, after 15 years from the first version of the Competition Law, we succeeded in promoting a new form of this law. It was necessary to amend the legislation and the procedures so as to adapt it to the new economic realities, but also to be able to act consistently with the other competition authorities of the other EU Member States. The new law offers additional tools for intervening more rapidly and with efficiency when we receive market signals on possible anticompetitive practices. These mechanisms already started to produce effects. For example, for the first time we concluded an investigation by accepting commitments, which is a manner for re-establishing more rapidly the competitive environment than by imposing fines and/or corrective measures. Another example is the first application of the settlement procedure in the case of an investigation on the drug distribution market, where two of the undertakings admitted their deeds, thus benefiting from a reduction of the fine. By applying this procedure, we are offering the possibility for the companies to reduce the fines as a result of admitting committing the respective deeds and, at the same time, we shall reduce the number of dossiers sustained in front of the legal courts.

In 2011, we succeed in identifying the first series of market monitoring indicators, allowing us to assess competition on certain strategic economic sectors. By this new monitoring system, that will be further developed, we will focus the efforts of the institution towards the areas presenting suspicions on possible anticompetitive acts and deeds.

The Railway Supervision Council and the application of the Law on unfair competition are two new attributions acquired by the Competition Council in 2011, determining us to make additional efforts for adapting the institution to the new regulatory fields.

As regards the activity on State aid, it was significantly influenced by the fact that the institution is part of the assistance programme carried out in Romania by the European Union together with the International Monetary Fund and the World Bank. The programme involves restructuring and

preparing privatisations of certain State-owned companies, and these measures must be analysed from the State aid perspective, requiring the approval of the European Commission. In this context, the Inter-Ministry Council for the Application of the State aid policy (ICAS), where the Romanian competition authority plays an important role, proved to be an efficient tool.

At the international level, it is worth mentioning that Romania - through the Competition Council - renewed for two years its Observer status within the Competition Committee of the Organisation for Economic Co-operation and Development. This confirms the results recorded lately by the competition authority. Moreover, starting with March 2011, as supplier of technical assistance and project leader, Competition Council together with the competition authorities of Austria and Latvia grants technical assistance on competition, State aid and for strengthening the administrative capacity for the National Agency on the Protection of Competition of the Republic of Moldova.

The participation of Mr Joaquin Almunia, the European Commissioner for Competition and Vice-President of the European Commission, at the event launching the Annual report on the state of the competition in Romania is an confirmation of the improvement of the cooperation with the executive body.

In 2011, we intensified the collaboration with the World Bank, institution which was selected for granting assistance for the operational assessment specific for the competition field. With this project, we intend to simplify the administrative procedures, and this will be directly reflected in the benefit of the Romanian consumers' interests.

In 2012, from a competition enforcement perspective and given the need to monitor competition sensitive markets, we shall focus on the energy sector, on the construction of national roads and motorways, on the retail of food products, as well as on public procurement procedures for implementing regional development projects. Thus, this year we shall conclude the analysis on the electricity market, the investigations on the possible agreements between traders and suppliers concerning the setting of resale prices, as well as on the investigations carried out on the road markings market, on the acquisition of armament and on the market concerning works related to the distribution of natural gas. Moreover, we shall continue granting assistance in the State aid field so as to assist in the successful implementation of the Governmental privatisation strategy.

In the context of the present economic modifications at Community level, but also given our future objectives, 2012 will be an important year, when we shall intensifie our efforts to support the business environment and for satisfying, to the greatest extent possible, consumers' interests.

**President of the Competition Council,
Bogdan M. Chirițoiu,**



Chapter 1

COMPETITION COUNCIL – INTRODUCTION, DEVELOPMENT OF THE FRAMEWORK FOR ACTION

The Competition Council is an autonomous administrative authority, with legal personality, entrusted for this scope by the Competition Law¹. As national competition authority, the institution enforces and ensures the observation of the **national² and Community³ provisions on competition**. At the same time, the Competition Council has the role of **national contact authority on State aid⁴** between the European Commission, on one side, and the public institutions, the State aid suppliers and beneficiaries, on the other side.

In 2011, the Competition Council has taken over⁵ the competence to apply the Law on **combating the unfair competition⁶**, which was previously enforced by the Ministry of Public Finances. Furthermore, **the Supervision Council in the Railway field⁷** was transferred from the Ministry of Transports and Infrastructure (where it functioned since 2005) to the Competition Council. Thus, the requests concerning the functional and decisional independence of this body were achieved.

Vision, mission, values

The vision: an efficient and dynamic market economy, based on recognising and respecting the competition values and principles, as factor of progress, durable development and welfare.

The mission of the competition authority is to apply efficient measures for maintaining a functional competitive environment.

The role of the Romanian competition authority is to guarantee the normal and fair functioning of the markets by applying efficiently the competition rules, so as to, finally, consumers' interest to be promoted as good as possible.

The values on which we ground our actions and which we promote are: the independence, the responsibility, the professionalism, the efficiency, and the integrity.

Organisation

The Plenum of the Competition Council is a collegial body, made up of seven members, as follows: a President, two Vice-Presidents and four Competition Councillors, which are appointed by the President of Romania at the proposal of the Government. The members of the Competition Council's Plenum do not represent the authority that appointed them and are independent in their decision-making.

¹ Competition Law no.21/1996, republished, with the subsequent amendments and completions.

² Provided for the Competition Law.

³ Art.101 and 102 of the Treaty on the Functioning of the European Union.

⁴ According to the Competition Law and to the Government Emergency Ordinance no.117/2006 on the national procedures on the State aid field, approved with amendments and completions by Law no.137/2007.

⁵ Through the amendments brought to the Competition Law.

⁶ Law no.11/1991 on combating the unfair competition, with the subsequent amendments and completions.

⁷ As a result of the entering into force of the Government Emergency Ordinance no.21/2011.

At the present time, the Plenum of the Competition Council is composed of:

**BOGDAN M. CHIRIȚOIU - PRESIDENT**

Mr. Bogdan Marius Chirițoiu has a Ph.D in economics and he is professor at the Bucharest Academy of Economic Studies. The President of the Competition Council was State counsellor within the Presidential Administration, the Departments of “Planning and political analysis” and “Economic and Social Policies”, he was consultant on social policies at the United Nations Programme for Human Development, Bucharest, as well as consultant on European integration for the Romanian Government at the European Institute

**OTILIAN NEAGOE - VICE-PRESIDENT**

Mr. Otilian Neagoe, Ph. D candidate in political and administrative sciences, was Prefect of Brașov County, as well as Vice-President of Brașov County Council.

**VALENTIN MIRCEA - VICE-PRESIDENT**

Mr. Valentin Mircea, Ph. D candidate in law, worked as senior lawyer within the Tax & Legal Department of KPMG Romania and within the law firm Sinclair Roche & Temperly). He provided legal assistance to the members of the Romanian Parliament and Government in the process of drafting laws on the improvement of the judiciary procedures, the restitution of the properties and the business.

**DAN IONESCU - COMPETITION COUNCILLOR**

Mr. Dan Ionescu, licensed in economics, was the head of the Competition Office (function assimilated to State Secretary), director within the Ministry of Public Finance.

**JÓZSEF NÁNDOR NEMÉNYI - COMPETITION COUNCILLOR**

Mr. József Nándor Neményi, Ph. D candidate in economic sociology, published numerous papers and articles on competition, economic transition issues and on the banking field, he is lector at the Partium Christian University – Oradea.

**LÁSZLÓ GYERKÓ - COMPETITION COUNCILLOR**

Mr. László Gyerkó was Vice-President of the Authority for State Assets Recovery. He has a Bachelor's Degree in law and in economics, a master diploma in the business law and he graduated the National Defence University (specialisation - security and good governance)

During 2011, the Plenum of the Competition Council had also the following members:



ALEXE GAVRILĂ - VICE-PRESIDENT

Mr. Alexe Gavrilă has eight years of experience as Secretary General in ministry/national agency and one and a half years of experience as President of the Senior Civil Servants Recruiting Commission.

Mr. Gavrilă was Vice-President of the Competition Council until the 27th of September 2011, when he was appointed Vice-President of the Romanian National Securities Commission.



VALENTIN MIRCEA - COMPETITION COUNCILLOR

Mr. Mircea was Competition Councillor until the 19th of December 2011, when he was appointed Vice-President of the Competition Council.



ȘTEFAN NEAGOE - COMPETITION COUNCILLOR

Mr. Ștefan Neagoe had a Bachelor's Degree in law and in economics. Among others, he was President of Teleorman Chamber of Commerce, Industry and Agriculture, President of Teleorman Health Insurance House and General Director of the Permanent Election Authority.

Mr. Neagoe passed away on the 27th of May 2011.

During 2011, the functional structure of the competition authority was as follows:

DIRECTORATES OF SPECIALITY OF THE COMPETITION COUNCIL

Services Directorate	Director, Georgeta Fotino Deputy Director (6 months), Marian Ivan
Industry and Energy Directorate	Director (3 months), Georgeta Gavriloiu Deputy Director, Daniel Chilea
Consumption Goods Directorate	Director, Daniela Bădilă
Tenders and Petitions Directorate	Director, GrațIELA Gheorghe
State aid Authorising Directorate	Director, Cristina Cobianu (4 months)/Maria Alexandru w(8 months)
State aid Reporting, Monitoring and Control Directorate	Director, Daniel Diaconescu
Territorial Directorate	Director, Gheorghe Rădulescu Deputy Director, Dumitru Ene
Research-Synthesis Directorate	Director (4 months), Maria Alexandru Deputy Director/Director, Florin Andrei
Legal and Contentious Directorate	Director, Cristina Butacu Deputy Director (6 months), Andrei Pufulesc
International Relations and Communication Directorate	Director, Doina Ion Tudoran

GENERAL SECRETARIAT

Secretary-General	Vasile Șeclăman
Budget, Human Resources Directorate	Director, Anca Tuluș / Daniela Stroe (6 months)
Administrative Directorate	Director, Tatiana Hațegan

COMPARTMENTS AND SERVICES

The Cabinet of the President	Director, Dan Picu
Internal Audit Compartment	Auditor, Ioan Suciu
Public Relations and Communication Services	Chief of Service, Marius Marin Petrescu

Amendment of the Competition Law

In 2011, the Competition Law was **improved**⁸, as regards the instruments for enforcing the law, as well as in respect to certain procedural aspects. The most important amendments will be presented below.

The appointment of the members of the Competition Council's Plenum will be made by the President of Romania at the proposal of Consultative College, with the Government's advice and after hearing the candidates in specialized commissions of the Parliament. Formerly, the appointment was also made by the President of Romania, but at the Government's proposal. The Consultative College is a non-permanent body consisting of the representatives of academic and business environment and consumer protection associations or other high reputation individuals activating in the economic, legal or competition field. These new provisions contribute to the improvement of the selection process of the members of the Romanian competition authority's decisional collegial body.

In the area of economic concentrations, the calculation method of the authorisation tax was simplified, its maximum level being reduced from EUR 100,000 to EUR 25,000. In the situations where the acquisition of control over certain undertakings or assets presents a threat to the national security, the Government, at the proposal of the Supreme Country Defence Council will issue a prohibiting decision, while observing the competence of the European Commission in this field.

Within the *settlement* procedure, (the possibility of the Competition Council to diminish the basic level of the fine when the companies expressly recognize they committed anticompetitive acts which are the subject of investigations in progress, thus being able to contest those fines in the legal courts only in respect to their amount), the maximum amount that may be granted was increased from 25% to 30%, and its application was also extended in cases where the level of the minimum fine is provided by the law. This will reduce the number of cases under judicial review, allowing the authority to refocus its resources to different priorities.

The provisions of the Competition Law concerning the ability of individuals or of legal entities, which may be affected by an anticompetitive practice prohibited by law to request to the legal courts compensations have been completed. Thus, they can initiate legal actions even when the Competition Council's decision, on which it is based, has remained definitive or was maintained only in part by a final and irrevocable judgement. In addition, legal action may be instituted for consumers also by consumer protection associations which are legally registered, as well as by professional or employers' associations for their members affected by anticompetitive practice.

Following the amendment of the Competition Law, a comprehensive process of **adapting the secondary legislation** was performed. The list of the regulations and instructions issued in 2011 can be found within the ***Statistics*** section.

⁸ By Law no.149/2011 approving Government Emergency Ordinance no. 75/2010 amending and completing Competition Law no.21/1996.



Chapter 2

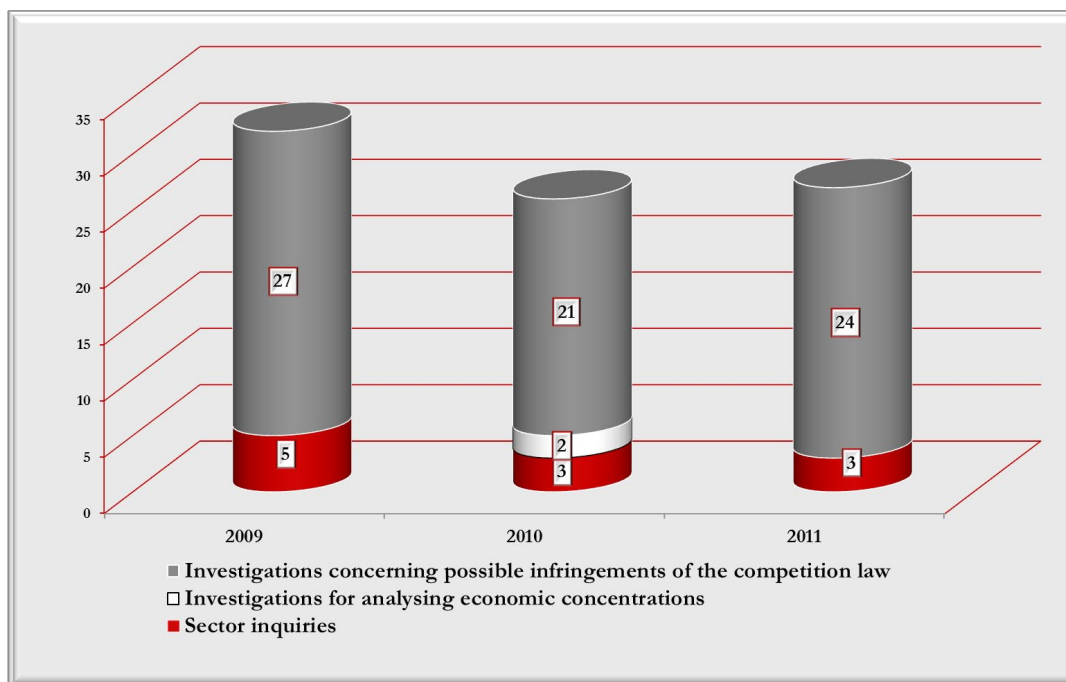
THE RESULTS OF THE ACTIVITY – IMPROVEMENT OF THE COMPETITIVE ENVIRONMENT, INCREASE OF THE ECONOMIC EFFICIENCY AND PROTECTION OF CONSUMERS' INTERESTS

2.1. Progresses in enforcing the competition rules

- New investigations

In 2011, the Competition Council initiated 27 investigations, out of which 24 are concerning possible infringements of the Competition Law and 3 certain economic sectors (sector inquiries).

Graph no. 1. New investigations (no.), 2009-2011

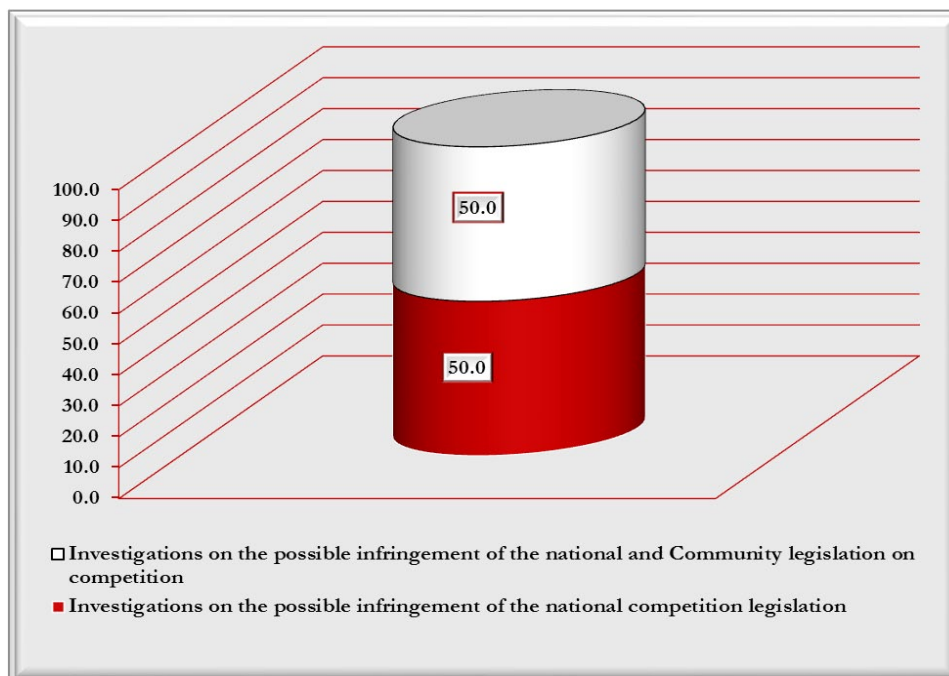


In 2010 and 2011, the number of the new investigations decreased by 10% compared to 2009, respectively by 16%. This development indicates that the competition authority stressed its efforts on completing on-going cases.

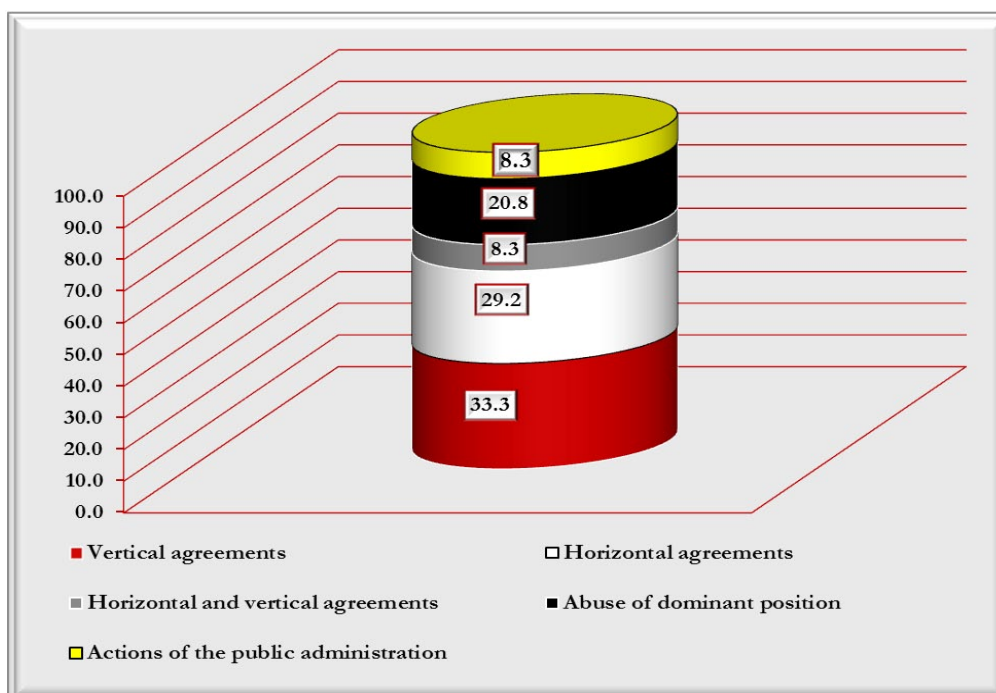
As regards the **24 investigations concerning possible competition law infringements** opened in 2011, we mention that about 60% were ex-officio procedures. The economic sectors analysed within these investigations are important from the economic perspective, as well as in terms of the direct effects of the possible anticompetitive practices over the consumers. The main sector concerned was energy/natural gas (30% of the total number of new investigations). One of the investigations initiated in this sector was a result of the collaboration between Competition Council and the Directorate for Investigating Organized Crime and Terrorism within the Public Ministry – Prosecutor's Office attached to the High Court of Cassation and Justice.

The structure of these investigations, depending on the incident competition legislation and on the investigated practice is presented below.

Graph no. 2. The structure of the investigations on the possible infringement of the competition law initiated in 2011, depending on the incident legislation (%)



Graph no. 3. The structure of the investigations on the possible infringement of the competition law initiated in 2011, depending on the investigated practice (%)



It is worth mentioning that 71% of the investigations concerning possible horizontal anticompetitive agreements are envisaging bid riggings.

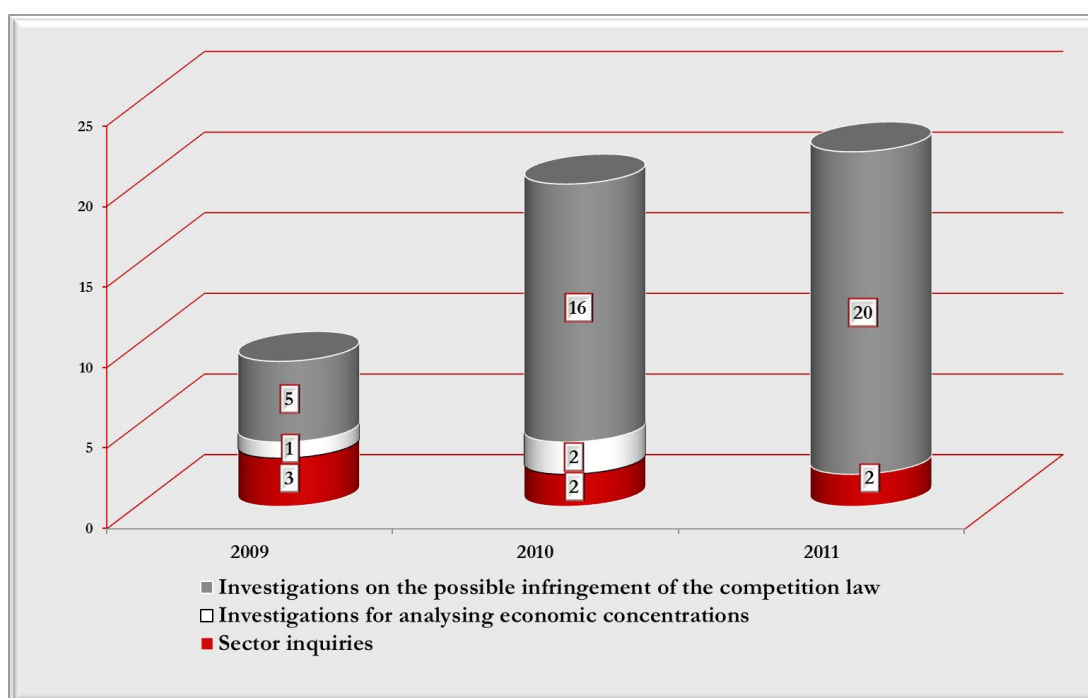
The **3 sector inquiries** initiated in 2011 are envisaging:

- banking payment services;
- a large consumption good (beer);
- the distribution of household products and of confections through virtual stores.

• Concluded investigations

22 investigations were concluded, out of which 20 are concerning possible infringements of the competition legislation and 2 sector inquiries. 7 of these procedures were older than three years.

Graph no. 4. Concluded investigations (no.), 2009-2011



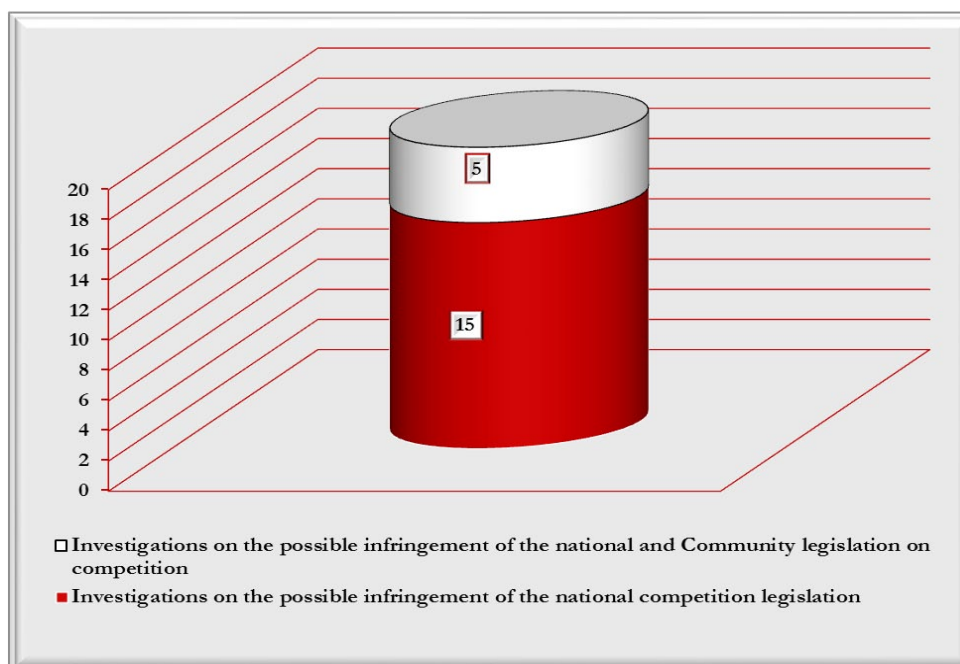
A record number of investigations on the possible infringement of the competition law were completed in 2011. Compared to 2009, their number increased by 4 times, and by 25% compared to 2010.

As regards the sector inquiries completed during the period of analysis, their number was relatively similar, which demonstrates that during this period the Competition Council focused its resources mainly on the completion of the competition law infringement cases.

Taking into account the total number of the on-going investigations at the beginning of 2011, and those initiated during the year (excluding the disjoined and the connected procedures), it results that the Competition Council completed 22% of the cases under analysis in 2011.

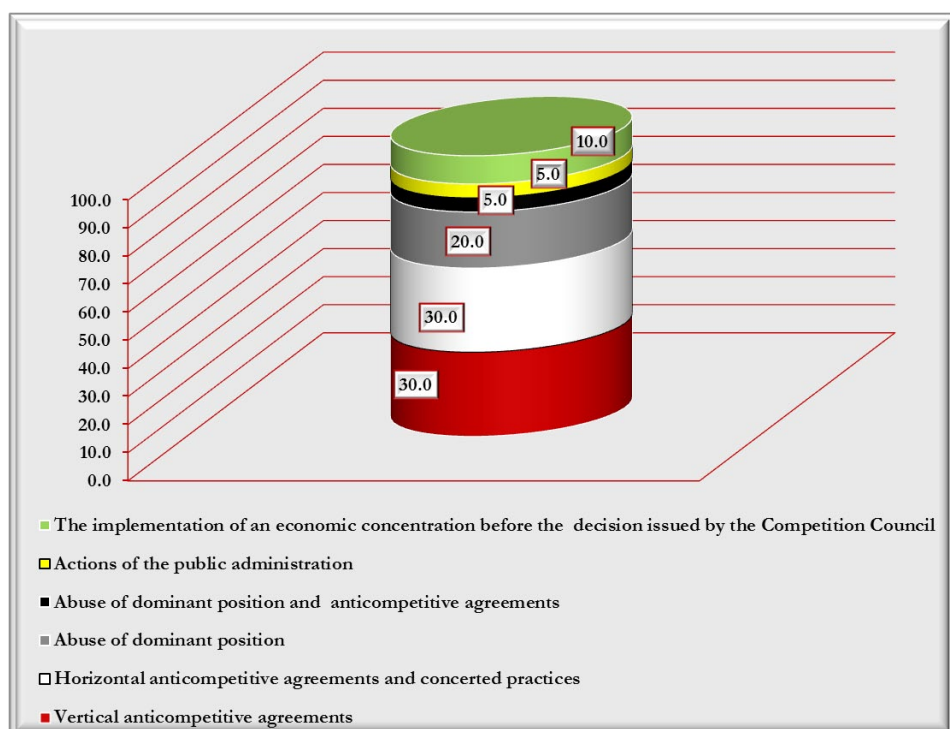
The situation of the investigations on the possible infringement of the competition law completed in 2011, depending on the incident competition legislation and on the investigated practice is presented below.

Graph no. 5. The structure of the investigations on the possible infringement of the competition rules completed in 2011, depending on the incident competition legislation (no.)



About 25% of the completed investigations concerning possible infringements of the competition rules targeted both the national and the Community legislation.

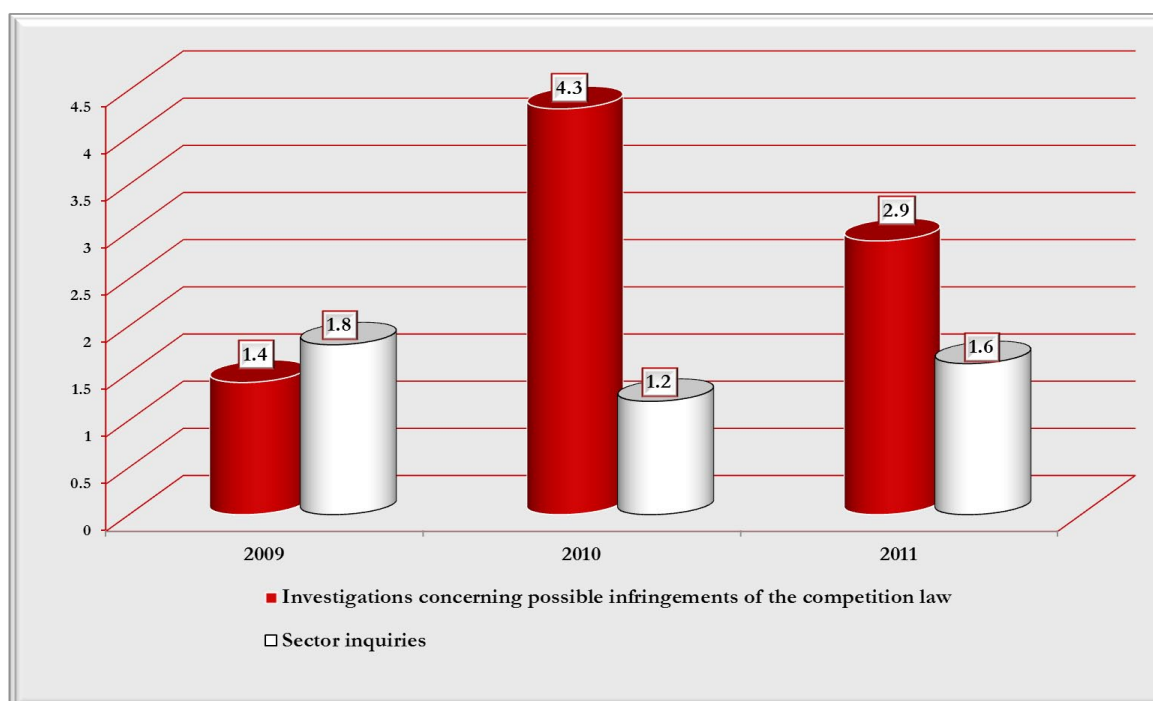
Graph no. 6. The structure of the investigations on the possible infringement of the competition rules completed in 2011, depending on the investigated practice (%)



13 of these investigations (65%) were completed by imposing **fines**. Six procedures envisaged anticompetitive vertical arrangements, three horizontal anticompetitive agreements and concerted practices and two for each of the following competition law infringements: abuse of dominant position and the implementation of an economic concentration prior to a decision of the Competition Council. In the other cases, the evidences identified were insufficient for proving an infringement of the law, so as to justify the imposition of fines or of certain measures.

The average duration of the investigations on possible infringement of competition legislation concluded in 2011 was of around 3 years, and of 1.6 years in the case of sector inquiries. The comparative situation with 2009 and 2010 is presented in the following graph.

Graph no. 7. The average duration of the concluded investigations on possible infringement of competition legislation and of sector inquiries, 2009-2011 (years)



In 2011, the average duration for concluding cases on infringement of competition rules decreased by 33% compared to 2010, respectively by 1.4 years (16.8 months), which shows that the Romanian competition authority significantly focused its efforts in this regard. Compared to 2009 however, the duration remains high, and this state of affairs may be explained by the large number of cases under analysis in 2011 (taking into account on-going investigations at the beginning of the year and investigations opened during the year, the Competition Council evaluated with 50% more cases in 2011 compared to 2009). Many of the cases completed in 2011 were old cases, with a high complexity.

Statistically, depending on the nature of the competition law infringements, the investigations concluded in 2011 lasted on average as follows: 6 years – anticompetitive agreements and abuse of dominant position, 5.3 years – abuse of dominant position, 3 years - cartel, 2 years - vertical anticompetitive agreements, 1.6 years - implementation of an economic concentration prior to a decision issued by the Competition Council, 1.1 years – anticompetitive actions of the public administration.

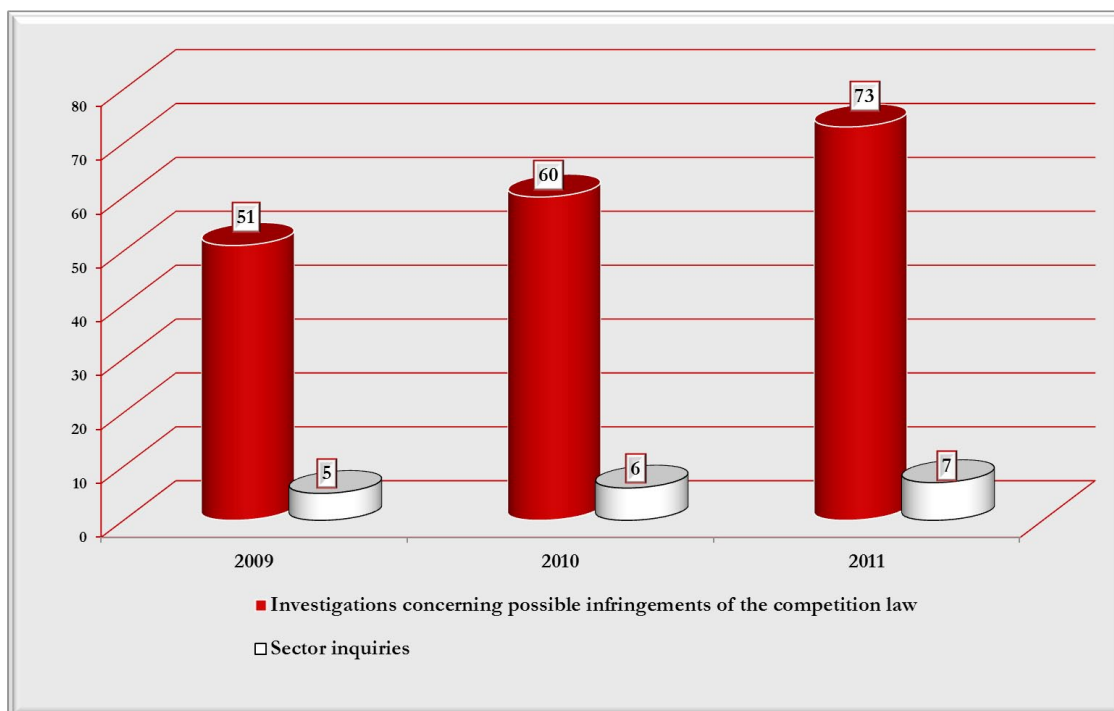
As regards the sectors covered by these investigations, most procedures were conducted in the health sector (25%) and in telecommunications (15%).

In respect to sector inquiries, the 2011 average duration of this type of procedures is superior to the one recorded in 2010, and lower than the 2009 average duration by 0.2 years (2.4 months). This fluctuation may be the result of the nature of sectors analysed during the previous two years (e.g. marketing of the food products, drugs wholesale sector), which required the use of a broader research.

- **Investigations in progress at the end of 2011**

73 investigations on the possible infringement of competition law, out of which 16 older than 3 years, and **7 sector inquiries** were in progress at the end of 2011.

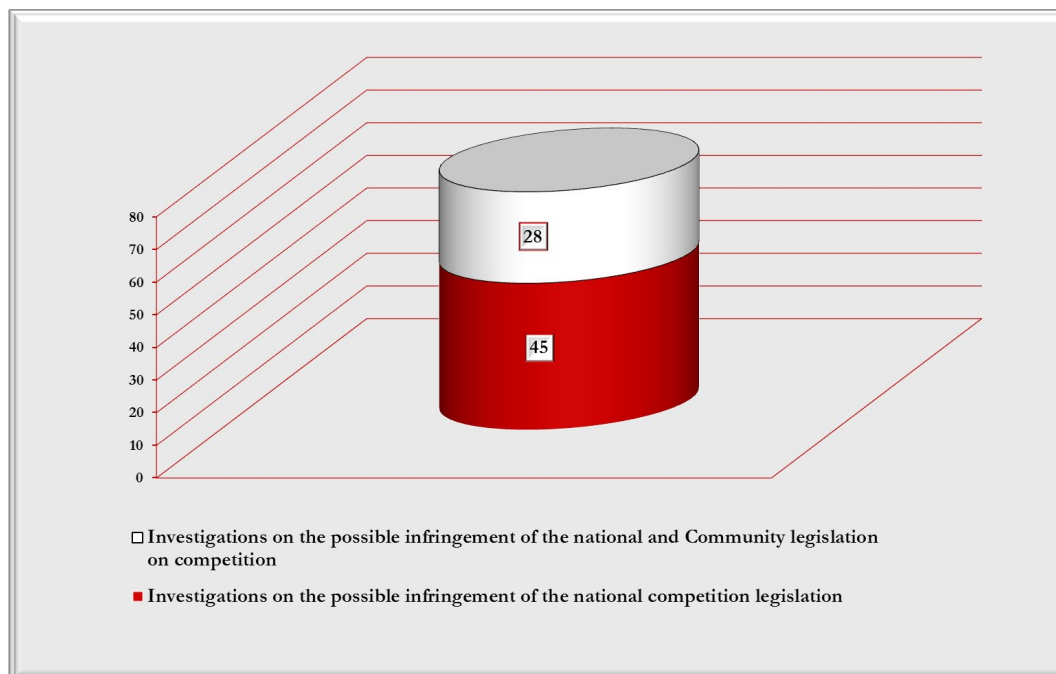
Graph no. 8. The investigations in progress at the end of the year (nr.), 2009-2011



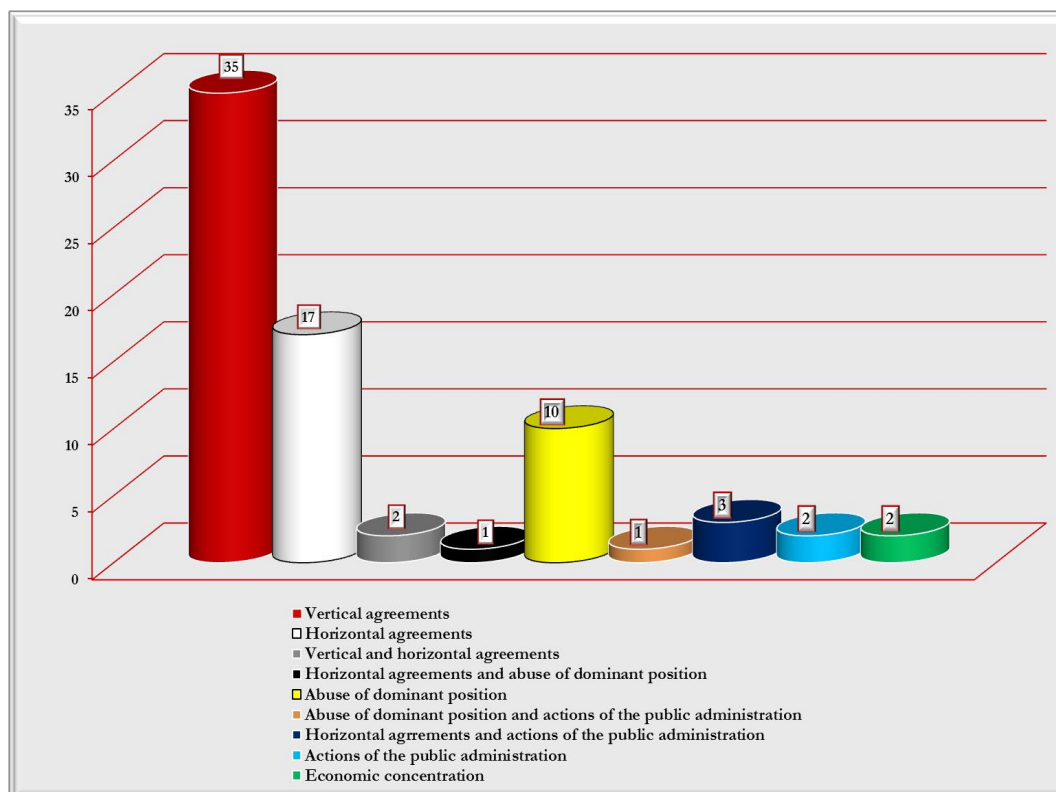
The number of investigations concerning possible infringements of competition legislation which were in progress at the end of 2011 increased by 22% compared with the on-going investigations at the end of 2010, and by 43% compared with the end of 2009. Mainly, this is explained by the fact that the number of investigations opened during these years was larger than that the one of concluded investigations; it may also be due to the several procedures disjointed and to the partial conclusion of certain investigations.

The situation of the investigations on the possible infringement of the competition legislation in progress at the end of 2011, according to the incident legislation and to the investigated practice, is presented in the following graph.

Graph no. 9. The investigations on the possible infringement of the competition legislation in progress at the end of 2011, according to the incident legislation (no.)



Graph. no. 10. The investigations on the possible infringement of competition legislation in progress at the end of 2011, according to the investigated practice (no.)



At the end of 2011, the average duration of the on-going investigations was of 1.9 years. As regards the possible infringements of the competition law, their duration recorded the following values: 6.4 years – abuse of dominant position and anticompetitive actions of the public administration; 6.3 years – horizontal anticompetitive agreements and abuse of dominant position; 2.5 years - anticompetitive agreements and horizontal anticompetitive agreements and actions of the public administration; 2.2 years - possible infringement of the rules in the field of economic concentrations; 2.1 year – abuse of dominant position; 1.9 years – vertical anticompetitive agreements; 1.6 years – horizontal anticompetitive agreements; 0.5 years – anticompetitive actions of the public administration, and 0.2 years – horizontal and vertical anticompetitive agreements.

The average duration of the on-going sector inquiries at the end of 2011 was of 1.4 years.

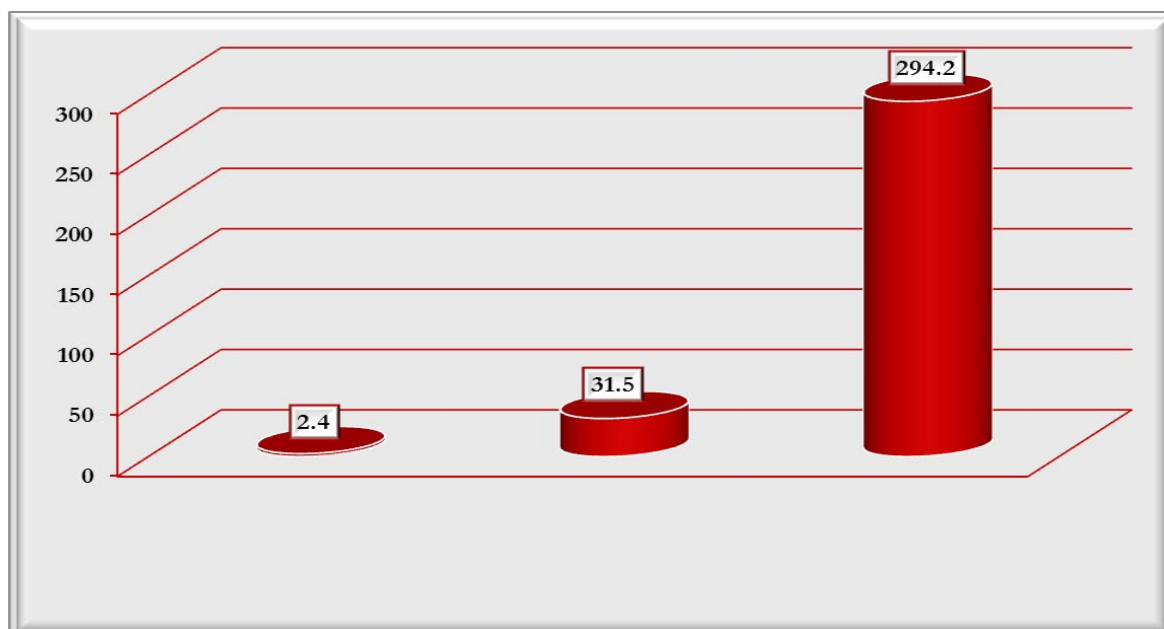
- **Dawn raids**

136 headquarters/working points owned by 127 undertakings **were inspected** within 19 investigations carried out during 2011.

- **Fines**

In 2011, the fines applied were of **RON 1,246,641,324 (EUR 294,164,875)**, as follows: 64 undertakings for anticompetitive practices, 39 for failing to submit the information requested within sector inquiries, and two for the implementation of certain economic concentration prior to a decision issued by the Competition Council. Compared to 2010, the fines applied in 2011 increased by 9.3 times. The fines applied in 2011 overcame the budget of the Competition Council by over 36 times.

Graph no. 11. Applied fines, 2009-2011 (million euros)



Statistically, in terms of the nature of the competition law infringements, in 2011 72 % of the total fines were applied for cartels, 22% for abuse of dominant position, 6 % for anticompetitive vertical arrangements, 0.3% for the implementation of an economic concentration prior to a decision issued by the Competition Council and 0.2 % for failing to submit the information requested within sector inquiries.

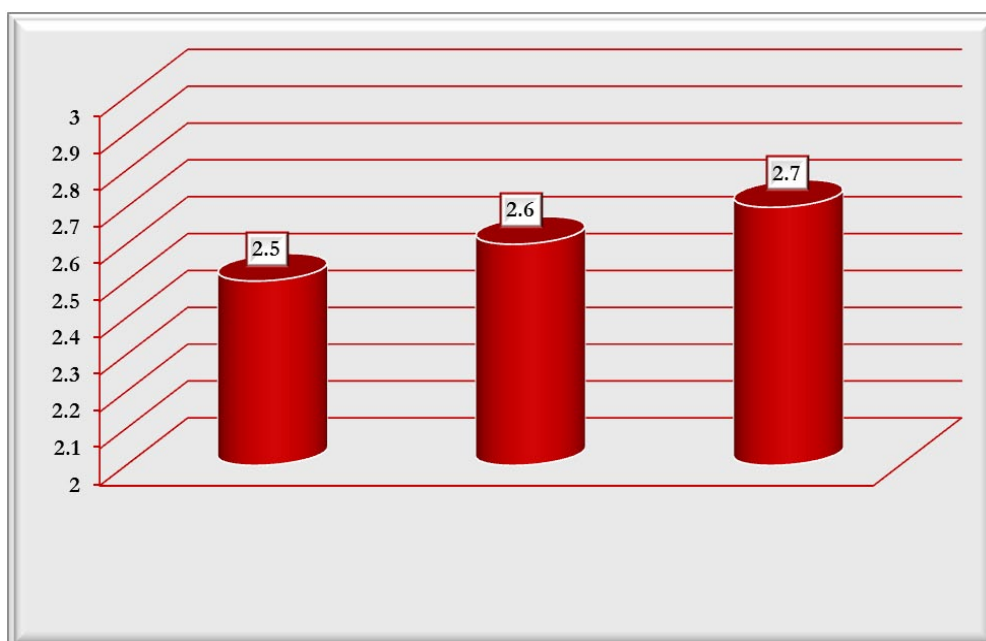
As regards the average fine for the proven cases, the values were the following ones: for cartel – RON 297.6 million (EUR 70.2 million), abuse of dominant position – RON 134.2 million (EUR 31.7 million), anticompetitive vertical agreements – RON 13.3 million (EUR 3.1 million), the implementation of an economic concentration prior to a decision issued by the Competition Council – RON 1.8 million (EUR 431.2 thousands), failing to submit the information requested within sector inquiries – RON 1.2 million (EUR 291.5 thousand). Per sanctioned undertaking, the average fines were the following ones: for cartel – about RON 47 million (EUR 24 million), for abuse of dominant position – RON 134.2 million (EUR 31.7 million), for anticompetitive vertical agreements – RON 1.9 million (EUR 436.1 thousands) and for failing to submit the information requested within sector inquiries – RON 63.4 thousand lei (about EUR 15 thousands).

- **Economic concentrations**

35 economic concentrations were approved, the amount of **authorisation taxes being of RON 2,956,103**. This amount represents less than half of the value recorded in the previous year, due to the change of the system for calculating the authorising tax in the benefit of the undertakings performing such operations, as well as by the decrease of the number of economic concentrations analysed by the Competition Council. All the economic concentrations were authorised without conducting an investigation.

The average duration of the economic concentration cases concluded in 2011 was around 2.7 months, rising insignificantly compared to 2010 and 2009 (by 3 days, respectively by 6 days).

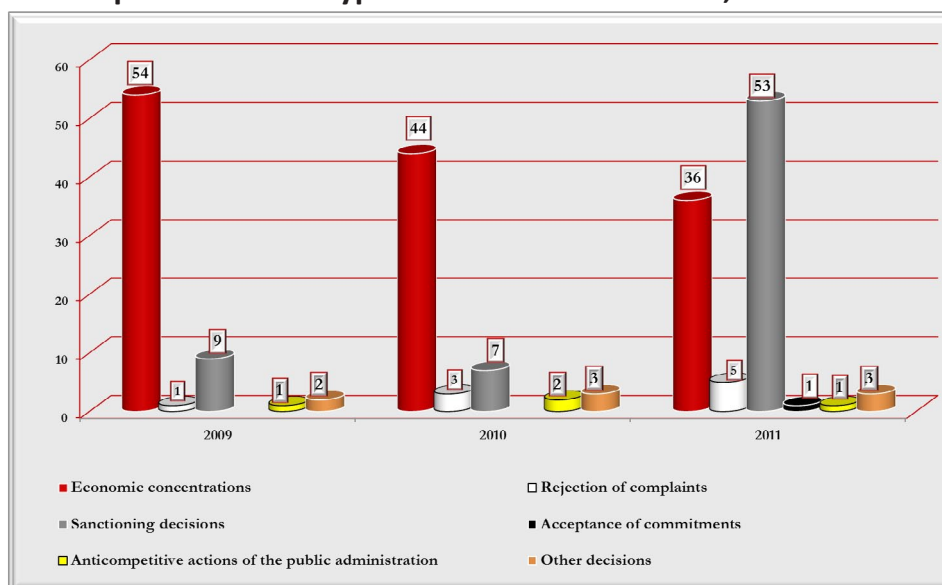
Graph nr. 12. The average duration of the economic concentration cases (without investigation), 2009-2011 (months)



- **Decisions**

99 decisions were issued, the largest part of them (53.5%) being sanctioning decisions. Their number rose evidently compared to 2010 and 2009.

Graph no. 13. The type of the issued decisions, 2009-2011



In 2011, the number of the economic concentration decisions continued the descending trend. This can be explained by the economic and financial context, which reduced the mergers and acquisitions process, resulting in the reduction of the number of the cases analysed with by the Competition Council, as well as by the amendment of the Competition Law occurred in the summer of 2010, which eliminated the negative clearance decisions (that were issued when the analysed operations did not fall under the scope of the Law).

Detailed information on the implementation of the competition legislation in 2011 is presented within the [Statistics](#) section.

2.2. Finalised competition cases

2.2.1. Forbidden agreements between competitors

- **Cartel on the fuels market – withdrawal of Eco Premium gasoline from the market**

In December 2011, Competition Council completed the investigation on the possible infringement of Competition Law and of the Treaty on the functioning of the European Union by companies active on the retail and wholesale market of fuels by limiting or controlling production, marketing, technical development or investments.

Following hearings of the undertakings concerned, the competition authority has found that OMV Petrom, OMV Petrom Marketing, Lukoil, Rompetrol Downstream, MOL and ENI infringed competition rules by participating within a concerted practice and/or agreement aimed at withdrawing Eco Premium gasoline from the market.

In this case, the relevant market was defined as the retail market of Eco Premium gasoline on the Romanian territory. Eco Premium gasoline was a fuel assortment designed for a specific demand. Its specific characteristics met the special needs of certain types of passenger cars, especially those that were not equipped with catalytic converter. It should be noted that, in

accordance with the legal provisions concerning the conditions for marketing gasoline, with effect from the 1st of January 2005, operators were allowed to market only unleaded gasoline, thus being prohibited to sell gasoline containing lead tetraethyl. At that time, all undertakings concerned freely chose to sell Eco Premium gasoline, promoting it among consumers as a replacement for the previously leaded gasoline. During 2005-2007, demand for Eco Premium gasoline was between 18%-28% of the total gasoline sales made by the concerned parties.

From May 2007 to March 2008, OMV Petrom, OMV Petrom Marketing, Rompetrol Downstream, MOL, Lukoil and ENI carried out discussions in order to agree on the cessation in selling Eco Premium gasoline. The exchange of information on Eco Premium gasoline had a strategic character, sensitive from a commercial point of view, knowing such information significantly reducing uncertainty on the future market behaviour of the competing undertakings.

Moreover, during the discussions on this topic, a preliminary written form of the agreement to stop selling Eco Premium by all the parties was drafted. The text of the draft agreement provided even the use of certain coercive measures (penalties, fines) sanctioning potential deviations of non-complying undertakings.

During the discussions carried out by the undertakings concerned on this matter, a preliminary form of a written agreement was reached between all the undertakings concerned in respect to the cessation to trade Eco Premium gasoline. The draft text of the convention provided the cessation date of marketing Eco Premium gasoline (1st of April, 2008) and the use of coercion methods (penalties) in order to sanction companies that would have not respected the understanding. Although no evidence of concluding a written form of this convention was found, put into practice their common plan of stopping the retail sales of Eco Premium and starting with April 1, 2008 they gradually eliminated this product from the product range offered to customers at filling stations.

The activities of the undertakings concerned during May 2007 - April 2008 were part of an overall plan to restrict competition between parties and limiting thus their individual commercial conduct by determining the lines of their mutual actions regarding the sales of Eco Premium. This action contradicts the procompetitive concepts according to which each economic operator must determine independently the policy intended to be adopted on the market. The competition legislation prohibits any form of coordination deliberately substituting competitive risks with practical cooperation between parties.

In the present case, the parties jointly decided to stop selling Eco Premium, which was an assortment previously traded freely by the involved undertakings.

During the proceedings, the parties invoked the existence of a legal obligation to withdraw the Eco Premium gasoline from the market as of the 1st of January 2009. In fact, there was no legal prohibition to continue marketing this type of gasoline after the 1st of January 2009. According to the existing legislation, any type of gasoline could have been sold on the Romanian market, subject to the obligation to reduce its sulphur content from a maximum of 50 mg/kg to a maximum of 10 mg/kg. That adjustment was required for all gasoline types. On the 31st of December 2008, Eco Premium gasoline, as well as the other two existing gasolines (unleaded gasoline COR 95 and COR 98) had a maximum sulphur content of 50 mg/kg. From the 1st of January 2009, the undertakings concerned had taken all necessary measures so as to continue selling unleaded gasoline COR 95 and COR 98 with sulphur content of maximum 10 mg/kg. These measures have not been taken for Eco Premium gasoline, because the involved undertakings had decided to eliminate it from the market.

Thus, the discussions that took place over approximately one year timespan and, subsequently, the agreement to stop selling a certain product provided a guarantee for the parties that neither of them will be selling Eco Premium in the future and implicitly neither will satisfy the demand of consumers for this type of gasoline. Such a guarantee was important for the parties, since it allowed them to eliminate any risks and uncertainties that normal competition between them would entail, by replacing them with practical cooperation. If prior to the agreement the parties competed on three types of gasoline, the agreement allowed parties to stop competing on one of these types of gasoline.

This agreement has been considered by Competition Council as an infringement of the Competition Law and of the Treaty on the Functioning of the European Union.

The duration of the infringement committed by OMV Petrom, OMV Petrom Marketing, MOL, Lukoil and ENI was from the 10th of May 2007 until the 1st of April 2008, and for Rompetrol Downstream, from the 1st of November 2007 until the 1st of April 2008.

The fines applied through Decision 97/27.12.2011 were the following: OMV Petrom – RON 366,530,965, OMV Petrom Marketing RON 137,288,031, Lukoil – RON 136,894,846, Rompetrol Downstream – RON 159,553,612, MOL – RON 80,267,746 and ENI – RON 11,194,766.

When available, the decision can be accessed at: www.competition.ro/official_documents/competition/decisions.

- **Concerted practice on tariff fixing – taxi services in Târgu Mureș**

The ex-officio investigation was initiated in 2008 and envisaged the possible anticompetitive concerted practice implemented by eight companies operating on the taxi transport market in Târgu Mureș: Transaldea, Royal Tours, Siletina Impex, Cristitaxi, Transimpex Bravo, Taxi Cornisa, Transrelaxa and Venus Taxi.

The anticompetitive practice envisaged the concerted fixing of tariffs by the eight undertakings, thereby restricting the competition by establishing unique tariffs applied in Târgu Mureș.

During March 5-7, 2007, the eight undertakings involved started the technical procedures to adjust the tariffs to be implemented in the next period. The concerted practice envisaged both the value of the main tariff, as well as its subsequent tariffs (for starting, for waiting, for night transport, for transport outside Târgu Mureș).

According to the Community jurisprudence, the concept of concerted practice indicates any cooperation between competitors which leads to an anticompetitive behaviour, without concluding a written agreement or an action plan. Such a practice relates to a form of coordination between undertakings which, without involving an effective conclusion of a convention, consciously substitutes competition risks with practical cooperation between the respective undertakings.

The facts presented above represent a *per se* violation of the competition rules, which cannot be subject to any exemptions from the application of Competition Law, c a concerted practice aimed at fixing and increasing with the same value over the same period of time tariffs for taxi transport of persons.

In Decision no.962/7.12.2011, Competition Council has shown that, during March 2007 - July 2011 the eight undertakings involved infringed Competition Law by a concerted practice restricting competition by its object, given that the horizontal agreement analysed eliminated competition on the market of taxi transport of persons within Târgu Mureș. The total fine applied to the eight companies was RON 963,000 (approximately EUR 224,000), representing between 0.69 - 5.2 % of the individual turnovers of the undertakings in the year prior to the sanction.

When available, the decision can be accessed at: www.competition.ro/official_documents/competition/decisions.

2.2.2. Vertical anticompetitive agreements

- **The fixing of the retail price on the fruits and vegetables market**

The ex-officio investigation was initiated in October 2009 and had as object the possible anticompetitive agreement concluded between Interfruct, Albinuța Shops and Profi Rom Food on the market of the commercialisation of fruits and vegetables in Bucharest. Competition Council found that the three companies have concluded a number of contracts, whereby the supplier Interfruct set shelf retail prices for the vegetables and fruit sold through the Profi chain of shops in Bucharest belonging to the retailers Albinuța Shops and Profi Rom Food. The agreement between Interfruct and Profi was carried out for a year, and the one between Interfruct and Albinuța over a period of two years.

Considering that the agreements in question envisaged the fixing of the retail prices of products delivered to third parties, they fall within the category of serious competition restrictions, prohibited *per se* by the specific legislation.

Through the anticompetitive agreement, the parties mutually ensured the benefits resulting from the sale of fruits and vegetables, while consumers did not benefit from potentially lower shelf prices or from the alternative of purchasing substitutable products.

As a result, by Decision no.18/31.05.2011, the Competition Council applied sanctions to the involved parties, as follows: Interfruct - RON 1.8 million (around EUR 400,000), Albinuța Shops - RON 2.6 million (around EUR 600,000) and Profi Rom Food - RON 12.3 million (around EUR 3 million).

When available, the decision can be accessed at: www.competition.ro/official_documents/competition/decisions.

- **Interdiction of exports on the drug distribution market**

In 2011, the Competition Council completed 3 investigations on possible infringements of the Community and national competition legislation on the drug distribution market. These investigations were initiated ex-officio in 2009 (initially there were 4 investigations, however two of them were later connected) and envisaged certain possible vertical anticompetitive agreements concluded between Belupo Croatia, Bayer, Baxter, Sintofarm Switzerland and each of their distributors. Below, we present the Baxter case.

The contracts concluded between Baxter and its sole distributors in Romania (Actavis, Farmaceutica Remedia and Sofmedica), and the subsequent additional acts contained an export prohibiting clause, a monitoring clause (the obligation of the distributors to report to Baxter information on their activity) and a non-compete clause (the distributors were forbidden to promote and commercialize products competing with Baxter products).

The effect of applying the three types of clauses was that distributors did not export Baxter products and did not trade products competing with Baxter products. Thus, these acts constitute anticompetitive agreements which isolated the Romanian market and prevented the trade of these products on other markets, including within the common market.

By Decision no.52/28.10.2011, the Competition Council concluded on the violation of the Competition Law and of the Treaty on the Functioning of the European Union by the investigated companies. Baxter and Farmaceutica Remedia admitted committing the deed and, therefore benefited from a 20% reduction of the fine. This reduction was possible as a result of the amendment of the Competition Law in 2010 and 2011 (the ability to reduce the amount of the fine with percentages ranging between 10 and 30%, when the undertakings expressly admit committing the anticompetitive acts which are the subject of investigations in progress – the settlement procedure).

The fines applied by the Competition Council's decision were the following ones: Baxter – RON 1.362 million (EUR 315,000 euro), Actavis – RON 2.981 million lei (EUR 691,011), Farmaceutica Remedia – RON 1.051 million (EUR 243,720) and Sofmedica – RON 0.598 million (EUR 139,080). The fines represented 3.36%, 0.72%, 0.57%, respectively 0.96% of the individual turnovers recorded by the undertakings in the year prior to the sanction.

When available, the decision can be accessed at: www.competition.ro/official_documents/competition/decisions.

2.2.3. Abuse of dominant position

- **Abusive behaviors on the telecommunications market – Orange and Vodafone**

In July 2006, as a result of two complaints submitted by Netmaster, Competition Council initiated an investigation concerning the possible anticompetitive practices of Orange, Vodafone and Romtelecom, having as object the elimination of Netmaster from the market. The investigation was disjoined in 2010 into four investigations, according to the possible anticompetitive practices investigated and to the party concerned.

Three of these investigations were completed in 2011, envisaging: the possible abuse of dominant position of Orange, the possible abuse of dominant position of Vodafone and a possible anticompetitive agreement concluded between Orange, Vodafone and Romtelecom. In the latter case, no evidence of competition infringement has been identified, justifying the imposition of measures or sanctions.

As regards the first two investigations, the competition authority has found that Orange and Vodafone refused the access of Netmaster to their telephone networks, access that was necessary for terminating the national and international calls transited by this operator. Previously, Netmaster requested interconnection at the tariff level regulated by the National Authority for Administration and Regulation in Communications, which was lower than those charged by the two phone companies.

The interconnection of the operators' networks and, implicitly, their acquisition of the termination services offer subscribers of the different networks the possibility to make calls between them. Thus, the development of these services involves the takeover of calls from or transited through the networks of other operators (Netmaster, in this case) and their delivery to the final destination (the final users of Orange and Vodafone networks). For alternative phone operators (of Netmaster's type), these services are essential facilities for entering and preserving their presence on the market.

The abuses of Vodafone and Orange were manifested on the markets for call termination services in their own telephone networks, markets where each of these operators has a monopoly position. According to the legislation in the field of competition, in the absence of an objective justification, a refusal constitutes an abuse of dominant position on the market.

Orange and Vodafone had not only the obligation to grant Netmaster access to their networks so as to terminate the calls, but also the obligation to observe the rules of the regulatory authority in the field, including to practice a maximum fee for their services (regardless of their place of initiation, outside or inside Romania).

From the analysis carried out by Competition Council resulted that until 01.01.2007, Vodafone and Orange set higher tariffs for international call termination services, without taking into account the rules in the field establishing a mandatory maximum tariff. If Vodafone and Orange would have granted Netmaster access at the maximum regulated tariff, in accordance with the non-discrimination obligation, they would have had to apply the same tariff to all operators requesting this service, including to those they had concluded contracts with.

A company holding a dominant position has the obligation to provide access, so that the goods and services offered to downstream companies are provided on terms no less favourable than those granted to other parties, including the conditions imposed on their own downstream operations.

The two companies have not granted Netmaster access to their telephone networks - for a period of one and a half years in the Vodafone network, and of two years and four months in the Orange network - so as to terminate the international calls and the ones originated in the networks of other Romanian suppliers. Furthermore, for a short period of time, the two companies limited the termination of the national calls from the Netmaster network.

After concluding on the abusive behaviours of the two companies in relation with Netmaster, by Decisions no.1 and 2/14.02.2011, the Competition Council fined Orange with RON 147.9 million (EUR 34.8 million), and Vodafone with RON 120.3 million (EUR 28.3 million). The sanctions represented 3.60%, respectively 3.45% of the individual turnover of the undertakings recorded in the year prior to the sanction.

When available, the decisions can be accessed at: www.competition.ro/official_documents/competition/decisions.

2.2.4. Competition harms generated by the actions of the public

- **Anticompetitive actions of the Cluj Emergency Clinical Hospital**

The investigation was initiated after Romdiamed company submitted a complaint in November 2010 envisaging the public procurement procedure conducted in 2010 by the Cluj Emergency Clinical Hospital for the award of a public supply contract of medical devices and consumables, valid for two years.

Romdiamed participated in the tender as a bidder. The Cluj Emergency Clinical Hospital disqualified its offer on the grounds that it did not submit, in accordance with the award documentation, the authorization issued by the producer certifying the supply of the products for 2010. Romdiamed mentioned that it holds in stock all the product quantity required to be supplied throughout the period of the contract. In addition, in the documentation submitted, the company presented an authorization in respect to 2009.

The request made by a contracting authority to present an authorisation from the producer on the delivery of the tendered products is, in fact, an artificial market entry barrier because it allows the producer to choose which of its distributors is to participate in the auction. In addition, according to the relevant legislation in the field of public procurement, the documents requested by a contracting authority for demonstrating that the qualification and the selection criteria are met must not limit the possibility of the tenderer to prove this by other means. In addition, tenderers must submit only documents issued by independent bodies which cannot influence the free manifestation of the competition.

The action of the County Emergency Clinical Hospital of requesting tenderers an authorization from the producer certifying the supply of the tendered products, and the disqualification of Romdiamed for failing to submit its bid in the form requested, without leaving it the possibility to prove its potential to meet the contractual conditions by other means, led to the restriction of the competition which would have manifested within the tendering procedure and which could have had the effect of lowering the acquisition prices of the tendered products.

Therefore, by Decision 93/8.12.2011, Competition Council concluded that the County Emergency Clinical Hospital - an institution belonging to the local administration in the health services field - infringed Competition Law. In addition, Competition Council decided to submit a recommendation to the Ministry of Health to take the necessary measures so that its subordinated institutions organising public procurement procedures should be aware that the request of authorizations from the producer certifying the supply of the tendered products/dealer authorisations constitutes a breach of the Competition Law.

When available, the decision can be accessed at: www.competition.ro/official_documents/competition/decisions.

2.2.5. Infringement of the rules on economic concentration authorising

- **Implementation of an economic concentration on the IT products market prior to the notification of the operation and the decision issued by Competition Council**

In December 2009, Competition Council initiated an ex-officio investigation concerning a possible infringement of the Competition Law by Asesoft Distribution, through implementing an economic concentration before notifying it and prior to a decision issued by Competition Council.

In March 2009, Asesoft Distribution and Flamingo International concluded a contract with the aim of facilitating Asesoft Distribution to acquire the IT products distribution and the warranty service developed by Flamingo. Through this transaction, Asesoft Distribution gained the control over the IT product distribution developed by Flamingo. The transaction in question constitutes an economic concentration within the meaning of the Competition Law. Therefore, Asesoft Distribution had the obligation to notify the operation to the Competition Council prior to its implementation, in order for the authority to examine its compatibility with a normal competitive environment on the Romanian market.

The notification of the economic concentration concerned was transmitted to the Competition Council on 25.02.2010, becoming effective on 22.11.2010. In December 2010, the Competition Council issued the non-objection Decision no.53/16.12.2010, stating that although the operation falls within the scope of the law, there are no serious doubts on its compatibility with a normal

competitive environment. From the analysis of the information and documents in the case file, it was found that, prior to merger notification and the issuance of the non-objection decision by the Competition Council, Asesoft Distribution took a series of decisions for implementing the concentration operation. This constitutes a breach of the Competition Law.

As a result, by Decision no.14/27.04.2011, Asesoft Distribution was sanctioned with RON 3.2 million (around EUR 775,000), representing 0.5% of the total turnover of the undertaking recorded in the year prior to the sanction.

When available, the decision can be accessed at: www.competition.ro/official_documents/competition/decisions.

2.2.6. Application of the commitments procedure - the first case of the Competition Council

The commitments procedure was introduced in the competition legislation through the 2011 amendment of the Competition Law. The specific secondary legislation was adopted in 2011.

The commitments procedure enables the undertakings under investigation for possible anticompetitive practices to voluntarily assume a number of obligations so as to address certain issues that might constitute violations of the national and Community legislation in the field of competition. The initiative of presenting the commitments belongs exclusively to the undertakings investigated by Competition Council for the possible violation of the law. The closure of an investigation by a decision accepting commitments is an exceptional situation, limited to those cases whereby this procedure the competitive environment is restored more rapidly and efficiently than it would be achieved by imposing fines and/or corrective measures through a decision asserting an infringement of the law. The decision for accepting commitments has a compulsory legal force. If the undertakings fail to comply with the commitments made, Competition Council will apply penalties, comminatory fines when the implementation of the compulsory obligations is delayed or it may reopen the procedure, ex-officio or upon request.

In the present case, the investigation was initiated ex-officio by the competition authority in April 2009 and envisaged the possible infringement of the Competition Law and of the EU competition rules by the Professional Football League (PFL) and its members, as well as by the Romanian Football Federation (RFF) and its members in the field of selling broadcasting rights for football events.

The investigation revealed that certain documents adopted by the parties contain provisions that may fall under competition rules. Thus, the RFF statute contains provisions that are the result of the decision of the RFF members to sell jointly, through the federation, publicity and advertising rights and the rights to broadcast by television and/or by radio the competitions where they participate on their behalf. This document also stipulates that RFF is the rightful owner of all the rights arising from the competitions and other events organised under RFF jurisdiction. In fact, the goal of the football clubs was to sell those rights collectively. In addition, RFF members competing in the 1st League decided, through the PFL statute, to sell jointly the television and radio rights, namely the live broadcasting, recordings and full or summary retransmissions by radio-television, or by any audio-visual means, of the football events organised by PFL. They also decided that the advertising and publicity rights within properties and, in general, within locations relating to professional sports competitions to be exploited individually by each club.

In respect to the implementation of the centralized sale, both RFF and PFL were actively involved in the adoption of the secondary regulations, in the conclusion and management of the contracts for the sale of those rights, as well as in monitoring compliance with the centralized sale established by the football clubs.

Centralized sales can lead to market closure for operators interested in the transmission of sport events and, finally, can result in limiting the coverage area of the transmission of football matches to the detriment of consumers. Furthermore, the joint sales of commercial rights prevent price competition between clubs. It was established that the investigated practice affects the Romanian geographical market, as well as the intra-Community trade, falling under national and Community competition law.

In November 2010, RFF and PFL submitted their commitments proposals. These were later supplemented so as to remove the competition concerns regarding the subject of the investigation. These commitments proposals were subjected also to a public consultation. The final version of the proposed commitments was presented by RFF and PFL in March 2011.

According to these commitments, the two bodies self-assumed that they will change their market behaviour, ensuring:

- the improvement of the competitive environment (rights will be sold by tender procedures, rights put up for sale will be presented in packages, which will increase competition for their acquisition);
- the availability on the market for all the rights, contributing to market development and meeting consumers' needs;
- improvement in accessibility of content for television, radio, internet and mobile telephony operators;
- that the validity of the packaged rights is limited to three years, so that the operators concerned are able to compete regularly and frequently for their purchase;
- that all the contracts concluded after the tender will not contain any automatic renewal clause or the "first option" clause; this will neutralize the risk of removing competition for a particular right, as well as the possibility of strengthening the market position of the operator owning and operating the right in question;
- the fact that the rights related to matches from the national football championships – the 1st League and the Romanian Cup - will not be purchased by the same buyer, allowing the existence of competition on the markets where these rights are exploited.

Considering the assumed commitments, which were considered adequate for the protection of the competition and for overcoming the situation that started the investigation, by Decision no.13/19.04.2011, Competition Council considered that it has no more grounds for further investigating this case and decided to close the procedure. RFF and PFL commitments shall be valid for the competition seasons 2011-2012, 2012-2013, and 2013-2014. As regards the packaging of the radio broadcasting rights of sports competitions, the decision will also apply for the competitive season 2014-2015.

When available, the decision can be accessed at: www.competition.ro/official_documents/competition/decisions.

2.3. Estimations of the effects felt by consumers

- **Improved legislation on consumer credit contracts**

In 2011, Competition Council elaborated an analysis on the impact of the revision of the early reimbursement fee, according to the Emergency Government Ordinance no.50/2010(hereinafter the Ordinance), on consumer credit contracts.

The aim of introducing the provisions on the elimination/reduction of the early reimbursement fee for all consumer credits (natural persons) has been to fairly increase competition between banks, as a result of better inter-bank client mobility. An important indicator for assessing the achievement of this objective was concretised in the evolution of the refinancing activity within the Romanian banking system.

After the adoption of the Ordinance (June 2010 – May 2011), the total number of the refinanced credits doubled compared to the previous period (June 2009 – May 2010). In this period, around 160,000 refinancing credits were granted, compared to 85.5 thousand refinancing credits granted during June 2009 – May 2010. As a result, at least 160,000 clients directly benefited from the elimination/reduction of the early reimbursement fee. The clients which early reimbursed their credits partially (229,000 clients) or totally (other than the refinancing credits), also benefited from these conditions, together with those which have renegotiated their contracts so as to benefit from more favourable conditions.

The cumulated volume of the refinancing credits granted in RON during June 2009 – May 2010 is of RON 1,027 million, and the one granted during June 2010 – May 2011 is of RON 2,169 million. By comparison, the volume of consumer credits remaining to be reimbursed at the moment May 2011 was of RON 35,402 million. Consequently, during the 12 months after the adoption of the Ordinance, the total volume of the refinancing credits doubled compared to the corresponding previous period. At the same time, this volume is 6% of the volume of consumer credits still to be reimbursed.

During June 2010 – May 2011, the volume of the refinanced credits in foreign currency was of EUR 338 million. Considering an average reduction of 3% to the early reimbursement fee paid by bank clients in the period after the adoption of the Ordinance, it led to savings of approx. RON 65 million, respectively of EUR 10 million.

Moreover, the provisions of the Ordinance influenced directly around 229,000 early reimbursements of credits granted in RON and in foreign currency, and the volume of the early reimbursements was of RON 542.2 million and of EUR 261.9 million. At the same time, applying an average reduction of 3% to the early reimbursement fee paid by bank clients who reimbursed part of their credits results in savings of around RON 16 million and EUR 7.85 million after the adoption of the Ordinance.

The detailed analysis is presented within the report on the state of competition elaborated by Competition Council in 2011, *Romanian competition environment - developments in essential sectors*, which can be accessed at: www.competition.ro/publication/annual_reports.

- **The dominant position cases of Orange and Vodafone**

The total fines applied in 2011 by Competition Council in these two cases were of RON 268.3 million. The competition authority found that, in the period between late 2004 - early 2007, Orange

Romania SA and Vodafone Romania SA refused to give access to Netmaster Communications Company SRL to their individual mobile network for the provision of call termination services.

The practices of Orange and Vodafone affected the activity of Netmaster, because it could not operate efficiently on the market of call transit services, and also affected consumers, namely the customers of fixed telephone services because, over the period considered, the reduction of expenditure of the fixed telephony operators could have been reflected in lower retail prices.

- **Consumers' benefits as a result of the restoration of the normal competitive environment**

In 2011, Competition Council completed a series of investigations conducted on products and services markets with direct impact on consumers. Following the decisions of the Competitive Council, the competitive environment was restored, the effects being felt at the level of the end users.

For example, following the conclusion of the investigation concerning the anticompetitive agreement concluded between SC Producție Zarah Moden SRL Târgu Secuiesc and its distributors on the distribution market of men's trousers, free competition was restored by removing restrictions on the geographical area where the distributors could operate. In this way, consumers became the beneficiaries of lower purchase prices for such products, established in accordance with the demand and supply interaction, because the intra-brand competition between distributors was restored.

The following two cases concern the anticompetitive practices of tariff fixing in taxi services provided in the local markets of Târgu Mureș and Baia Mare. In the first case, the implementation of the Competition Council's decision generated differentiated tariffs practiced by the parties involved (taxi dispatchers) as a result of restoring free competition on this market. Thus, customers (consumers) can opt for a certain tariff, depending on the quality of the offered service. In the case of Baia Mare, the manner of action of the operators on the market changed. Price developments are no longer parallel, each of the operators involved in the taxi activity establishing its own tariff policy. In this way, consumers are able to choose a certain tariff, based on their individual evaluations.

2.4. Competition cases solved by the legal courts

Data on the Competition Council's court files are presented in the [Statistics](#) section.

Aspects held by courts in certain cases analysed during 2011 are succinctly presented below. The findings of the courts relate to competition law offences, including procedural issues – supply of inaccurate information and refusal to submit to an inspection.

- **UPC vs. Competition Council case**

By Decision no.237/2006, Competition Council demonstrated two distinct conducts of UPC infringing Competition Law. Firstly, UPC was sanctioned because, together with Quadral Hi-Fi (whose legal successor is RCS&RDS), concluded and put into practice a market sharing agreement concerning cable retransmission services of TV programs in Timișoara. Secondly, UPC, as legal successor of Astral Telecom, was sanctioned for abusing its dominant position in Bucharest, by imposing increased tariffs not justified by higher costs.

UPC contested the competition authority's decision to the Court of Appeal, which admitted the request and annulled the decision of the Competition Council.

In respect to the market sharing agreement, the court established that the right of Competition Council to apply the sanction expired. With regard to the abuse of dominant position, the court considered the definition of the relevant market (geographical and product market) related to the UPC's practice was incorrect, and that the competition authority did not determine unequivocally that UPC had imposed unfair tariffs.

Competition Council appealed the sentence and the appeal was accepted by the High Court of Cassation and Justice, which amended the contested sentence.

Thus, the court maintained the solution in terms of the right of Competition Council to sanction UPC's market sharing agreement by taking into account its previous jurisprudence – in 2009, the High Court of Cassation and Justice decided that the right of the competition authority to impose penalties for RCS&RDS (as the legal successor of Hi-Fi), the other party to the market sharing agreement conducted by UPC, expired. As regards UPC's abuse of dominant position, the court found that the competition authority correctly defined the relevant market and that the sanctioned undertaking imposed unfair selling tariffs, as it was originally decided by Competition Council.

- **SC Raiffeisen Bank SA vs. Competition Council case**

In 2010, SC Raiffeisen Bank SA (hereinafter Raiffeisen) was sanctioned by Competition Council with an administrative fine for supplying inaccurate information in response to a request made by the competition authority. The request was made within an investigation launched in 2008 on the possible infringement of national and Community competition law on the Romanian market of banking and interbank services (anticompetitive agreements). The competition authority found that the information submitted by Raiffeisen, based on documents drafted at different moments in time, is contradictory, thereby sanctioning the infringement.

Raiffeisen challenged in court the fine imposing minute, claiming that its right to defence was affected and that the privilege against self-incrimination was violated. The privilege against self-incrimination is the right of undertakings to not respond to those questions which might involve an admission of anticompetitive acts, but not an absolute right to silence.

With regard to Raiffeisen's claim relating to the violation of its right to defence, the court stated that this claim cannot be held, since the company understood that it is the subject of an investigation and determined that there is a link between the information requested by Competition Council and the subject of the investigation, thus being able to delimit the obligation to collaborate with the competition authority. The first instance court found that there is no breach of the privilege against self-incrimination, since the company responded to the questions of Competition Council, without indicating those questions as being self-incriminating at the time the request for information was received. At the same time, the court established that the presumption of innocence in respect to Raiffeisen was respected, the competition authority sanctioning the company on the basis of thorough evidence.

The court rejected the complaint of Raiffeisen and, as a consequence, maintained the fine imposing minute issued by Competition Council. Raiffeisen appealed the decision of the court, which is currently judged by the Bucharest Court.

- **SC TCE 3 Brazi SRL vs. Competition Council case**

In 2008, SC TCE 3 Brazi SRL (hereinafter TCE) was sanctioned for refusing to submit to an unannounced inspection carried out by Competition Council's inspectors at its premises. TCE challenged the fine imposing minute at the first instance court, namely the Piatra Neamț Court. The first instance court established that TCE's invoked motivation concerning the absence of the judicial authorization of Competition Council is unfounded, since such an authorization is not required as long as the legal basis for this type of inspection is provided by Competition Law⁹. Considering that it was an unannounced inspection conferring to the competition inspectors the right to enter in all premises, lands and means of transport belonging to the investigated undertaking, the first instance court did not accept the reasons presented by TCE relating to the objective impossibility of putting the documents of the company at the disposal of the competition inspectors, as they were not specifically named and identified by them. The express indication of such documents would have deprived the operation of efficiency and would have given the investigated party the possibility to take precautions, namely to destroy certain documents. In addition, competition inspectors may also have had only generic information on the possible results of the inspection and thus could not have been able to precisely identify documents (date, number, type).

For these reasons, Piatra Neamț Court rejected the complaint of TCE. The undertaking appealed the decision of the court.

Regarding the lack of prior judicial authorization, the appeal court noted that the authorization is compulsory only when the inspection is carried out at any other premises, including homes, lands or means of transportation belonging to managers and/or other employees of undertakings or of associations of undertakings subject to investigation. As regards the fine imposing minute, the appeal court maintained the conclusion of the first instance court, noting that the company refused to comply with the request of the competition inspectors - giving access to the documents from the undertaking's archive, as well as to the electronic documents. TCE admitted the refusal to submit to the inspection, on the grounds that competition inspectors did not specify which documents they wished to consult and did not clearly enumerate their suspicions concerning the existence of a certain anticompetitive practice. The court stated that these grounds cannot justify the refusal to submit to an inspection, since, according to Competition Law, during the inspection, the competition inspectors can verify any documents, under any form, concerning the activity of the undertaking in the location under investigation, and if irrelevant, documents are to be returned. The appeal court also rejected the TCE statement according to which it did not submit the documents because they were stored at other headquarters, outside the city, since TCE did not prove the truth of that statement. In addition, nothing would have prevented the representatives of the company to allow competition inspectors to access documents from the archive, where they would have been able to assess the real situation confirm TCE statements, and therefore clear TCE.

For these reasons, the appeal court rejected the action of TCE.

⁹ Art.36 and not the provisions of art.37-38 of the Law.

2.5. Sector inquiries

- **Sector inquiry on the drug distribution market**

The sector inquiry was initiated in 2009 and it analysed the functioning of the Romanian drug distribution system operated by wholesalers, and the possible changes on the short and medium term.

The conclusions and the proposals of Competition Council envisaged:

- **The incident legislation over the drug distribution market:**

As regards the organisation of the *National Health Programmes*, the contracting authorities must analyse the characteristics of each programme and, based on their findings, to choose one of the available procedures, namely the national tender, county tenders, the drug distribution through open circuit pharmacies and the sole source negotiation. For each of the four options, Competition Council identified both the advantages and the disadvantages in terms of the competition, and what measures can be taken so as to ensure that they generate the best value for money.

Considering the significant growth of the drug expenditure as a result of the drug distribution through open circuit pharmacies, and if this procedure will continue to be used, a system of prices referencing it is necessary to be introduced, at least in the cases where there are several drugs with the same INN (international non-proprietary name). The introduction of this system leads to the reduction of the drug expenditure, to the enhancement of the price competition, from the producers' level up to the pharmacies' level and, finally, to lower prices.

In respect to the List of the INNs of which are benefiting the health insured patients treated outside hospitals, the existing legislation must be amended by:

- introducing the criteria used for the inclusion of the drugs on one of the three sub-lists and of their subsequent compensation levels;
- defining the effective time deadline for the automatically compensation of a certain drug after it was included on the List by the Ministry of Health, and
- regulating certain adequate ways available for undertakings to challenge a negative decision of the Ministry of Health regarding the inclusion of an INN on the List, under the management of an independent judiciary body.

Furthermore, for increasing the transparency of the whole process of including an INN on the List, Competition Council proposed to the Ministry of Health to publish on its website the individual decisions concerning the inclusion of the drugs on the List, as well as the draft of this document, in accordance with the legislation in force in the field of decision-making transparency.

As regards the purchase of drugs of which are benefiting the insured persons treated in hospitals, it is necessary to renounce at requesting the dealer authorization, because the document does not comply with the provisions of the public procurement legislation, and to use instead the instruments with the same purpose provided for by the regulations, namely the participation guarantee and the good performance guarantee. In addition, for demonstrating the distribution capacity, a non-confidential version of the contract based on which the dealer has access to the drugs being the subject of the tender could be requested.

- **The analysis of the competition on the drug distribution market**

As regards the findings on the exclusive distribution relationships, Competition Council considered necessary the re-evaluation of the distribution systems used for the products with a market share

of more than 30% and with a duration of more than five years, as well as for those where the distribution is made by a limited number of distributors - which could lead to an undue restriction of competition on the relevant markets - and for the markets where the distribution is restricted as a result of parallel networks of constraints covering more than 50% of the market.

In respect to the rapport between innovative and generic drugs, the legal framework was improved as a result of the reintroduction of the doctors' obligation to prescribe INNs compensated drugs and of the introduction of the pharmacists' obligation to release the drug giving the reference price. However, the same legal framework should be applicable for the drugs which are granted within the National Health Programmes, at least in the case of the INNs having several substitutable drugs on the market, in order to reduce the costs of these drugs and to promote the use of generics, as they enter on the market. Considering that public budgets, including those allocated to cover the health expenses, are subject to significant constraints, the competition exerted by the generic drugs is essential to maintain under control the public budgets and to allow further widespread access to drugs for the patients.

In addition, it is appropriate to better regulate the framework concerning the promotion of drug. In order to avoid influencing the prescription of certain drugs in the detriment of others depending on the "gifts" received from the companies, by Decision no. 43/27.09.2010, Competition Council already recommended to the Ministry of Health to provide in the secondary legislation the rules defining the terms gifts, benefits in cash which have a "symbolic value" and which "are not expensive", general terms mentioned by Law no. 95/2006 on healthcare reform.

Considering the importance of the generic drugs, they should enter on the market without undue or unjustified delays. Therefore, Competition Council will pay a particular attention to this issue in the future in order to ensure that the generics' market entry is not affected in any way by possible anticompetitive practices.

The report of the sector inquiry can be accessed at: www.competition.ro/publications/miscellaneous-reports.

- **Sector inquiry on the market of heating energy production, transportation, distribution and supply in Bucharest**

The sector inquiry was initiated in 2010 and had as objective to provide to the competition authority and to any other institution or person concerned a real and general set of data and information on the Bucharest heating energy market, in terms of its organisation, technical and functional characteristics, and on the specific regulatory framework. This inquiry provides a radiography of the market segments of heating energy generation, transmission, distribution and supply in Bucharest and seeks to identify any disruptions relating to anticompetitive behaviours, as well as the measures to be taken.

The main conclusions and proposals of Competition Council were as follows:

The current technical and administrative configuration does not guarantee a normal competitive framework in respect to the heating energy production market (ELCEN-S.E.B. has a market share of 90%), as well as regarding its distribution market (R.A.D.E.T. is the sole distributor of ELCEN-S.E.B.). The involved markets are regulated, their opening and liberalization not being allowed. Both markets have unused production, transmission and distribution capacities. Thus, in the absence of certain guarantees or financial incentives, it becomes impossible for a new heating energy producer to

invest in this area, in the present organisation and functioning system. Any new investment involves high costs which are reflected in the production price of the heating energy thus becoming non-competitive.

The separation of the consolidated transmission and distribution network in Bucharest, which is an objective of the Bucharest Energy Strategy, raises a number of problems, such as: technical issues, related costs, property rights concerning networks' routes, legislation etc. Separation into several distribution areas requires concrete privatization measures. Consequently, although it can bring benefits to operators, the network separation might generate, in terms of competition, the preservation of the local monopoly, divided at the level of each operator.

The technical conditions of the Bucharest heating network are precarious and are a real impediment to any competition opening measure. The transmission and distribution networks present certain issues too, requiring investments of billions of euro.

The regulatory measures proposed to be adopted in the future by the Bucharest General Council and by the National Regulatory Authority for the Community Services of Public Utilities are designed to regulate the heating energy market, in terms of contractual and operational discipline, and this may create a favourable effect over the competition too.

In the absence of a free market mechanism, in many countries another form of competition is being introduced, based on the activity performance measurement. In Bucharest, the application of this system would be unrealistic at the moment, since performance depends on the type, age, and operating system of the production plants, and production plants and transmission networks are technically outdated.

Looking ahead, the Bucharest heating energy market must be designed as a competitive market, that would not require a monopoly or dominant companies to increase the economic efficiency of the heating energy production, transport and distribution. In order to be able to compete on both segments of the market, the Bucharest Energy Strategy mentions, among others, privatization and public-private partnerships. Until the implementation of at least one of these solutions, the application of the Bonus Support Scheme should be expedited. This scheme provides a single price for producers using the same fuel, and this could remove one of the existing inequalities between them in relation to R.A.D.E.T. and would stimulate the return on the market of the affected producers, or the market entry of new producers.

The normal competitive environment must arise from the adoption of a uniform strategy in Bucharest, dealing with the two market segments and correlating their mode of operation. The ultimate goal of the strategy is to ensure the security and the continuity of the service supplied to residents, in terms of quality, as well as affordable heating energy provided in free competition conditions.

The report of the sector inquiry can be accessed at: www.competition.ro/publications/miscellaneous-reports.

2.6. Actions for a legal framework in line with the competition rules

Competition Council continued in 2011 to supervise the legal framework in order to identify and eliminate any anticompetitive provisions. Its action envisaged draft normative acts, on which the Romanian competition authority delivered opinions and points of view, as well as normative acts already in force, where Competition Council intervened so as to make them compatible with competition rules.

In this context, this year a particularly important role was played by the participation of a Competition Council specialist at the preparatory reunions of the Government's meetings, which allowed the analysis of all the draft regulations proposed for adoption. For the same purpose, the Romanian competition authority maintained a continuous cooperation with the representatives of the specialized commissions of the two parliamentary chambers.

The list of the binding opinions, points of view, opinions/interventions for amending the draft regulations or the ones already in force, as well as their current implementation phase are presented in the [Statistics](#) section.

Some of the results of Competition Council in this segment of activity are presented below.

- **The pharmaceutical field**

Competition Council continued to have an intense activity in this field in terms of harmonisation of the legal framework with competition rules.

Thus, the Romanian competition authority issued several points of view addressed to the National Health Insurance House on the draft Government decision concerning the 2011 supply framework contract according to which the introduction of the indicative value of the contract is not a viable alternative because the draft legislation did not contain provisions concerning the correct approach in cases where this value is exceeded.

The competition authority has also expressed its point of view on the proposed amendment of Health Reform Law no.95/2006. It provided certain changes of the additional financing system of the public health system, known as the *claw-back* system. In summary, this system, used under various forms in other countries too, requires the holders of the drug marketing authorisations or their legal representatives to contribute with a certain percentage of the turnover resulted from marketing the drugs which are disbursed from the Health Insurance National Fund, as well as from the Ministry of Health's budget.

The amendments mainly relate to the percentage applied for determining the contribution level and to the situations when it is applied (only for the drugs reimbursed when the market increase exceeds a certain level, and which can no longer be financed from the health insurance budget). According to the old form of the system, the contribution was calculated based on the turnover resulted from total sales of all the drugs marketed in Romania, settled or not from the public budget.

Competition Council stressed that the proposal did not lead to a decrease in the State's drug expenditures, because it covers 80% of the market growth and that the system disadvantages the drugs newly entered on market. Later, the competition authority issued a favourable binding opinion on the draft normative act, recommending the periodic review of the measures' impact on the market.

As regards the claw-back system, the Romanian competition authority presented several points of view on a draft legislation¹⁰ providing the system's implementation. Competition Council welcomed the proposal on the differentiated taxation of the innovative drugs and of the generic ones and the use of the same calculation base for all taxpayers' contribution. At the same time, the competition authority underlined certain issues, such as the taxation amount, which could have a deterrent effect for producers to sell on the Romanian territory drugs which fall within the scope of the contribution. They might choose to renounce selling those drugs for which there have no longer acceptable profit margins.

One of the proposals to Competition Council following the completion of the sector inquiry on the drug distribution market, namely the introduction of a price reference system, at least where there are several drugs with the same INN, was accepted by the Ministry of Health and included in the Order of the Minister of Health no.1275/2011. The introduction of this system will lead to the reduction of the drug expenditure and to the stimulation of price competition, in the benefit of consumers.

Competition Council also expressed its point of view on a proposal of the Ministry of Health concerning the calculation method of the settlement prices for the drugs used by the patients included in the National Health Programmes so as to create savings in the health budget.

Thus, the wholesale price would have been the producer price decreased by 15%, which would have been supplemented by the distribution mark-up. Competition Council underlined that this calculation method could have the effect of increasing the export attractiveness of such drugs. Therefore, the measure could have led to a shortage of drugs on the market, with possible consequences on the health of the chronically ill patients treated within the National Health Programs. In addition, considering impact on the drug availability, the producer price decreased by 15% could have influenced producers' commercial strategies, by getting them to diminish/renounce marketing drugs whose reduced price generated low profit margins. As an alternative solution, Competition Council recommended the application of the 15% reduction to the settlement price.

- **Retail**

Competition Council recommended to the Government to repeal and amend certain articles of the normative act¹¹ regulating the construction of large commercial spaces. The Romanian competition authority considers that regulating the conditions on the establishment of commercial structures so as to ensure a balanced competitive environment over the framework established by the Competition Law may lead to an unjustified protectionism of the undertakings already existing on the market, contrary to the market economy and to the free competition principles.

At the same time, the provisions of the normative act are contrary to the European Services Directive and to the Romanian legislation transposing this directive, because the authorization for large commercial spaces may only be granted upon proving the existence of an economic need or of a market demand, upon an assessment of the economic effects over the other competitors; the normative acts mentioned above provide for the intervention of the other competing undertakings in the individual decision-making process of the competent authorities. Such provisions restrict the freedom of establishment within the European Union, therefore the above-mentioned Directive requires Member States to eliminate such requirements from their legal system.

¹⁰ The draft Government Decision for determining the contribution level, the calculation methodology, the reporting procedure, the control and sanctioning procedure, as well as the destination of the quarterly contribution for drugs included in the National Health Programmes, as well as for the drugs used by the patients treated outside hospitals.

¹¹ Government Decision no.1454/2004 concerning the establishment of large commercial structures.

The recommendations of Competition Council are supported by the provisions of the Memorandum of Understanding concluded between European Union and Romania, which states that restrictions on the establishment of retail stores should be eliminated. In this context, Competition Council cooperates with the Ministry of Economy, Trade and Business Environment in order to remove restrictions on the opening of large retail chains.

In 2011, the Romanian competition authority also focused on a proposal for modifying the normative act¹² regulating the marketing of products and services. The proposal envisaged the requirement imposed to commercial centres to exhibit traditional food and non-food products in at least 10% of their commercial area. The proposal contained certain provisions that contravened to the national and European competition rules on and to the freedom of movement of goods and services, its anticipated effects being able to affect consumers. Such a measure is discriminatory in relation to other economic operators (e.g. those with small selling areas, cash&carry, etc.) and constitutes a form of discrimination between traditional products and other products manufactured in Romania. The fact that traditional products would thus have a guaranteed potential market does not provide final consumers with quality products at lower prices; in this way, producers would not have the incentive to increase their efficiency and to compete through prices.

The proposed action may fall under the provisions of the Treaty on the Functioning of the European Union, according to which the internal market comprises an area without internal frontiers where the free movement of goods, persons, services and capital is ensured. The legislative proposal also may come under the incidence of the European Services Directive because it imposes discriminatory conditions for having access to a service or to exercise it. As regards the affectation of consumers, the legislative proposal may constitute a restriction to the freedom of the commercial operators, leading to increased costs and administrative burdens, and the existing competition on the market could be restricted or distorted, at least in areas where production or demand of retail traders is limited. The Commission for Industries and Services of the Chamber of Deputies rejected the legislative proposal.

Competition Council also expressed its point of view on another legislative proposal¹³ imposing a requirement to the economic operators (producers and traders) to market their products or services accompanied by documents stating their production costs.

Competition Council considers that displaying the production costs of a product constitutes a form of disclosing strategic information between the economic operators, thus revealing their trade policies. Competition would be replaced with tacit cooperation between competing companies, for the purpose of aligning and standardising their business practices and, consequently, the final prices. On the other hand, this legislative proposal could artificially create market entry barriers or affect the trade with goods and services. Also, this requirement to provide production costs can not be implemented for products manufactured outside the country. In these circumstances, products manufactured in Romania would suffer artificial price increases.

On a distribution chain that includes several undertakings, the production cost and the commercial mark-up applied by the last vendor does not provide the final consumer with all the information concerning the final price formation. Thus, the final consumer would be able to identify only the product's production cost, the difference up to the retail price being perceived as the mark-up added

¹² Government Ordinance no.99/2000 on the marketing of products and services.

¹³ Concerning the amendment and completion of Law no.294/2004 on the Consumption Code, of the Government Ordinance no.99/2000 on the marketing of products and services and of the Government Ordinance no.97/2001 regulating the production, circulation and of the food products.

by the trader. This perception would be inaccurate, since the difference includes numerous other categories of expenditures recorded by the manufacturer, the distributor and the trader.

The Government Project “The Solidarity Basket - Governmental support programme for retirees” was also analysed by the Romanian competition authority. Through this program, the Government intended to acquire, via local councils, basic food products so as to provide reduced prices for retired citizens. Competition Council’s proposals underlined the need for a tendering procedure in order to ensure a competitive process for selecting suppliers and to guarantee their equal and non-discriminatory treatment. At the same time, it was stressed out that any public resource must be used in exchange for a price which corresponds to the market price. In this way, the programme would not fall under the State aid legislation.

- **Telecommunications**

In 2011, Competition Council issued a binding opinion on the draft Government Emergency Ordinance for the establishment of the “State’s Common Electronic Communications Infrastructure” (SCECI), submitted by the Ministry of Communication and Information Society. On this occasion, a range of possible competition distortions on the markets for electronic communications services were identified, through the allocation of a market segment to the Special Telecommunications Service (STS), in its quality as sole operator and integrator of SCECI, and on wholesale services markets for accessing the infrastructure’s components and/or of other network access services, as well as of the associated services, by compelling STS to use only the network infrastructure elements and electronic communications services provided by specialized companies.

Furthermore, by creating SCECI, an economic concentration operation could have been achieved, assuming that STS would have behaved as a market operator. Additionally, the coordination of competitive behaviour of the specialized companies and possibly of STS (assuming that this authority would operate as private undertaking on the market) could have been possible, including through the actions of the Inter-Ministry Coordination Council of the SCECI. The project could have presented State aid issues.

Competition Council proposed the amendment of the draft legislation by introducing certain provisions not allowing the undertakings concerned to use the SCECI for supporting their economic activities (the services provided by the SCECI cannot have a commercial nature, because the infrastructure is aiming at exercising the State authority – the e-Government application). Moreover, the number of the enterprises (majority or wholly owned by the State) benefiting from SCECI should be restricted to those that have a strategic importance from the national security standpoint, to those providing services of national interest, or to those which are *de facto* part of the public administration, and their establishment/development, operation and use of SCECI must be made in compliance with the principle of separating the regulatory function from the operational one. Under the conditions specified by Competition Council, the project would fall under State aid rules.

The Ministry of Communications and Information Society accepted the conditions imposed by Competition Council, thus receiving a favourable binding opinion of the competition authority. However, there is still a risk of competition concerns related to the allocation of a market segment to STS as a result of subsequent regulations to be issued in the future.

2.7. Fulfilment of the attributions in the State aid field

2.7.1. Progresses

As contact authority on State aid field in the relation with the European Commission, the Competition Council ensures the application and the observance of the State aid rules by the public authorities and private environment, as well as an efficient communication with the Community body.

In 2011, the activity in the State aid field of the Romanian competition authority can be presented synthetically as follows:

- specialised consultancy granted through 200 working meetings with the State aid suppliers, 97 written opinions concerning draft normative/administrative acts and other 230 written opinions/clarifications;
- cooperation with the ministries and local administrations managing the national funds; as a result, 16 *de minimis* State aid schemes were elaborated for 47,496 beneficiaries, with a total budget of RON 451,099,983 (out of which RON 97,385,000 were for 2011);
- 10 formal opinions concerning State aid notifications/information fiches on State aids exempted from the notification obligation;
- two official notification of State aid measures;
- organisation and participation in 7 meetings of the Inter-Ministerial Council for the application of the State aid Policy;
- elaboration of the State aid Inventory and of State aid *Scoreboard*, which was submitted to the European Commission;
- elaboration of a report and of an impact study in the State aid field;
- 60 answers/positions at the request of European Commission (on-going investigations and informal cases);
- participation in 4 consultations organized by European Commission.

The Lists of the formal opinions is presented within the [Statistics](#) section.

2.7.2. State aid cases in 2011

At the end of 2011, the relevant cases to the attention of the Competition Council and which remained under the analysis of the European Commission were the following ones:

- **The supposed State aid granted to Ford** – Following a complaint on a possible illegal State aid for Ford, the European Commission requested the Romania's position on this case. The experts of the Competition Council provided specialised assistance to the involved authority - the Authority for State Assets Recovery - in the process of elaborating the answer.
- **The possible State aid granted by Cluj - Napoca airport to Wizz Air company** – Following a complaint, the European Commission requested the Romanian authorities certain information concerning the commercial relations between Wizz Air and Cluj- Napoca airport.
- **The State aid scheme for establishing the infrastructure in the benefit of the regional airports** – Based on certain doubts on the compatibility of State aids granted within the State aid scheme for establishing the infrastructure in the benefit of the regional airports, the European Commission decided to initiate an investigation in this case, thus it requested the Romanian authorities certain clarifications.
- **The notification of the support measures included in the Closing Plan of the non-competitive coal mines of the National Coal Company of Petrosani SA** – The Romanian authorities submitted to the European Commission the pre-notification of the State aids for closing three mines exploitations belonging to the National Coal Company Petroșani, in

accordance with the decision of the Council of the European Union. The notification of the State aid for closing the non-competitive coal mines was transmitted through SANI (State Aid Notification Interactive) in August 2011 and it was followed by the European Commission's requests for information.

- **The support measures for SC Oltech SA Râmnicu Vâlcea** – The European Commission has requested certain clarifications from the Romanian authorities within the investigation carried out in this case. As a result of the collaboration between the representatives of the Competition Council, the Ministry of Economy, Commerce and Business Environment, the Authority for State Assets Recovery, as well as the Ministry of Public Finance, certain materials were drafted and transmitted to the European Commission. At the same time, technical consultations on this case took place in Bruxelles at the end of 2011, this case being the subject of the informal consultations between the experts of the European Commission and the Romanian authorities.

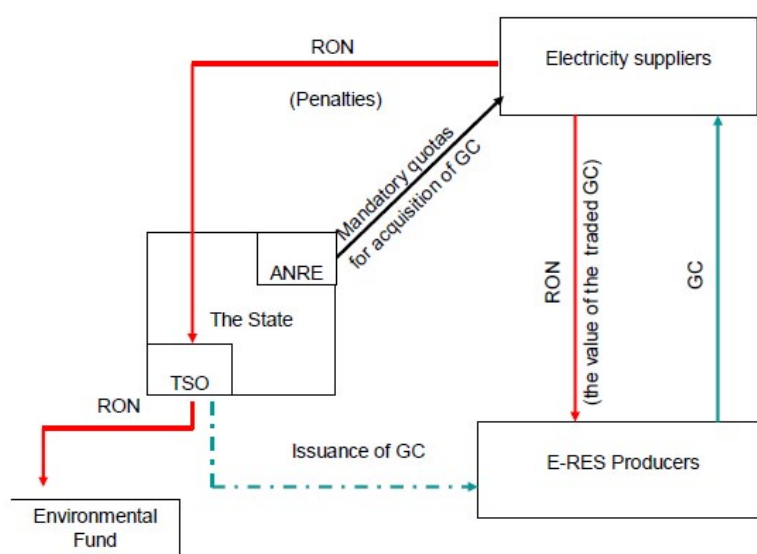
During 2011, the European Commission issued two decisions on State aid notified by Romania in the following cases:

- **The State aid scheme concerning the green certificates for promoting the electric power production from renewable sources**

The primary objective of the State aid measure is to observe the mandatory renewable energy (hydro energy, wind energy etc.) target provided for by the European legislation by 2020. For Romania, this target was fixed at 24% out of the final energy consumption.

The scheme involves the issuance of green certificates to the producers of electric power from renewable energy resources (E-RES), while electric power suppliers are requested to acquire such certificates, otherwise being subjects of penalties. The penalties are revenues to the Environment Fund and will be used for supporting the production of energy from renewable sources by individuals who invest in certain energy facilities. The certificates are granted on a monthly basis by the Transport Operator (TSO) and the National Energy Regulatory Authority (ANRE) sets the number of green certificates to be acquired annually by the electric power suppliers.

Figure no. 1 Functioning of the green certificates system



The scheme is valid until the 31st of December, 2016. Up to this date, the new beneficiaries can enter into the system. The total budget was estimated at RON 80.713 billion (approximately EUR 19.5 billion), and the number of the beneficiaries is between 101 and 500.

- **The temporary State aid scheme under the form of guarantees**

During 2011, in the context of the amendments brought to the *Commission Communication on the temporary framework of the European Union for State aid measures to support access to finance in the current financial and economic crisis*, EximBank, as State aid supplier, considered opportune to initiate a new guarantee scheme, considering the evolutions of the financial and banking market which indicated difficulties in re-launching certain economic sectors. The object of implementing this scheme was to unblock the access to finance for the undertakings and to provide the continuity of their activity.

The State aid scheme was financed from State budget resources amounting of RON 200 million and expired at the end of 2011.

The State aid consisted of guarantees covering a maximum of 80% of the value of new credit granted by a commercial bank. For the small and medium-sized enterprises, the guarantee was granted for credit for investments and working capital, and in case of large enterprises, the guarantee was granted only for investments.

The guarantee issued by Eximbank was granted to small and medium-sized enterprises and for the large enterprises activating in all sectors of activity, excepting the armament production, gambling, alcohol and tobacco production and the real-estate transactions. Moreover, another condition is the benefiting undertakings not to be in difficulty.

The State aid decisions of the European Commission, relevant for Romania, can be accessed at [www.stateaid.ro/decisions/decisions of the European Commission](http://www.stateaid.ro/decisions/decisions%20of%20the%20European%20Commission).

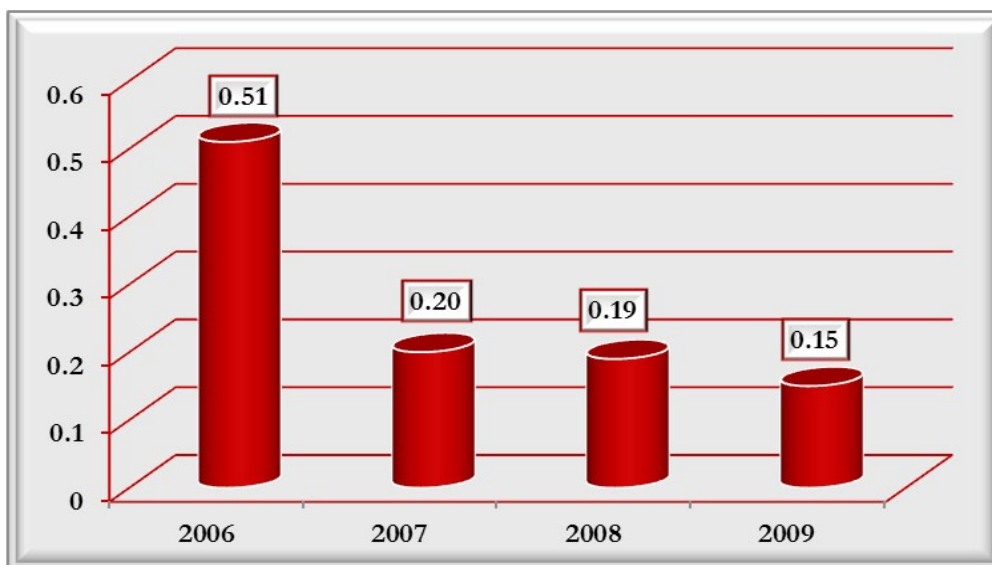
2.7.3. Trends in State aid granting

The Competition Council published its **Annual report on the State aids granted in Romania** in November 2011. The document presents the level, structure and the trends in granting State aids in our country during 2007-2009, based on the data and information submitted by all State aid grantors, local and central authorities, as well as by the organizations managing the State's and local communities' resources.

The total State aid amount (less agriculture, fisheries, transport, services of general economic interest and *de minimis* aid) expressed in current prices shows a **general downward trend**, from RON 1,749 billion in 2007 to 556 million in 2009.

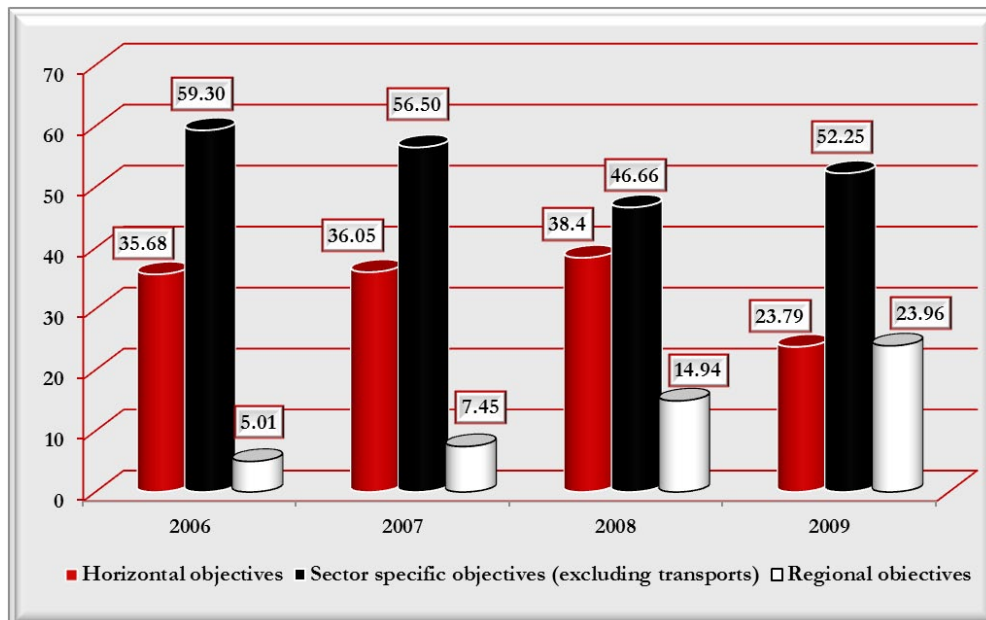
In terms of the share in the GDP (gross domestic product), the evolution is shown by the graph below.

Graph no.14. The State aid share in the GDP (%), 2006-2009



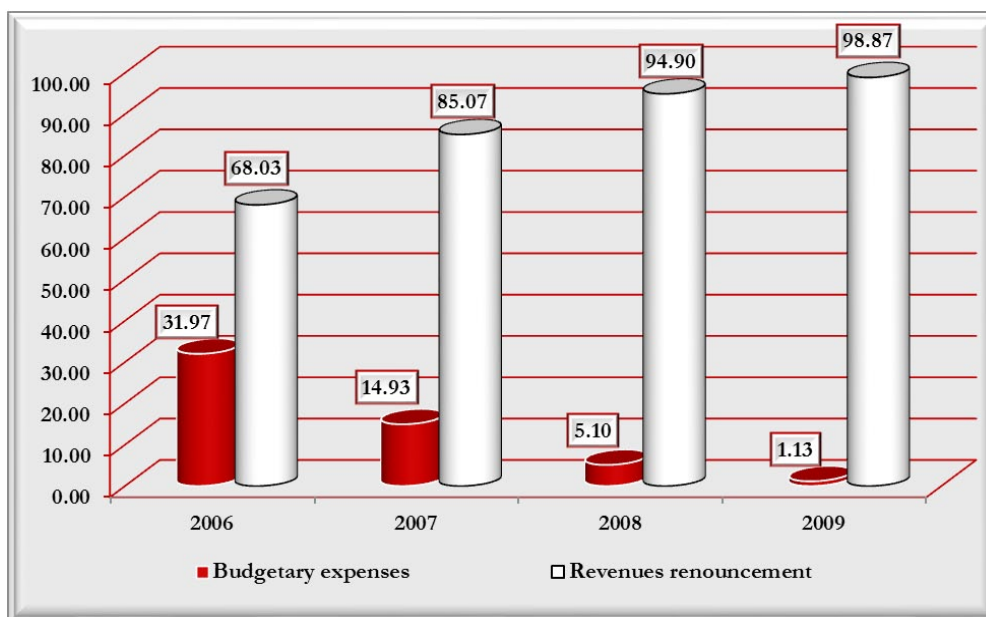
There is a **continuing declining** trend of the State aid granted at the national level, its share in GDP being below 1%. In terms of the percentage in the GDP recorded by different State aid objectives, the report highlighted the following development:

Graph no. 15. The structure of the State aid depending on the objectives (%), 2006-2009



Compared to 2008, the lower level recorded in 2009 was the result of the significant reduction of the State aids granted for horizontal objectives (research, development and innovation, environment, rescue and restructure, job creation) and of maintaining the State aid granted for sectorial objectives (coal extraction, media and culture, other sector specific objectives) at a level of around 50%. At the same time, the value of authorised State aids for regional development increased in 2009 compared to 2008.

Graph no. 16. The structure of the State aid depending on the financial instruments used (%), 2006-2009



In 2009, the increasing trend of the share of State aid of the nature of “budgetary expenses” in the total State aid has continued, in the detriment of the State aid of nature of “revenues renouncement”. This is explained especially by the high level of the State aids under the form of subsidies, grants, allocations, bonuses, subsidized loans, and other non-reimbursable sums (93.05%) granted by the State aid grantors mainly to the undertakings activating in the research-development and innovation field, to the National Coal Company Petroșani, active in the coal extraction field, as well as within the State aid scheme for promoting culture and the conservation of the cultural heritage aiming at supporting the film production.

This is consistent with the requirements of the European Commission to reduce fiscal State aids and it reflects the correct application of the *acquis communautaire*, Romania **being in line with the European State aid Policy**.

The Report can be accessed at [www.stateaid.ro/State aid reports](http://www.stateaid.ro/State%20aid%20reports).

2.7.4. The impact study in the State aid field

In 2011, the Competition Council drafted the study *Impact of the State aid granted to undertakings operating in Romania's free zones*. The document shows the effects of the State aids granted to the undertakings operating in the free zones¹⁴ over the social and economic development of the regions where the free zones are located. At the same time, this study is the last report submitted to the European Commission, according to the provisions of the Accession Treaty of Romania to the European Union concerning the State aid granted in the free zones where the European Commission granted a transition period (until the end of 2011) because of the incompatibility of fiscal nature with the *acquis communautaire*.

¹⁴ These aids were granted through a regional State aid scheme initiated in Romania by Law no.84/1992 on the regime of the free zones.

The development of commerce and the alignment of the national economy to the worldwide globalization process led to the creation of some strictly delimited areas on the Romanian territory where specific custom rules were applied. These rules are similar with those applied in other existent areas in Europe and throughout the world. It was considered that the existence of certain free zones will lead to the business development, to the creation of jobs and finally to an increase of the local welfare. In order to stimulate the investments, some support measures were set for the firms that intended to operate in these locations. The measures consisted in total or partially exemptions from the payment of the profit tax and royalties owed for leased buildings.

The State aid monitoring aimed at a number of 28 State aid beneficiaries. The monitored undertakings carried out their activity in 5 free zones: Arad Free Zone (2 undertakings), Brăila Free Zone (2 undertakings), Constanța Free Zone (5 undertakings), Galați Free Zone (2 undertakings) and Giurgiu Free Zone (17 undertakings). The undertakings analysed within the impact study spent USD 14,225,891 in order to make the necessary investments for carrying on the activities in the free zones and considered eligible according to the regional State aid regulations. The total amount of the State aid granted is of USD 7,295,916 out of which USD 6,501,439 represent exemptions from paying royalties and USD 794,477 represent exemptions from paying the profit tax.

The implemented State aid measures had positive effects, as follows: supported free initiative within free zones, investments in the area, new jobs creation, even though, overall, the number of employees decreased at the end of the analyzed period, qualified personnel was employed (over 60% of the total personnel), taxes paid to the public budget (the total State aid granted represents about 5.6% of the taxes paid).

At the same time, certain negative effects were recorded as well: many companies relied too much on the fiscal facilities existing within the free zones and they requested for these facilities to be maintained during the following period of time without trying to identify other support measures in order to develop their activities, the temporary nature of the State aid effects, the economic activity within the free zones had not diversified, and the State aid measures had not drawn major investments in the free zones.

Taking into account all the above, the Competition Council considers that it is necessary for the public authorities to take measures for supporting the Romanian free zones in order to maintain this trade system used at international level and to create the premises for new investments and for the new jobs creation. In this respect, these are the main actions that should be carried on by the public authorities:

- drawing up a national strategy regarding the maintenance and the development of the free zones underlining the role this structure would have in the national economy;
- an active implication of the local authorities in knowledge the realities of the economic environment in the area, the identification of the development and innovation opportunities and the encouragement of those contributing in it;
- the local authorities must create the necessary infrastructure within the free zones based on the European funds or in a public – private partnership;
- extension of the Free Zones Administration's attributions on advising the companies on the financing possibilities from budgetary/Community funds existing at a national level, as well as on receiving funds for new investments, within the State aid schemes;
- if necessary, the implementation of a State aid scheme for the companies which would carry on activities within these areas; the State aid should consist in grants and depend on the new investments and new jobs creation;
- transforming some parts of the free zones into industrial parks in order to eliminate the supplementary taxes associated with the free zone customs regime for the companies that do not develop an extra-Community trade.

The study can be accessed at [www.stateaid.ro/State aid reports](http://www.stateaid.ro/State_aid_reports).

2.7.5. Inter-Ministerial cooperation

- **The Inter-Ministerial Council for the application of the State aid Policy**

In 2011, 7 meetings of the Inter-Ministerial Council for the application of the State aid Policy (ICSA)¹⁵ were organised. They were attended by the representatives of the most important Romanian State aid grantors. Within these meetings, the ministries granting State aid analysed the State aid schemes initiated during 2007-2010 and which were authorized but not implemented/blocked or in different stages of implementation. In this sense, a procedure was initiated for analysing and drafting clear and well-grounded situations concerning the opportunity of maintaining these State aid schemes and of unblocking the sums provided for their implementation.

Considering the present budgetary crisis Romania is confronting, it is necessary for the money allocated from the State budget for non-implemented State aid schemes to be directed to other State aid schemes thereby creating the necessary fiscal rooms for re-launching the national economy. In this respect, the Competition Council drafted a document on all the State aid schemes initiated during 2007-2010 and their stage of implementation. It was a working document for the ICSA meetings. The centralised analysis of the State aids granted by suppliers aimed at reporting and monitoring the efficiency indicators of the existing State aid measures, identifying the non-performing measures and unused sums. Within these meetings, the Competition Council also discussed with the representatives of the ministries on the most important cases under the analysis of the European Commission.

Moreover, within the ICSA meetings a series of materials and/or situations drafted by the Competition Council were presented in order to monitor the efficiency of State aid granted, namely:

- the conclusions of the "Study on the economic and social impact of the restructuring State aids granted to undertakings in difficulty";
- the conclusions of the "Study on the impact of the State aids granted to the undertakings operating in Romania's free zones";
- the document on the State aids granted for services of general economic interest in Romania;
- the document on the State aids granted for industrial parks.

- **The Inter-Ministerial Committee in the State aid field**

In 2011, the Competition Council organised through the ReNAS Programme (National State Aid Network) two meetings of the Inter-Ministerial Committee in the State aid field.

In order to prepare the new reporting year, the experts of the Competition Council organised in February an inter-ministerial meeting with the State aid grantors, ministries, agencies and central public administrations and focused on specific issues concerning the accurate reporting of the State aids granted in Romania during 2008-2010 and which envisaged to clarify certain State aid issues. This was an occasion for analysing the deficiencies encountered within the reporting procedures, aspects regarding the legal basis for granting the State aid, as well as their duration. Clarifications were also made on State aid situation.

The second meeting was organised in November and was attended by representatives of the central authorities as State aid grantors (ministries, Eximbank, the Authority for State Assets Recovery, the National Employment Agency, the National Cinematography Centre etc.) and focused on the issues/

¹⁵ Established based on Government Decision no.98 of 10 February 2010.

deficiencies encountered by the Competition Council in inventorying the State aid. Clarifications were also made in respect to the organisation of the State aids situation. At the same time, the State aid Inventory for the period 2008-2010 was presented and discussions were carried out on the issues indicated by the European Commission in relation to the State aid *Scoreboard*.

2.7.6. Technical consultations with the executive body and with other international bodies

- **Technical consultations with the European Commission on the State aid cases on-going**

For an accurate application of the State aid rules and for avoiding certain incompatibilities of the individual measures/schemes elaborated by the State aid grantors with the European provisions on State aid, during the analysed period the representatives of the Competition Council attended various technical consultations with the experts of the European Commission so as to clarify and rapidly solve 7 cases.

- **The pre-consultation mechanism with the European Commission on privatizations**

Within the pre-consultation mechanism on privatizations¹⁶ during 01.01.2011 – 17.03.2011, 11 information sheets on certain undertakings to be privatized by the Authority for State Assets Recovery were transmitted to the European Commission.

The privatizations planned by the Authority for State Assets Recovery to take place through tendering procedures having as the only criteria the price offered have ceased starting with 17.03.2011 at the request of the European Commission.

- **Consultations with the European Commission for debating the Community legislative proposals on State aid**

During 2011, the experts of the Competition Council attended a series of multilateral meetings organised by the European Commission for debating the amendments intended to be made by the executive body of the regional State aid regulations, as well as of the procedural regulation on the obligations of the member states to report the existing State aids. Moreover, the Competition Council transmitted to the European Commission the Romania's position on the reviewing the mentioned regulation as well as on the regulation on the services of general economic interest.

- **Technical consultations with the International Monetary Fund, the European Commission and World Bank**

During 2011, the experts of the Competition Council attended a meeting with the representatives of the European Commission, the International Monetary Fund, the European Commission and the World Bank, and discussed the alternatives for solving the debts of certain State-owned companies. The reunion was also attended by the representatives of the involved Romanian authorities (the Ministry of Transports and Infrastructure, the Ministry of Economy, Commerce and Business Environment and of the Ministry of Public Finance) as well as of the respective companies. The reunion was the first opportunity to dialogue on the grounding of certain solutions for each company, following for the Romanian authorities to elaborates documents demonstrating the observance of the State aid rules. These documents will be submitted to the European Commission in the process of notifying the measures.

¹⁶ This mechanism was established in February 2008. Its aim is to avoid and to solve in due time any issues that may appear in the process of privatizing certain undertakings.

2.8. Combating the unfair competition and the Railway Supervision Council - results of the two new activities of the competition authority

Considering the new attributions of the competition authority in this field, as well as the necessity of improving the existing legal framework, an analysis was carried out on the regulation on the unfair competition at the Community level, as well as on the practice in the field. Thus, certain legislative solutions were identified for amending and completing the Law on combating the unfair competition and it resulted in a new draft law. In December 2011, it was presented for public debate.

In respect to the application of the existing law, the Competition Council received 66 intimations and 46 cases were solved. These intimations envisaged the following:

- Client's re-orientation by a former employee of the respective trader;
- Providing services by an employee of an operator to its competitor;
- disclosure of a trade secret by an operator or by one of its employee, without the consent of the legitimate owner of that trade secret and in a manner contrary to fair commercial practices;
- communication/dissemination of false statements by a merchant about a competitor so as to harm the competing firm;
- offering/promising gifts or other advantages to an employee of a trader so as him to find out, through unfair behaviour, the industrial proceedings to know or use its clients or to get any other advantages in the detriment of the competitor;
- using the trade marks, the designs or packages so as to cause confusion with those used by the legitimate trader.

• The Railway Supervision Council

The President of the Railway Supervision Council (RSC) is appointed by the President of the Competition Council by choosing one of the members of the Competition Council's Plenum. The members must be specialists from the following fields: railway, European affairs, economy and legal. The President and the members of the RSC are appointed for four years and they are not subjects to the administrative hierarchical subordination in exercising their specific functions. The body is independent from the organisational, legal and decision-making perspective as well as regards the financial decisions taken in relation to the railway infrastructure managers, the railway infrastructure charging bodies, the railway capacity allocation bodies and the railway transport operators.

Some of the main attributions of the body are: analysing and solving the appeals against the decisions taken by the manager of the railway infrastructure or, where applicable, by the railway transport operator, ensuring that the charges set by the administrator of railway infrastructure are in accordance with the legal provisions in force and that they are non-discriminatory, authorising the negotiations between the applicants and the railway infrastructure manager concerning the level of charges for the use of the railway infrastructure, monitoring the negotiations between them on the level of the charges for the use of the railway infrastructure and, where necessary, intervening immediately where the negotiations could be contrary to the legal provisions in force, monitoring the competition on the railway services market, including on the railway freight market.

The RSC's members were appointed by [Order of the President of the Competition Council no.656/05.08.2011](#) and are the following:

- President: Otilian Neagoe, Vice-president of the Competition Council;
- Vasile Șeclăman, Secretary General of the Competition Council;
- Anca-Andreea Atomi, competition inspector within the Competition Council;
- Daniel Picu, Director of cabinet within the Competition Council;

- Liliana Mușat, General Director within the Ministry of Transports and Infrastructure;
- Marin Stancu, superior counsellor within the Ministry of Transports and Infrastructure;
- Petru Mărculeț, Chief of service within the Ministry of Transports and Infrastructure.

As a result of the appointment of the RSC's members, monthly meetings took place and focused on organizational issues, on the analysis of the railway market developments in the last two years as well as on the legislative amendments to streamline the work of the regulatory authority.

Moreover, for a better knowledge of the issues faced by the operators in the sector, RSC proposed to analyse it together with the operator's representatives. Thus, analysis on the activity of the National Railway Company "CFR" SA (the infrastructure manager) in the recent years and forecasts on its 2012 activity were carried out. The proposed measures to be taken by the National Freight Railway Company (the national operator) in the territory were also analysed. The 2011 Annual Report of RSC can be accessed at: www.consiliulferoviar.ro/annual-reports.



Chapter 3

INTERNATIONAL ACTIVITY

In 2011, the international activity of the Romanian competition authority envisaged the cooperation with other competition authorities and international bodies in the field, as well as the training of the institution's staff within the framework of international activities.

Thus, the main international activity fields of the Competition Council were:

- ECN (European Competition Network¹⁷) and European Affairs;
- Bilateral relations and actions in collaboration with international bodies;
- Providing technical assistance to other competition authorities;
- Professional training within the framework of international activities.

3.1. ECN and European affairs

During 2011, Competition Council joined DG Competition in the process of increasing the degree of procedural convergence in the national leniency programmes field and in respect to the antitrust investigating tools, by carrying out a continuous exchange of information and of best practices on the application of Community competition rules in the 27 EU Member States.

• Common areas of intervention

The sanctioning policy, the direct negotiation procedure in the case of cartels, and the best practices concerning antitrust investigative procedures were the common areas of intervention of the European Commission and of national competition authorities within the ECN.

In addition, the ECN working groups focused, in particular, on the mechanism of cooperation in the antitrust field (the procedural convergence) and on the economic concentration area (the cooperation within the exchange of information between the national competition authorities in the cases of the concentrations potentially affecting the intra-Community trade).

In 2011, the working groups on Cartels, Cooperation Issues, Economic Concentrations, Forensic IT and the working subgroups Food and Pharma were particularly active in the context of the projects conducted by these working bodies and of the summary reports drawn up.

• Actions carried out during 2011

In the area of antitrust, Competition Council informed the European Commission on 18 cases in fields such as: pharmaceuticals, telecommunications, financial services, auto vehicles fuels sector.

The process of amending the Merger regulation of the Competition Council was started, so as for the Romanian competition authority to be able to take advantage of the exchange of confidential information and to participate unrestricted with other competition authorities within the cooperation framework on the analysis of the economic concentrations notified in several jurisdictions.

The decision of the European Court of Justice (ECJ)¹⁸ to the preliminary question in case C-360/09

¹⁷ ECN is the mechanism of cooperation between the competition authorities of the EU Member States and the European Commission designed to ensure the uniform application of the Community provisions on competition. Moreover, it is the framework for elaborating common position papers, for exchanging information or for coordinating the investigations initiated under the Treaty on the Functioning of the European Union.

¹⁸ Thus, ECJ decided that the national courts will regulate the access to confidential information protected by the leniency programmes according to the legitimate interests of the parties.

Pfleiderer/Bundeskartellamt has generated new challenges for the national leniency programmes, as regards the access of the affected parties to the protected information contained by the leniency dossier in private damages actions. These developments led to discussions carried out within the working groups on Cartels and Cooperation Issues.

- **The contributions of the Competition Council in the public consultations organised by the European Commission**

During 2011, the European Commission continued the discussions on private damages actions initiated by persons affected by the infringement of the Community competition rules. Competition Council submitted its comments on the documents presented on the website of the Directorate General for Competition of the European Commission (DG Competition) for public consultation. The two documents envisaged:

- the rights of the affected persons within the framework of collective court actions - public consultation carried out in the second quarter of the year in order to identify common legal principles concerning collective actions and
- the quantification of damages in the context of private damages actions - public consultation conducted in the third quarter of the year; the European Commission intends to publish a guiding document for the courts and for the parties involved in damages actions; this intention follows the publication in 2008 of the white paper in this area, a document without a binding nature which defines a framework for pragmatic guidelines for quantifying damages suffered by third parties

3.2. Bilateral relations and the cooperation with the international bodies

The economic globalization requires a continuous effort to enhance the international cooperation in the field of competition policy. The main way Competition Council may contribute to the promotion of best practices in the application of competition rules is the cooperation with authorities from various countries. Such cooperation also offers useful exchanges of information, mutual support, promotes competition culture within national economies and helps solving similar cases on competition law infringements.

Moreover, the participation of Competition Council within the works of international bodies, such as the Organization for Economic Cooperation and Development (OECD), the European Competition Authorities (ECA), the United Nations Conference on Trade and Development (UNCTAD) or the ICN (International Competition Network) increases the international notoriety of the authority and ensures access to a platform of best practices in the field of competition, which can subsequently be transposed in the national legislation and practice.

- **Bilateral relations**

Among the most important events organised at a bilateral level were the following:

- the participation in the exchange of experience organized by the Bulgarian competition authority which focused on the experience and the challenges in fighting anticompetitive practices. The main purpose was to carry out an exchange of experience between the representatives of the authorities cooperating with the Bulgarian competition authority. Within the framework of this action, Competition Council's representatives held a presentation on abuse of dominant position and recent cases of the Romanian Competition Council.

- the participation of Competition Council at the events which marked the 5 years anniversary of the Serbian competition authority - April 12, Belgrade. These events included an introductory session and a workshop on “Sanctions and remedies – criteria for determining the type and level of the fines”. These meetings were attended by the leaders of authorities from several European countries, as well as by experts of the European Commission and of UNCTAD.
- the visit at UK’s Office for Fair Trading (OFT) of the President of Competition Council during 10-11 November, 2011. The agenda of the meeting included important aspects on competition in banking, public procurement and food sectors. Another topic addressed was the delimitation of competences between competition authorities and regulatory authorities, the incident legal framework and mechanisms for the inter-institutional cooperation.

• International bodies

OECD

2011 marked the **renewal of the OECD Observer status for Romania, represented by Competition Council, for the Competition Committee** of this important international organization, for 2012-2013.

At the same time, the efforts focused on demonstrating the ability of the Competition Council to assume an active Observer role were intensified by participating, submitting written contributions, interventions within the organised reunions as well as by carrying out regional promoting activities of the best practices in the field.

For assimilating at the institutional level the 2009 OECD Council Recommendation on competition assessment, Competition Council paid a special attention for the initiators of draft normative acts to undertake the impact analysis of the proposed regulations from the viewpoint of the rules on competition and State aid in respect to the methodology of elaborating, monitoring and evaluating the public Romanian policies, according to the Government decision¹⁹ adopted in 2010 as a result of the intervention of the Romanian competition authority. Moreover, in 2011, the Instructions of the OECD Competition Committee on detecting bid riggings were transposed and detailed within Competition Council’s Guide on detecting bid riggings. This document was disseminated among the Romanian central and local public contracting authorities, the action following to be completed in 2012.

Among the significant results obtained in the OECD work should be mentioned:

- the participation with contributions on relevant topics for the current evolution of the competition policy at the international level, both within the meetings of the OECD Competition Committee held in February, June and October 2011, as well as on the occasion of the 10th session of the Global Forum on Competition, as follows:
 - institutional and procedural aspects of the relationship between competition authority and courts;
 - economic evidence in merger analysis;
 - regulated conduct defence;
 - competition in ports and port services;
 - remedies in merger cases;
 - promoting compliance with competition law;
 - impact evaluation of merger decisions;
 - developments of competition law and policy in Romania in 2010.

¹⁹ Government Decision no.219/24.03.2010 for the amendment and completion of the Annex to the Government Decision no.1361/27 September 2006 on the content of the presenting and motivating of the draft normative act to be adopted by the Government.

- presentations and interventions delivered within five seminars and conferences organized under the auspices of the Budapest OECD Regional Centre for Competition, on topics such as:
 - collusion – theory and evidence - presentation of the driving schools case;
 - legitimate business practices or cartels in disguise - presentation of the client allocation case by the competing undertakings activating on the compulsory privately administered pensions (the 2nd Pillar);
 - the use of economic analysis within the practice of the competition authorities;
 - competition litigation – presentation of an analysis on the evidences analysed by the courts in two cases investigated by the competition authority, namely A&A Medical SRL vs. the Competition Council and Carpatcement vs. the Competition Council.

ICN

As member of the ICN, Competition Council continued in 2011 the activities conducted within the network's working groups on cartels, economic concentrations, the unilaterally behaviour of dominant firms, on the efficiency of an authority and on promoting the competition policy.

Among the significant results of the ICN activity of Competition Council during 2011, it is worth mentioning the following:

- The President of Competition Council moderated a break-out session of the Annual ICN Conference, held in Hague, focused on "Strategy to promote the awareness and use of the leniency policy in Romania" and delivered a presentation on "Strategy for promoting the leniency policy in Romania".
- Competition Council prepared and submitted its responses to the competition authority of the Netherlands regarding the Consumer welfare project, whose results were released at the annual conference.
- Competition Council prepared and transmitted to the ICN Working group on effectiveness of a competition authority answers to the questionnaire on knowledge management, which was disseminated on the occasion of the annual conference.
- The inspectors of Competition Council attended 9 ICN teleconferences and phone seminars.
- The participation of a member of Competition Council's Plenum to the ICN Cartel workshop organised by European Commission in Bruges, during 10-13 October 2011.

ECA

Competition Council attended the ECA plenary meeting organized in Warsaw by the competition authority of Poland. The President of the Competition Council presented the new amendments brought to the Competition Law, as well as the most important on-going cases. On this occasion, the Romanian competition authority expressed its intention to organize the 2013 ECA meeting.

Cooperation between the competition authorities from the Black Sea – Caspian Sea area

Competition Council's initiative to extend the cooperation in the Black Sea – Caspian Sea area resulted from its prior bilateral relations with the competition authority of Russian Federation, Bulgaria, Turkey, Armenia and Ukraine. This initiative started in 2010 and continued in 2011 through certain activities, such as:

- the participation of a delegation headed by the President of Competition Council at the international conference organised in Chișinău by the competition authority of the Republic of Moldova, event which focused on the "Overcoming the economic crisis: role of the competition authorities, perspectives, encountered issues".

- the participation at the 20 years anniversary events of the independence of the Kazakhstan Republic. These events included a two section international conference on competition: “Efficient practices for identifying cartels” and “Competition advocacy - efficient factor for the development of the competition policy”.
- the participation of the Vice-President of Competition Council to the 20th anniversary of the competition authority of the Russian Federation and to the jubilee meeting of the Inter-state Antimonopoly Council within the Community of the Independent States. The presentation of the Competition Council focused on the manner of organising dawn raids in Romania.
- the participation of a delegation headed by the Vice-President of the Competition Council to the events marking the 10th anniversary of the Armenian competition authority. These events included a working session on “Market dominance: consequences and challenges” and an international conference aiming at disseminating the results of the UNCTAD voluntary peer-review on competition law and policy in Armenia. Competition Council’s delegation had a presentation focused on “Abuse of dominant position in Romania: policy and recent jurisprudence”.
- The roundtable organised by Competition Council on the 20th of October 2011 in Bucharest attended by the leaders of the competition authorities from the Black Sea – Caspian Sea area. The meeting focused on debating the recent competition developments, as well as competition in public procurement.



3.3. Competition Council – provider of technical assistance

The Twinning Project is the classic way for granting technical assistance to improve the functioning of a young competition at European standards.

Starting with March 2011, Competition Council together with the competition authorities of Austria and Latvia are granting technical assistance to the National Agency for the Protection of Competition (NAPC) of the Republic of Moldova, for a 18 month period, within the Twinning Project *Support to implementation and enforcement of competition and State aid policy*. Competition Council is project leader, being also responsible for fulfilling the objectives of one of the three components, namely the State aid component.

The project contributes to developing NAPC's capacity of dealing with the competition cases by introducing new techniques for detecting and sanctioning anticompetitive practices, as well as providing a legislative package on State aid in accordance with the Partnership Agreement concluded between the European Union and the Republic of Moldova.

We underline the following results (documents and draft normative acts) achieved in 2011 within the project, based on the contribution of the experts of Competition Council or in cooperation with the other two competition authorities involved:

- Within the component on strengthening the administrative capacity of NAPC:
 - Report on the assessment of the administrative capacity of NAPC;
 - Assessment of the internal procedures of NAPC;
 - The development strategy of NAPC for 2012-2014;
 - Internal procedures on State aid – the procedure on granting assistance in the field of State aid and the procedure for adopting decisions on State aid.
- Within the competition component, observations and recommendations on the draft Competition Law.
- Within the State aid component:
 - The draft State aid Law;
 - The position document on supporting the introducing in Moldova of the State aid Law;
 - Seven draft regulations on State aid envisaging: regional State aid, State aid for research and development, for environment protection, *de minimis* aids, State aid for rescue and restructuring, procedure on the notification, analysis and adopting State aid decisions, as well as for monitoring, reporting and drafting the State aid Registry.

All the draft normative acts proposed by the experts of Competition Council were drafted in accordance with the Community legal framework, considering the need to observe the obligations assumed by the Republic of Moldova within the process of concluding the Deep and Comprehensive Free Trade Agreement with the European Union.

It is worth mentioning that the Romanian representatives within this project participated alongside NAPC's experts at all public debates and at those organised within the Parliament of the Republic of Moldova, focused on adopting these draft normative acts. At the present time, these draft laws are in the final stage of adoption.

The Twinning Project continues in 2012, mainly envisaging the granting of technical assistance for the Moldovan competition authority in the field of applying competition and State aid rules, as well as for creating an efficient and transparent mechanism for granting and inventorying State aid. Moreover, the project will support NAPC to promote the new internal regulations and its role in developing a functional market economy.

At the same time, Competition Council submitted an offer for the future technical **assistance programme in the State aid field** in the benefit of the Macedonian competition authority. The participation to this competitive procedure contributed to strengthening of the international notoriety of Competition Council, as an active authority as well as a potential provider of technical assistance in the region.

In 2011, the representatives of the Ukrainian competition authority conducted a study visit on State aid, which was organized and financed through the Community project "**Harmonisation with European standards of competition and public procurement policy in Ukraine**". The Ukrainian

Government expressed its interest to undertake an exchange of experience in the field of State aid with the new EU Member States. In this respect, DG Competition recommended Romania as a good example. During this study visit, debates were carried out on: State aid control system in Romania, State aid reporting, primary and secondary legislation on State aid before the EU accession, as well as on institutional issues.

The projects carried out within TAIEX Programme, the technical assistance and exchange of information instrument of the European Commission, within Directorate General Enlargement, is another important tool used by the Competition Council to share its experience on competition and State aid to younger competition authorities outside the EU such as from Bosnia-Herzegovina, Albania, Libya, and Turkey. The experts of the Competition Council attended four such TAIEX missions in 2011.

3.4. Professional training within the international activities

- **Internships at the European Commission**

During 2011, three competition inspectors attended training internships at the European Commission. The internships aimed at assimilating EU regulations, as well as the procedures and the activities of the European Commission especially in the field of economic concentrations and regional policies, as well as at the practical cooperation within units focused on merger control, on analysing possible State aid and on public procurement.

- **Academy of European Law (ERA)**

The annual participation at ERA events provides the continuous training of the Competition Council's experts. In 2011, Competition Council attended two events focused on the latest developments in the field of State aid and on the European law on public acquisitions.

Thus, the participation at the "Forum on European State aid Law" allowed the delegation of the Competition Council to get familiarized with the latest legislative developments of the policy on rescuing and restructuring of the banking system, as well as on the services of general economic interest, as well as regarding European jurisprudence on the most relevant State aid cases.

- **Training in IT Forensic**

Forensic IT techniques allow the analysis and recovery of electronic data. These techniques are very useful in the activity of a competition authority especially within dawn raids.

The specific training is carried out within a multiannual project implemented by the institution. During 2011, the main objective was to prepare the necessary framework for participating in the Community training project in this field²⁰, which is financed from European funds and planned to be carried out during 01.09.2011 – 31.08.2014. An IT specialist of the Competition Council was appointed coordinator of the Eastern Europe countries for one of the important components of the training project. Moreover, during 2011, a Forensic IT laboratory was set-up.

²⁰ The training programme on antitrust and on exchanging experience between the Forensic IT specialists, EATEP_FIT.



Chapter 4 **PROMOTING ACTIONS**

Advocating for the competition rules is an activity carried out by the competition authority through means which are not directly related to the effective application of the law. These means envisage mainly the strengthening of the cooperation with other institutions and the increase of the confidence of all the interested parties in benefits created by competition (ministries and State institutions, undertakings, professional and employees' organisations, non-governmental organisations, consumers etc.). Promoting competition rules is achieved by attending meetings (roundtables, seminars, and delivering presentations) organised in Bucharest and at local level and which are focused on certain target groups: business environment, local administration, market regulators or other competition authorities in the region.

- **Cooperation with other institutions**

In 2011, cooperation protocols were concluded with the Prosecutor's Office attached to the High Court of Cassation and Justice, the Bucharest University – Faculty of Law and with the Confindustria Romanian Employers Association. The protocol concluded with the Public Ministry - Prosecutor's Office attached to the High Court of Cassation and Justice was concluded within the Bid Rigging Module, established by Competition Council in November 2011. One of the main 2011 achievements recorded by the Bid rigging Module was the elimination of the producer/dealer authorisation requirement within the awarding documentation. At the same time, Competition Council drafted and disseminated the "Guide on bid rigging" to 111 contracting public authorities within the central and local public administration.

For intensifying the dialogue with the parliamentary structures, during 2011, 4 meetings were organised with the parliamentary commissions focused on certain areas of interest (for example, the Commission for Budget, Finances, Banks and Capital Market, the Commission for Economic Policies, Industry and Services). Moreover, weekly meetings were organised with the parliamentary commissions within the process of amending the competition legal framework. In addition, a permanent dialogue was carried out with the leaders of commissions, members of the Romanian Parliament or of the European Parliament.

In 2011, the effects of the amendment of the legislation on consumer credits contracts were assessed, which was the result of the 2010 common intervention of the Competition Council and of the National Authority for Consumer Protection (see subchapter 2.6).

- **Public consultations**

In 2011, Competition Council organised two events focused on debating with all involved parties on the conclusions of the sector inquiry on the drug distribution market, as well as on the commitments case envisaging the possible infringement of Competition Law and of Community competition provisions by the Romanian Football League and its members and by the Romanian Football Federation and its members, as regards the joint selling of the commercial rights related to football events.

Moreover, the non-confidential final reports of the sector inquiries concluded in 2011 were presented on the website of the institution for public debate.

- **Relation with the mass-media**

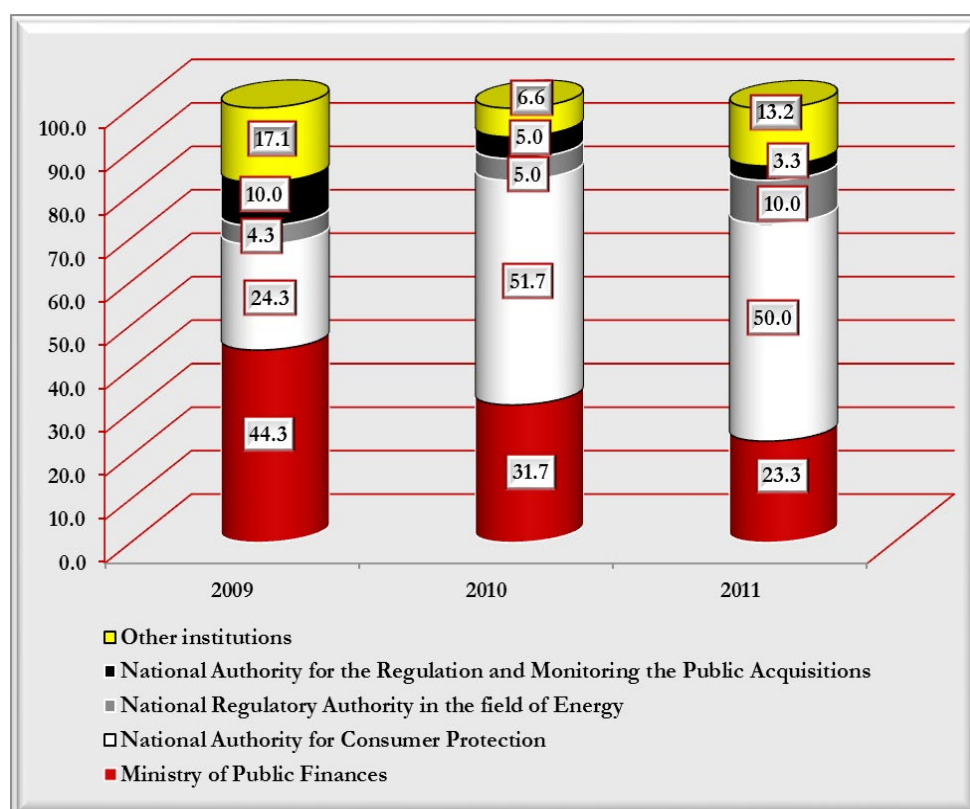
The number of the posting in the press was of 4,950, larger by 48% compared to 2010, and of 2.7 times more higher than the one recorded in 2009. This demonstrates the increase of the communication efforts of the institution as well as a higher interest of the mass-media for presenting information

on Competition Council and on its area of activity. Out of this number, 65% were presentation of the activity of the Romanian competition authority, 25% were positive articles, the rest of 10% being negative editorials.

15 press events were organized, which represent 25% more than in 2010 and 2009 and 50 press releases were issued.

The transparency of the Competition Council improved, as a result of a more efficient communication. This is demonstrated by the decrease in the number of requests for information of public interest, as well as in the number of petitions not falling under the competence of the Romanian competition authority, thus being forwarded to other institutions and authorities. The evolution during 2009-2011 of the structure of these documents based on the competent institution/authority is presented in the following graph.

Graph no. 17. The structure of the petitions forwarded to other institutions based on the competent institution (% of the total number of petitions), 2009-2011



In respect to the number of requests of information submitted based on the legislation on the access to information of public interest, it decreased by 35,3% compared to 2010 and by 71,2% compared to 2009.

In 2011, Competition Council continued to publish quarterly bulletins, the specific magazine *Competition – studies, analyses and researches on the protection of the economic competition*, coordinated by Mr. József Nándor Nemény, Competition Councillor, materials and guides on competition and State aid. The official site of the institution (www.competition.ro) was improved, information presented being accessed more easily by all the interested parties. It was accessed

by over 116,900 times, 90% of the users being from Romania. The webpage of the National State aid Network (www.stateaid.ro) contributed to fulfilling the role of the institution of national informational point in the field. The internet page of the Leniency Module continued to be functional (www.clementa.ro), presenting all the relevant information on the conditions for applying leniency policy and a **special webpage was created** concerning the Supervision Council in the Railway field (www.consiliulferoviar.ro).

The evolution of the number of postings in the mass-media, press releases, press conferences, requests for information of public interest, as well as the number of petitions/requests forwarded to the competent institutions is presented within the **Statistics** section.

- **The Centre of studies on the competition law**

The Centre of studies on the competition law is a scientific research unit without legal personality, functioning within the Faculty of Law of the Bucharest University.

The centre was established in 2011 based on a convention concluded between Competition Council and the Faculty of Law of the Bucharest University and it is aiming at promoting the scientific research in the competition field, by analyzing essential aspects of the legislation and of the practice in this law segment, which is especially technical and essential for the functioning of the economy.



For this purpose, the centre organises seminars, debates, conferences, colloquia, symposiums attended by Romanian and foreign specialists, students and master candidates. In 2011, the themes approached were the following: “Law on unfair competition – proposals for a *ferenda* law” and “Contravention sanctioning regime under Competition Law no. 21/1996”

- **Opinion poll carried out in the competition field**

For assessing public knowledge of the competition field, in 2011, Competition Council carried out an opinion poll based on a national sample representative for the population between 18 and 70 years, by interviewing 1,036 persons.

62% of the respondents considered bid rigging as being an illegal practice. 58% of the respondents recognised the elimination from the market of competitors, the limitation of access to the market and the agreements not to sell or to buy from certain companies, without a reasonable justification, as being anticompetitive practices. Another action considered illegal by 56% of the interviewed persons is the application of certain unequal conditions for equivalent services, thus generating a competitive disadvantage. Sharing of markets or sources of supply (through territorial criteria, volume of sales and acquisitions or through other criteria), limitation or control of the production, distribution, technical development or of the investments, as well as price fixing between competitors were considered illegal by around 40% of the respondents.

- **Presentation of the 2010 Annual Report of the Competition Council**

The 2010 **Annual Report on the activity** of the Competition Council was presented within the event entitled “Competition Council: achievements and perspectives”, organised on 12 April 2011.



The event was attended by the following lectors: Mr. Frederic Jenny, Chairman of OECD Competition Committee, Mr. Helmuth Schröter, professor at Saarland University, Germany, and former Director of DG Competition within the European Commission, Mrs. Anca Chiriță, researcher on competition, Saarland University, Germany, Mrs. Livia Constantinescu, member of the Competition Committee of AmCham Romania, Mr. Iulian Iancu, President of the Commission for Industry and Services of the Chamber of Deputies, Mr. Cătălin Marinescu, President of the National Regulatory Authority in Communications and Mr. Marian Ivan, Deputy director within the Competition Council.

The debates were organised within a panel focused on the “Importance of granting access to essential facilities so as to create competitive markets in network industries”, moderated by Mr. Valentin Mircea, Vice-President of the Competition Council.

The Report can be accessed at: www.competition.ro/publications/annual-reports.

- **Launching of the Annual Report on the state of the competition**

On 21 October 2011, the Competition Council launched the public debate on the Report **Romanian Competition Environment – developments in essential sectors**.

The presentation of the report was undertaken by Mr. Bogdan M. Chirițoiu, the President of the Competition Council within the introductory session of the event, in the presence of Mr. Joaquin Almunia, Vice-President of the European Commission and European Commissioner for Competition. In its speech, the representative of the European Commission appreciated the activity of the Romanian competition authority. The event was attended by an impressive number of representatives of the regulatory authorities, of the Romanian Government and of other public institutions, by members of the Romanian Parliament, presidents of the chambers of industry and commerce, by representatives of the employers’ associations, of the professional associations, of the legal and academic environments, by representatives of the mass-media, as well as of the civil society.



Moreover, the event had an important international exposure, considering the participation of the heads of competition authorities from the Black Sea – Caspian Sea area.



Based on the results of the analysis carried out in the **banking, pharmaceutical and public procurement** sectors, which were the subject of the report, the perspectives of the competition policy in the context of the EU economic relaunching process were discussed together with the Romanian euro-parliamentarians (Mr. Petru Luhan and Mr. Cristian Bușoi) in the first working session of the event.

Taking into account that, for the first time, the report included a chapter dedicated to the competition assessment indicators in key sectors of the national economy, the second working session of the event focused on debating tools for evaluating the competitive environment, alongside Mr. Theodor Thanner, General Director of the Austrian competition authority, Mr. Manuel Sebastiao, President of the Portuguese competition authority, and Mr. Anatoly Golomolzin, Deputy Minister of the Antimonopoly Service of the Russian Federation.

The report can be accessed at: www.competition.ro/publications/annual-reports.



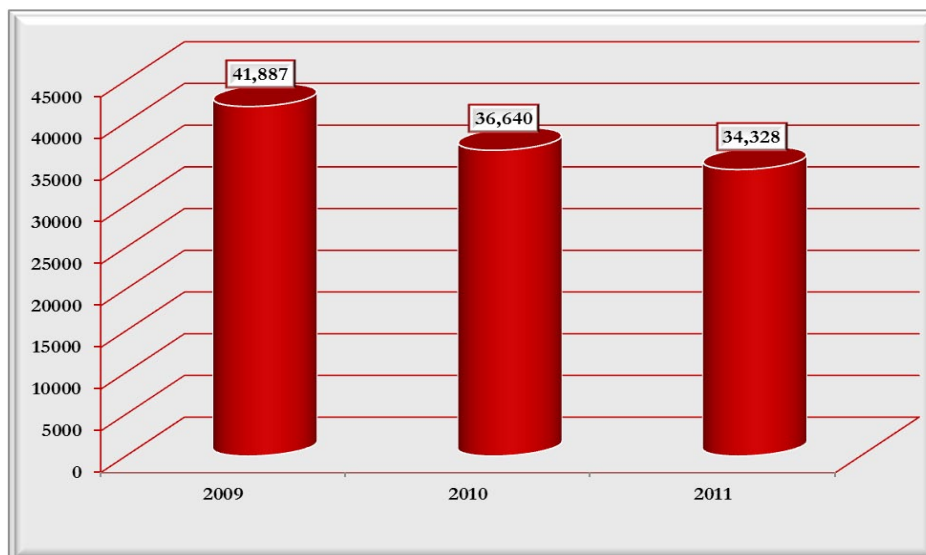
Chapter 5

RESOURCES OF THE COMPETITION COUNCIL

- Budget and budgetary execution**

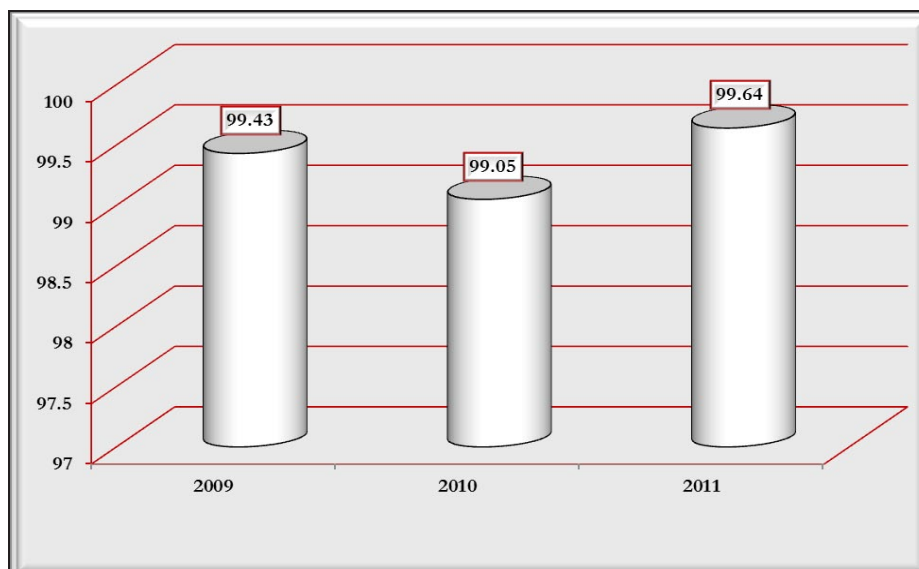
In 2011, the budget of the Competition Council was of RON 34,328 thousands. The comparative situation with 2010 and 2009 is presented by the graph below.

Graph no.18. Granted budget (thousands RON), 2009-2011



In the analysed period, the budget of the Competition Council recorded a decreasing trend, being by 6.3% lower than the one received in 2010, and by 18% lower compared to 2009. The decrease of the budget of the institution during the last three years is a result of the economic and financial crises affecting the Romanian public sector too. The most important expenses (84% of the budget) were the personnel ones, the situation being similar to 2010 and 2009.

Graph no. 19. The budgetary execution (%), 2009-2011

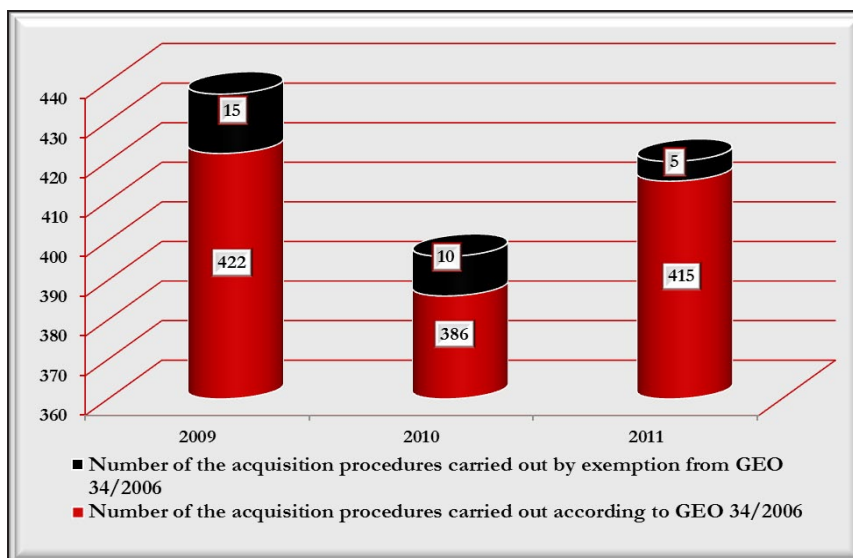


As regards the budgetary execution, in 2011 was recorded the highest level compared to 2009 and 2010, namely of 99.6%.

The Competition Council carried out 420 procurement procedures during 2011, of a total value of RON 4,741,348. 5 of this total number of procedures were carried out by exemption from the specific legislation in the field, namely the *GEO no.34/2006 on awarding the public acquisition contracts, of the concession contracts and of the services concession contracts*, with the subsequent (GEO 34/2006), envisaging the contracting of utilities, of the mandatory motor vehicle insurances, postal services etc.

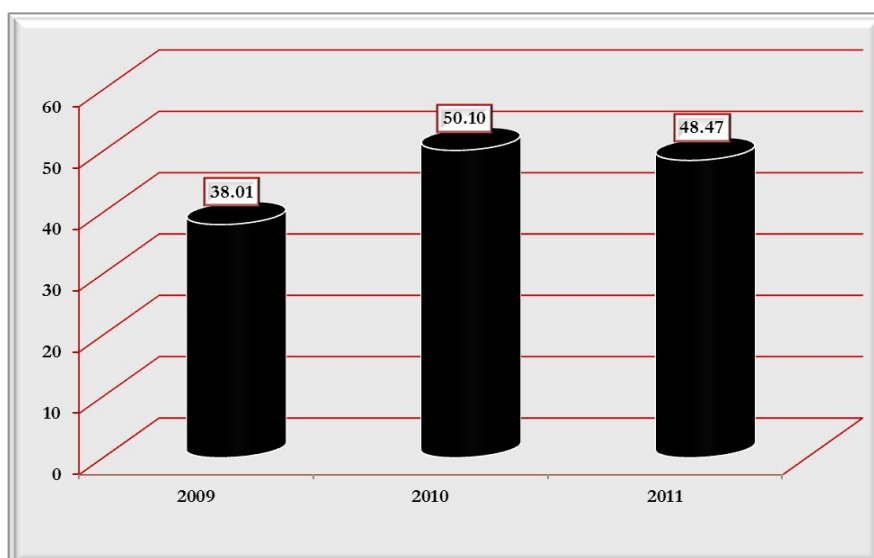
The evolution in this field during the past three years is presented by the graph below.

Graph no. 20. The number of procurement procedures, 2009-2011



From the perspective of the number of procedures carried out based on the specific public procurement legislation, 29.4% were conducted through SEAP (Public Acquisitions Electronic System), and by this system were contracted 48.5% of the total value of the goods and services acquired in 2011 based on GEO 34/2006.

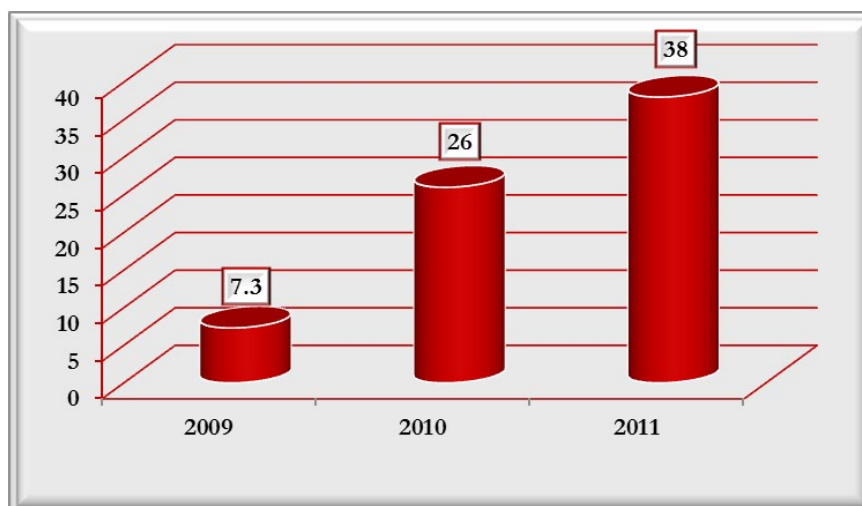
Graph no.21. The weight of the value of the procurements carried out by SEAP in the total value of the procurements carried out based on GEO 34/2006 (%), 2009-2011



- The projects carried out by the institution

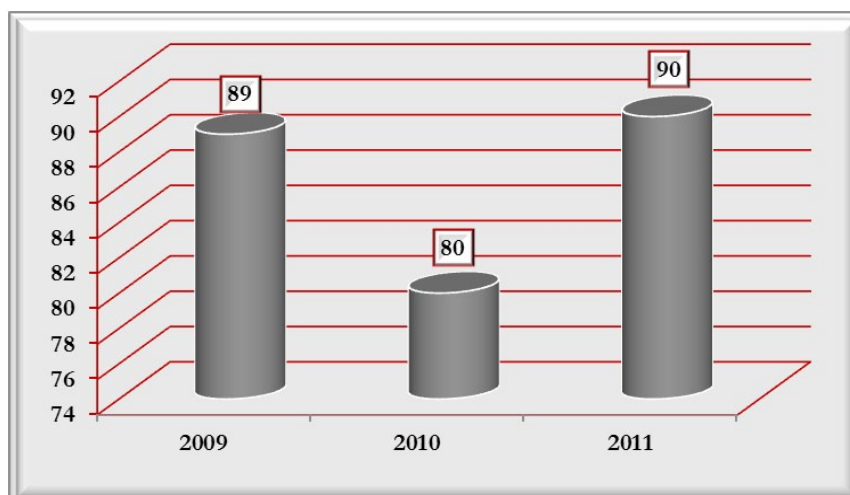
In 2011, the Competition Council organized a part of its activity based on 19 projects. The budget spent in this regard was of around RON 1,960,000 lei, representing around 38% of the budget of the institution, exempting the personnel expenses.

Graph or. 22. The weight of the budget allocated for the projects in the total budget of the institution (%), 2009-2011



In 2011, the percentage of the total budget of the institution, exempting the personnel expenses, which was allocated for the projects increased by 12 percentage points compared to 2010, and by 30.7 percentage points compared to 2009. From the perspective of the value, in 2011, the budget allocated for projects was over RON 1,960,000, by around 12% higher than the one recorded in 2010 and by around 282% larger than in 2009. These results confirm the clear tendency of the Competition Council to organise its activity based on projects. In 2011, the projects were fulfilled in a percentage of 90% (budgetary execution and fulfilment of the qualitative indicators), being higher by 10 percentage points compared to 2010 and at a similar level with the one recorded in 2009.

Graph no. 23. The fulfilment level of the projects carried out by the institution (%), 2009-2011



Below are described the main objectives of the projects carried out by the Competition Council during 2011.

○ **Core business**

10 projects were carried out within this category and the related results envisaged the following areas: State aid, competition, European affairs, enforcement of the competition legislation, IT training (Forensic).

The following aims were envisaged in the field of **State aid**:

- the elaboration of an impact study on the State aids granted in the free zones;
- the increase of the knowledge of the State aid issues and optimizing the State aid regulatory process;
- the consolidation of the relation between the Competition Council and the European Commission.

As regards the **competition** field, the aims were following ones:

- the conduct of/continuing conducting sector inquiries;
- the creation of new methods for detecting cartels by the use of economic analyses, by establishing and monitoring the evolution of a set of relevant indicators;
- the assessment of the competition on regional markets, evaluation of the prices for certain products and the creation of a data base concerning the main undertakings activating on the most important local markets;
- the increase of the analysis performance concerning the anticompetitive practices at the regional level.

For **improving the enforcement of the competition legislation**, the objectives were the following ones:

- the organisation of round tables targeted on judges, so as to improve their knowledge on the application of the competition rules and for a better grounding of the courts' decisions in the competition field;
- the improvement of the knowledge on the Community competition law by the legal experts of the Competition Council defending in courts competition cases by attending training programmes organised by the Academy of European Law.

The targets in the field of **European affairs and international relations** were following ones:

- to manage the participation of the Competition Council within the ECN;
- to manage the participation of the competition authority at external reunions relevant for fulfilling the role of national contact authority on State aid;
- to manage the participation of the Competition Council at the reunions for coordinating the European Affairs, organized by the Ministry of Foreign Affairs and by the Department for European Affairs/the Ministry of European Affairs;
- to facilitate the exchange of experience on specific issues.

For **developing the competences of the competition inspectors in the field of recuperating and analysing data stored in digital environments**, the aims were to train the inspectors within the IT compartment within a project carried out by the Italian competition authority, financed from European funds.

○ Strategic

Three projects were carried out within this category, and they were focused on the performance of the employees, on increasing the efficiency of the institution and on consolidating the image at the external level, by:

- increasing the training and the expertise of the personnel;
- improving the assessment system of the performance of the personnel by introducing cross evaluation techniques (360°);
- facilitating the granting of technical assistance for the National Agency on the Protection of Competition of the Republic of Moldova so as to carry out in good conditions the Twinning Project.

○ Logistic

One project was carried out for consolidating the administrative capacity of the institution, which was focused on procuring IT specific equipment (servers, computers etc.) so as to replace the morally and physically used ones.

○ Visibility

The two projects from this section envisaged the increase of the visibility of the institution by certain actions focused on certain target groups, considered relevant for the activity of the Competition Council:

- promoting the new regulations on the conditions and criteria for applying the leniency policy;
- increasing the visibility of the institution.

○ Promotion

Three projects were carried out within this section aiming at:

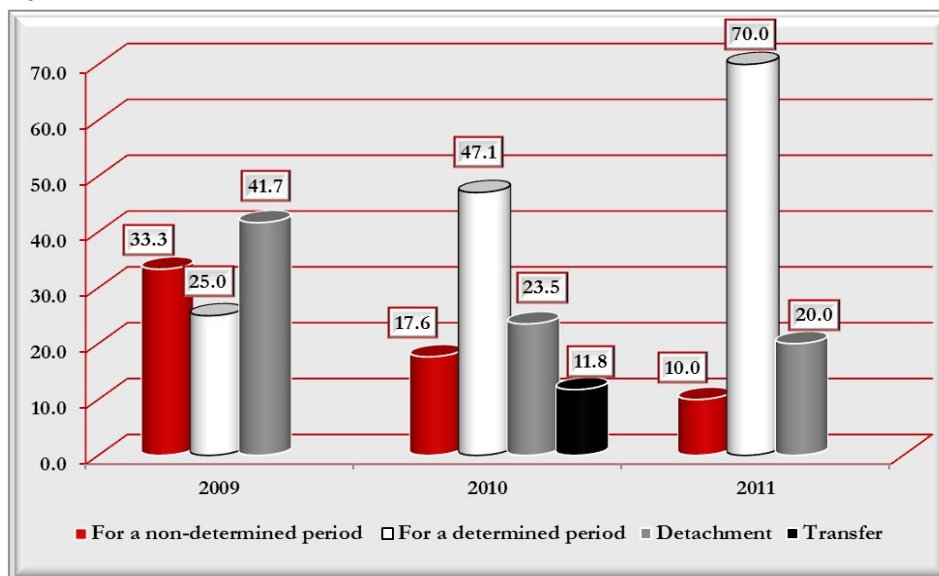
- promoting the competition rules within different environments;
- promoting the actions and especially the results of the institution.

● Human resources

Exempting the members of the Plenum of the Competition Council, in 2011, the personnel of the Romanian competition authority was made up from 286 employees, lower by 3% than in 2010 and by 4% compared to 2009.

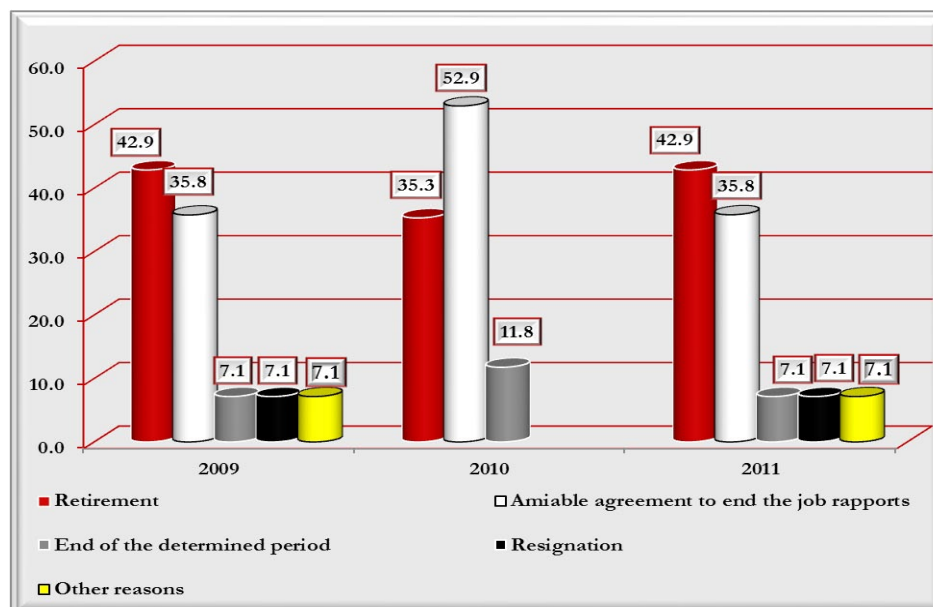
In 2011, the recruitments for a non-determined period observed the rule applicable to the entire Romanian public system, namely one new employee for seven left ones. In addition, ca number of personnel was hired for determined periods and by detachment. The evolution in the past three years of the recruitment manners for hiring temporary/permanent personnel is presented by the graph below.

Graph no. 24. Recruitments based on the manner used (%), 2009-2011



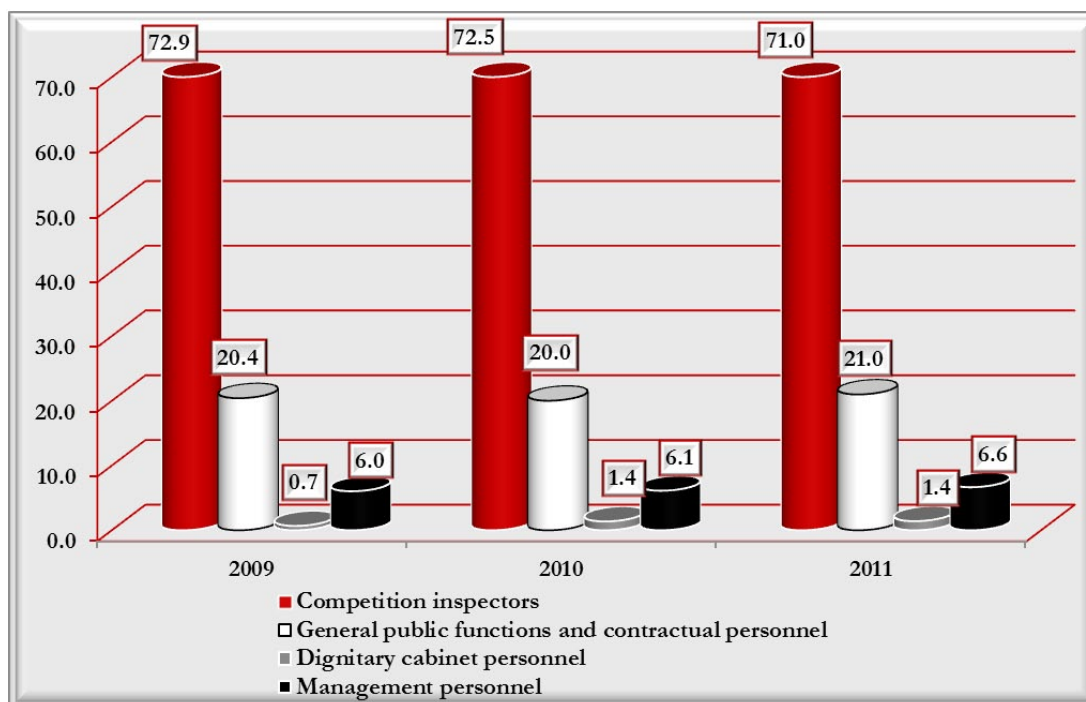
As regards the departures of the personnel of the Competition Council, the majority of the cases (around 43%) were retirements of the holders of the respective jobs, followed by the amiable end of the service reports (around 36%). The evolution in the past three years of the weight of the different types of personnel departures is presented by the graph below.

Graph no. 25. Departures from the institution based on the manner used (%), 2009-2011



As concerns the weight of the personnel categories, established based on the nature of the carried out activity (competition inspectors – legislation enforcement, personnel with general public functions and contractual personnel – administrative activity, dignitary cabinet personnel – administrative work related to the activity of the cabinets and management personnel – coordination of the different functional units of the institutions), the first place is occupied by the competition inspectors, representing around 71% of the total personnel. The evolution of the weight of the personnel categories during 2009-2011 is presented by the graph below.

Graph no. 26. The structure of the personnel based on the nature of the carried out activity (%), 2009-2011



In the case of the competition inspectors, 83.5% of the positions provided for by the personnel scheme of the institutions were occupied in 2011. The next table presents in a detailed manner the occupation rate of the competition inspector positions at the level of the Competition Council's directorates of speciality, alongside the number of positions provided for by the personnel scheme at the level of these functional units.

Table no.1. Competition inspector positions provided for by the personnel scheme and occupied positions, 2011

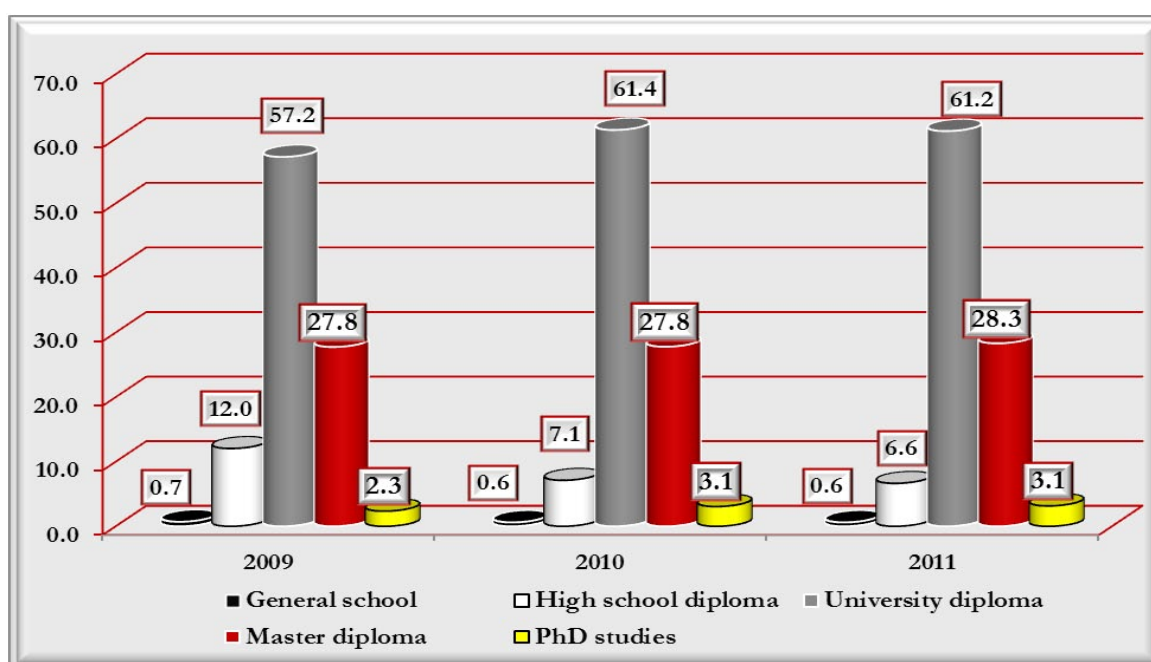
Type of functioning units	Positions provided at the directorates' level /total provided positions	Occupied positions / provided positions
Competition directorates	33.7	78.0
State aid directorates	12.4	73.3
Territorial directorate (including the territorial inspectorates)	35.4	96.5
Legal directorate	6.6	68.8
Research directorate	6.6	75.0
External direction directorate	5.3	84.6

As regards the age of the employees, for all personnel categories, the most of them are included in the 30-40 years category (this percentage varies between 30%, in the case of the personnel with general public functions, and 75%, for the dignitary cabinet personnel).

At the level of the Competition Council, in 2011, the women represented 54.9% of the total personnel compared to 45.1% percentage of the men. This structure is similar also for the period 2009-2010.

The majority of the employees of the Competition Council (around 60%) have at least one university diploma, being followed by those which graduated master courses (approximately 28%). The evolution of the level of education during 2009-2011, recorded at the level of the entire personnel of the Romanian competition authority, is presented by the graph below.

Graph no.27. The structure of the personnel based on the level of education (%), 2009-2011



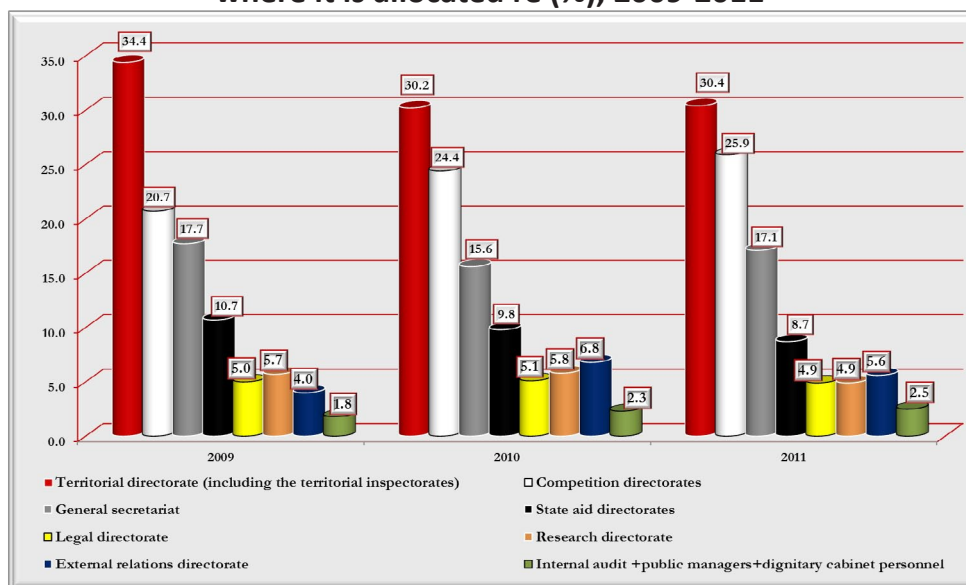
In respect to the professional education of the personnel, for all the personnel categories, the economists represent the majority, followed by the ones with legal studies. The evolution of this structure during 2009-2011 is presented by the table below.

Table no.2. Professional specialisation of the personnel based on the nature of their studies (%), 2009-2011

Professional training	The weight in the total personnel	Competition inspectors	General public functions and contractual personnel	Dignitary cabinet personnel	Management personnel
2009					
Economists	58.9	67	27.9	100	61.1
Jurists	15.7	18.8	3.3	-	22.2
Economists and jurists	1	1.4	-	-	-
Economists and another specialization	1.3	1.8	-	-	-
Jurists and another specialization	1.0	0.9	1.6	-	-
Another professional specialization	10.7	10.1	11.5	-	16.7
Medium and general studies	11.4	-	55.7	-	-
2010					
Economists	60.7	66.4	39	75	61.1
Jurists	15.6	19.2	1.7	-	22.2
Economists and jurists	1	1.4	-	-	-
Economists and another specialization	1.4	1.9	-	-	-
Jurists and another specialization	1	0.9	1.7	-	-
Another professional specialization	12.5	10.2	18.6	25	16.7
Medium and general studies	7.8	-	39	-	-
2011					
Economists	59.4	65.5	43.3	75	52.6
Jurists	16.4	19.2	3.4	-	31.6
Economists and jurists	1	1.5	-	-	-
Economists and another specialization	1.4	2	-	-	-
Jurists and another specialization	0.8	1	-	-	-
Another professional specialization	13.6	10.8	18.3	25	15.8
Medium and general studies	7.4	-	35	-	-

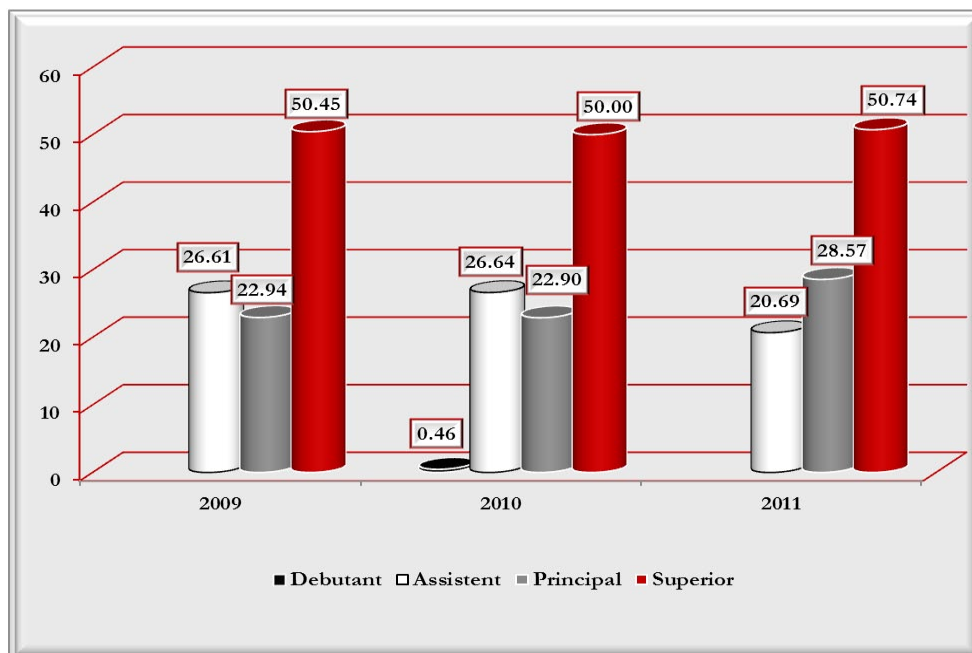
In respect to the allocation of the personnel in different types of functioning units, carrying out distinct specific activities, in 2011, the largest weights were recorded by the personnel from the territorial directorate (30.4%), the competition directorates (25.9%), followed by the general secretariat (17.1%). The evolution of this personnel repartition during 2009-2011 is presented by the graph below.

Graph no.28. The structure of the personnel based on the type of the functioning units where it is allocated re (%), 2009-2011



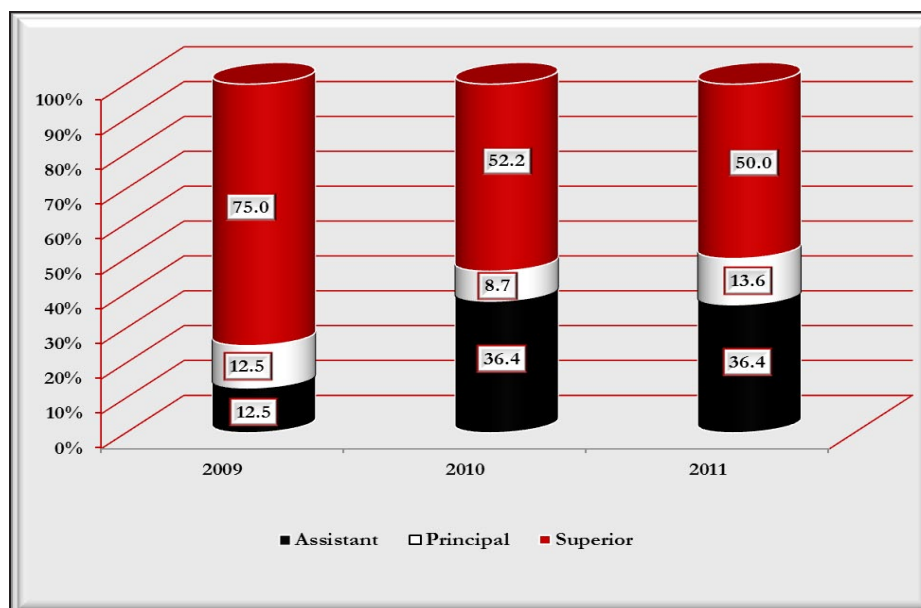
As regards the allocation of the competition inspectors based on their professional grade, during 2009-2011, at the level of the Competition Council the majority was represented by those with the professional grade of superior. On the other hand, the debutants is the lowest category, with a weight of only 0.5% exclusively in 2010. The evolution of this personnel distribution is presented by the graph below.

Graph no. 29. The repartition of the competition inspectors based on the professional grade (%), 2009-2011



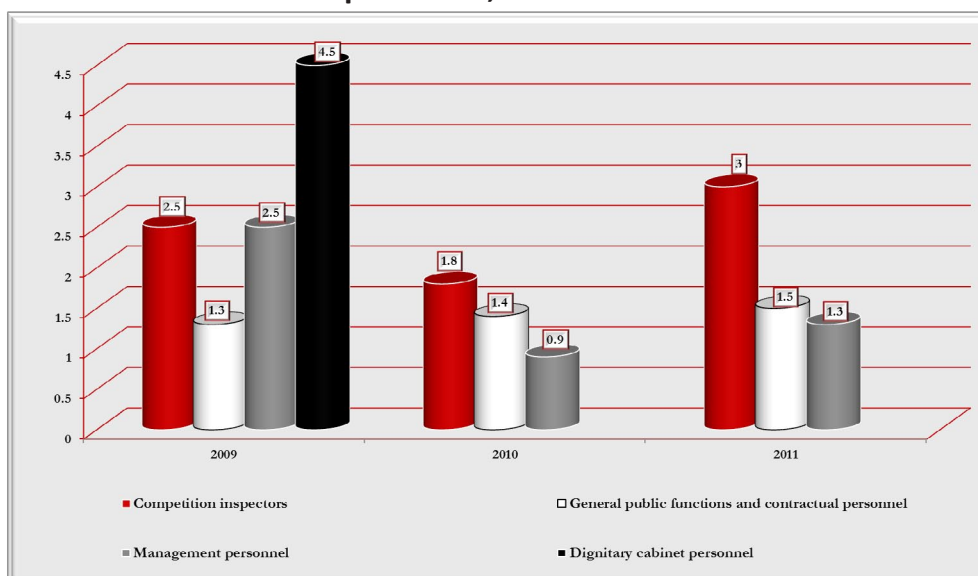
In the case of the employees with general public functions, the majority is also represented by the ones with the professional grade of superior, but their weight decreased compared to the first year of the analysed period (by 0.33%). Another aspect specific to this category is the lack of the employees with the professional grade of debutant.

Graph no. 30. The repartition of the personnel holding general public functions based on the professional grade (%), 2009-2011



As regards the professional training, in 2011 the personnel of the Competition Council graduated 21 training courses, of around RON 113,300 envisaging different fields of interest, such as: investigative technics, economic and financial analysis, communication within the public institutions, public acquisitions. Around 56% of the personnel of the competition authority benefited from these courses, situation similar to the one recorded in 2010 and 2009. For these ones, statistically on each category of personnel, the annual evolution of the average number of professional training days during 2009-2011 is presented by the graph below.

Graph no. 31. The average number of the professional training days for each category of personnel, 2009-2011



Detailed information on the human and financial resources of the Competition Council are presented in the **Statistics** section.



Chapter 6 FUTURE ACTIONS

According to the Strategy of the Competition Council for the period 2010-2014 (reviewed in 2011), the envisaged transformations in the activity of the competition authority target: efficiency, competence, transparency and cooperation.

In Romania, the performance of competition policy enforcement is still under the level recorded within the European Union. As a result, a national wide reform programme is needed also at the level of the Competition Council, as it is the main authority able to guarantee a healthy competitive environment. The envisaged key transformations will be reflected in:

- **Improving the framework of action:** Competition Council needs to adapt better its framework of action from the juridical perspective, from the competition policy, the mission, and the institutional capacity points of view, committing to attain a level of excellence within a field with an important impact.
- **A better definition of the Competition Council's mission:** a better functioning of the markets, in the interest of consumers; for achieving this objective, Competition Council must monitor on a permanent basis the functioning of the most important markets, as well as the legal framework grounding their functioning, and will identify and sanction anticompetitive practices distorting the markets; for fulfilling this aim, the resources of the institution must be used more efficiently.
- **Improving the administrative capacity/ the basic activity:** this will be transposed through the improvement of resource management; thereby the competences, the professional training and the experience of the Competition Council's personnel will be used as efficiently as possible so as to obtain high level results, comparable with the ones recorded by other competition authorities from the European Union.

The 3 priority axes and the related general objectives – defining elements of the reforming policy – are the following ones:

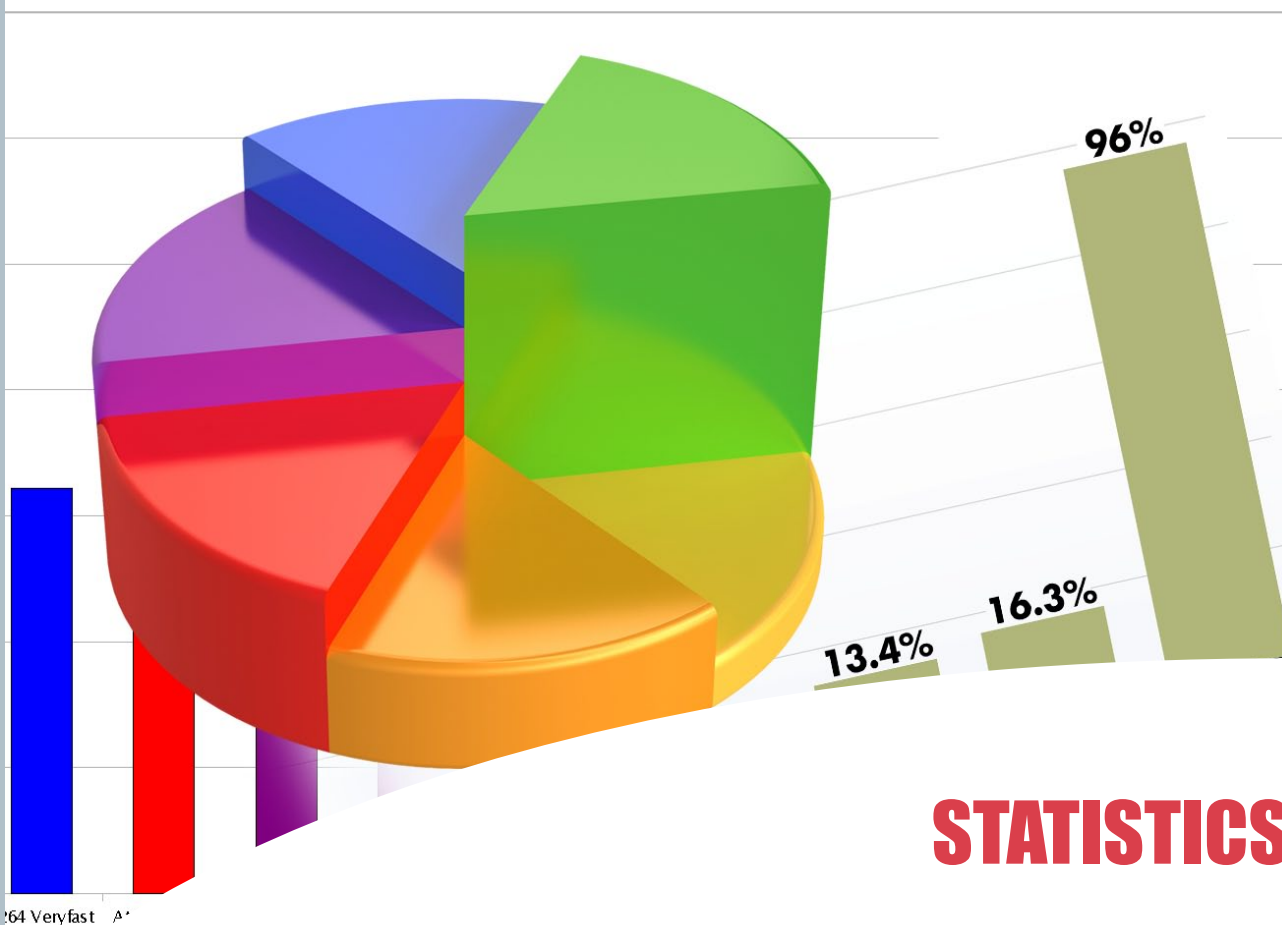
1. Obtaining performances at the level obtained by the other EU competition authorities;
 - maintaining a competitive environment in the benefit of consumers;
2. Amending the specific legislation so as to reduce the gaps compared to the most advanced EU Member States in the antitrust field;
 - Increasing the efficiency of the Competition Council's actions based on adequate legal tools;
3. Consolidation of the administrative capacity by applying a modern management of the institution;
 - Increasing the notoriety of the Competition Council in the Romanian public space by using the institution's resources at the highest level of efficiency.

All these lines of action envisage two basic objectives:

- The optimal functioning of the markets simultaneously with the development of the domestic market;
- The protection of the major public interest – as it is provided expressly for by Competition Law no.21/1996 – through monitoring, controlling and intervening on the State administrated markets, so as to stimulate competition by providing strategic services through the stock exchange mechanism (listing) or by national tenders and by decentralising certain activities in the benefit of the final consumers.

In 2012, the Romanian competition authority has certain priorities:

- As regards competition activity, a distinct unit especially dedicated to investigating the most serious infringements of the competition law –cartels - will be established and operationalized, as well as a functional advocacy unit. The attention of Competition Council will be focused towards the sectors sensible from the competition point of view, of a great importance for the economic growth such as: energy, construction of national roads and motorways, and tender procedures for implementing regional development projects.
- In the field of State aid, the role of the Inter-Ministry Council for the Application of the State aid Policy will be accentuated, so as to progressively reduce the weight of State aid in GDP, as well as to focus State aid granting preponderantly towards horizontal objectives.
- At internal level, operational procedures will be adapted and updated, so as to be in line with the new form of the Competition Law and to provide the fulfilment of the obligations of enforcing the Law on unfair competition and of those arising from the inclusion of the Railway Supervision Council.
- From an institutional capacity perspective , Competition Council will start implementing two projects:
 - *Increasing the efficiency of policy enforcement in correlation with sectoral policies*, financed by the Operational Programme Development of the Administrative Capacity, aiming at improving the national regulatory framework according to competition principles and at increasing convergence with specific EU and EU Member States legislation, at increasing the Competition Council's role in elaborating competition principles and policies and at acquiring knowledge on the best European practices in the field of competition by all interested parties, at supporting the business processes and the working procedures through high performance ITC (Information Technology and Communications), and at consolidating the administrative capacity of the Romanian competition authority.
 - *An integrated IT system interoperable with databases of the central public administration that ensures monitoring of the competitive environment*, financed through the 2007-2013 Sectoral Operational Programme "Increasing Economic Competitiveness" and which involves the development of a high performance hardware structure supporting an integrated IT system for the interoperability of the ITC systems of Competition Council with the ITC systems of the National Trade Register Office, of the National Agency for Fiscal Administration, of the National Authority for Regulating and Monitoring Public Procurement, the Ministry of Communications and Information Society/ Electronic System for Public Procurement, at the same time with developing an internal portal, with extending the existing on-line services portal available for citizens/ business environment/ public administration, as well as of an intelligent reporting system to support decision making within the Competition Council.



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I. Normative acts adopted by the Competition Council in 2011

- Instructions of 24.01.2011 on the conditions, terms and the procedure for adopting interim measures, according to art.47 of the Competition Law no.21/1996, published in the Official Gazette of Romania no.91/04.02.2011;
- Instructions of 02.03.2011 on the rules for granting access to the Competition Council's file in the cases related to art. 5, 6 and 9 of Competition Law no.21/1996, art.101 and 102 of the Treaty on the Functioning of the European Union, as well as in the economic concentration cases, published in the Official Gazette of Romania no. 189/18.03.2011;
- Regulation of 04.03.2011 for establishing and charging the fees for the procedures and services provided by Competition Law no.21/1996 and the regulations issued for its application, published in the Official Gazette of Romania no.186/17.03.2011;
- Instructions of 04.03.2011 on the manner of enforcing the competition rules for the access rules of the electronic communications sector – the general framework, relevant markets and principles, published in the Official Gazette of Romania no.197/22.03.2011;
- Instructions of 27.07.2011 amending and completing the Instruction issued for the application of art 32 of Competition Law no.21/1996, republished, with the subsequent amendments and completions, concerning the calculation of the authorising tax of the economic concentrations, published in the Official Gazette of Romania no.559/05.08.2011;
- Regulation of 19.08.2011 on the contraventions and sanctions applied by the Competition Council, published in the Official Gazette of Romania no.631/05.09.2011;
- Regulation of 07.09.2011 amending and completing the Regulation on the analysis and resolution of the complaints concerning the infringement of art. 5, 6 and 9 of Competition Law no.21/1996 and of art.101 and 102 of the Treaty on the Functioning of the European Union, published in the Official Gazette of Romania no.673/21.09. 2011;
- Instructions of 12.10.2011 amending the Instructions on the rules for granting access to the Competition Council's file in the cases related to art. 5, 6 and 9 of Competition Law no.21/1996, art.101 and 102 of the Treaty on the Functioning of the European Union, as well as in the economic concentration cases, published in the Official Gazette of Romania no.756/27.10.2011;
- Regulation of 07.10.2011 on the hearings carried out within the Competition Council and on the adoption of the decisions, published in the Official Gazette of Romania no.792/08.11.2011;
- Instructions of 06.12.2011 amending and completing the Instructions for the individualisation of the penalties for the contraventions provided by art. 51 Competition Law no.21/1996, published in the Official Gazette of Romania no.932/29.12.2011;
- Instructions of 06.12.2011 amending the Instructions for the individualisation of the penalties for the contraventions provided by art.50 and 51 Competition Law no.21/1996, published in the Official Gazette of Romania no.932/29.12.2011;
- Regulation of 22.12.2011 amending and completing the Regulation on economic concentrations, published in the Official Gazette of Romania no.23/11.01.2012;
- Regulation of 22.12.2011 amending Regulation for establishing and charging the fees for the procedures and services provided by Competition Law no.21/1996 and the regulations issued for its application, published in the Official Gazette of Romania no.10/05.01.2012.

The norms adopted by the Romanian competition authority are available at: www.competition.ro/official_documents/competition/legal_framework/regulations.

II. Enforcement of the competition legislation

Table no.3. Investigations on the possible infringement of the competition legislation initiated in 2011

No.	Manner of initiation	Type of anticompetitive practice	Incident competition legislation	Relevant market
1	ex-officio	vertical agreement	national	distribution and commercialisation of the liquefied petroleum gas (LPG) for vehicles
2		abuse of dominant position	national and Community	services of call termination services in mobile points within the individual networks of SC Orange România SA, SC Vodafone România SA, SC Cosmote Romanian Telecommunication Mobile SA, SC RCS&RDS SA
3		horizontal agreement	national and Community	the public acquisition procedure organised by the National Road Construction Company for awarding the contract "longitudinal, transversal and various road marking services provided on the national roads managed by the National Road Construction Company", for the 2nd lot - Craiova and the 6th lot - Iași
4		horizontal agreement	national and Community	the services provided by the Romanian court enforcement officers
5		horizontal agreement	national	competitive procedures (tenders and requests for offers) organised on the concession market of public works and services by the City hall of the Ion Creangă commune, Neamț County
6		horizontal agreement	national	competitive procedures (tenders and requests for offers) organised on the concession market of public works and services by the City hall of Roman city, Neamț County
7		vertical agreement	national	distribution of stockings (including socks)
8		horizontal agreement	national	public acquisition procedures organised by the Giurgiu County Council for awarding the framework contract for the service "Supply of dairy products for the 1st -8th grade pupils studying in the public and private system, as well as for the pre-schoolers from the public and private kindergartens with 4 hours normal functioning program from the Giurgiu County, for the period 2010-2014"
9		vertical agreement	national and Community	distribution of interior and metallic doors
10		horizontal agreement	national and Community	public acquisition procedures organised by SNGN ROMGAZ SA and SNTGN TRANSGAZ SA for awarding certain contracts for natural gas connections and for modernisation and maintenance works of the related facilities
11		vertical agreement	national	distribution and commercialization of LPG for vehicles
12		horizontal agreement	national	distribution and commercialization of LPG for vehicles in the counties from the Centre, West and North-West regions
13		vertical agreement	national	distribution and commercialization of LPG for vehicles in the counties from the West, Centre and South-West
14		vertical agreement	national	distribution and commercialization of steel and aluminium rimes, wheel antitheft devices, vehicle cosmetic products and other motor vehicle accessories
15		abuse of dominant position	national and Community	Registry operations for the issuers of securities
16	complaint	abuse of dominant position	national	distribution of electric energy
17		abuse of dominant position	national and Community	the pharmaceutical sector
18		horizontal agreement	national and Community	management services of the electronic and electric equipment wastes
19		actions of the public administration	national	commercialisation of stove bottled LPG
20		abuse of dominant position	national and Community	television services
21		actions of the public administration	national	the first distribution of tags in Romania
22		vertical agreement	national and Community	apparatus for processing the products for dental technical services
23		vertical and horizontal agreements	national and Community	equipment and spare parts for the energetic industry
24		vertical and horizontal agreements	national and Community	meal tickets

Table no. 4. Sector inquiries initiated in 2011

Nr crt.	Sector
1	serviciile de plăți bancare
2	bere
3	distribuția prin magazine virtuale a produselor electrocasnice și confecțiilor

Table no 5. Investigations on the possible infringement of the competition legislation finalised in 2011

No.	Year of initiation	Manner of initiation	Type of anticompetitive practice	Incident competition legislation	Relevant market	Manner of conclusion
1	2005	ex-officio	horizontal agreement and/or concerted practice concerning the withdrawal from the market of a certain product	national and Community	retail distribution of the ECO Premium gasoline	SC OMV Petrom SA, SC OMV Petrom Marketing SRL, SC Lukoil România SRL, SC Rompetrol Downstream SRL, SC MOL România Petroleum Products SRL and SC ENI România SRL were sanctioned with RON 891,729,966.
2	2008		concerted practice between competitors on tariff fixing	national	taxi services provided in Târgu-Mureș	SC Transaldea SRL, SC Royal Tours SRL, SC Siletina Impex SRL, SC Cristitaxi SRL, SC Transimpex Bravo SRL, SC Taxi Cornisa SRL, SC Transrelaxa SRL and SC Venus Taxi SRL were sanctioned with RON 963,134.
3	2009		implementation of an economic concentration prior to the issue of a Competition Council's decision	national	accounting services, accounting expertise services and fiscal and financial consultancy services	SC Asesoft Distribution SRL was sanctioned with RON 3,187,463.
4	2009		vertical agreement on selling price fixing	national	commercialization of fruits and vegetables in Bucharest	SC Interfruct SRL, SC Albinuța Shops SRL and SC Profi Rom Food SRL were sanctioned with RON 16,698,530.
5	2009		implementation of an economic concentration prior to the issue of a Competition Council's decision	national	Production and commercialization of drugs and alimentary supplements and of medical devices	SC Labormed Pharma SA was sanctioned with RON 467,081.
6	2009		vertical agreement concerning the restriction of the freedom to set the selling price	national	distribution of men fabric trousers	SC Producție Zarah Moden SRL Târgu Secuiesc and its distributors were sanctioned with RON 1,273,501.
7	2009		exports restricting vertical agreement	national and Community	drugs	Belupo Croația and SC A&G Med Trading SRL were sanctioned with RON 1,877,992.
8	2009		exports restricting vertical agreement	national and Community	drugs	Baxter AG Elveția, SC Actavis SRL, SC Farmaceutica Remedia SA and SC Softmedica SRL were sanctioned with RON 5,993,657.
9	2009		vertical agreement concerning the restriction of the freedom to set the selling price	national	commercialisation of the D&P parfumum products	D&P Parfumum and its partners were sanctioned with RON 2,112,588.
10	2009		exports restricting vertical agreement	national and Community	drugs	SC Bayer SRL, SC Sintofarm SA and their distributors were sanctioned with RON 51,522,130.
11	2009		horizontal agreement on the joint selling of the commercial rights related to football matches	national and Community	selling of broadcast rights for football events	The commitments of the Professional Football League and of the Romanian Football Association were accepted and the investigation was closed.
12	2010		tariff fixing horizontal agreement	national	taxi services provided in Baia Mare	SC Usi SRL, SC Taxi Galant SRL, SC Stotax SRL, SC Olar Rotax SRL, SC Straja Trans SRL were sanctioned with RON 21,525.
13	2010		horizontal agreement - bid rigging	national	public procurement	No sufficient evidences were discovered concerning the infringement of the Competition Law by SC Construcții Universale Serv SRL, SC Izolația SRL and SC Competent Serv SRL.
14	2005	complaint	abuse of dominant position	national	natural gas	No sufficient evidences were discovered concerning the infringement of the Competition Law by SNGN Romgaz SA.
15	2006		abuse of dominant position – refuse to grant access to its own phone network	national	mobile phone services	SC Orange România SA was sanctioned with RON 147,975,967.
16	2006		abuse of dominant position – refuse to grant access to its own phone network	national	mobile phone services	SC Vodafone România SA was sanctioned with RON 120,347,142.
17	2006		horizontal agreement	national	mobile phone services	No sufficient evidences were discovered concerning the infringement of the Competition Law by SC Vodafone România SA and SC Orange România SA.
18	2006		abuse of dominant position and agreement for restricting the access to the infrastructure	national	lending services of the connected infrastructure – pillars for sustaining the electric and communication networks	No sufficient evidences were discovered concerning the infringement of the Competition Law by SC Romtelecom SA.
19	2009		abuse of dominant position	national	cement	No sufficient evidences were discovered concerning the infringement of the Competition Law by SC Lafarge Ciment (România) SA.
20	2010		anticompetitive actions of the public administration	national	public procurement concerning catheters and medical consumables	The County Emergency Hospital Cluj infringed the Competition Law. Recommendations were formulated to the Ministry of Health.

Table no.6. Sector inquiries finalised in 2011

No.	Sector
1	wholesale of drugs
2	production, transport, distribution and supply of heating energy in Bucharest

The decisions concluding the investigations on the possible infringement of the competition legislation, as well as the reports of the sector inquiries of the Competition Council can be accessed on the website of the institution, www.competition.ro.

Table no.7. Decisions issued by the Competition Council in 2011

Type of decision	Total
Issued decisions, out of which:	99
A. Economic concentrations	36
- non-objection decisions	35
- authorising tax recalculation	1
B. Rejection of complaints, out of which:	5
- abuse of dominant position	4
- anticompetitive agreements	1
C. Sanctioning decisions, out of which:	53
- anticompetitive agreements	9
- the implementation of an economic concentration prior to the issue of a Competition Council's decision	2
- abuse of dominant position	3
- failing to supply information	39
D. Acceptance of commitments	1
E. Anticompetitive acts of the public administration	1
F. Other decisions, out of which:	3
- granting file access	1
- straightening material errors	2

The decisions of the Competition Council can be accessed on the institution's site, at: www.competition.ro/official_documents/competition/decisions.

III. Binding opinions, points of view, opinions and interventions on the issue/amending normative acts

- *Binding opinion on the draft amending proposal of the Audio-visual Law* – although the binding opinion did not provided any conditions, the Authority for the Administration and Regulation in Communications (AARC) was alerted in respect to the possible overcompensation of the Romanian Television Society, as supplier of a service of general economic interest; this draft normative act was not adopted so far;
- *Binding opinion on the draft de Government Emergency Ordinance (GEO) on the electronic communications* – the competition authority proposed the amendment of the draft normative act, so as to eliminate any possible overlap between the competences of AARC and those of the Competition Council; these proposals were introduced in the draft normative act;
- *Binding opinion on the draft GEO on the establishment of the “State’s Common Electronic Communication Infrastructure”* – the initiator of the normative act, the Ministry of Communications and Informational Society, accepted the conditions stipulated by the Competition Council;
- *Binding opinion on the draft GEO concerning the undertakings for collective investment in transferable securities and the investment managing companies* – the draft normative act did not raise any competition issues, therefore the Competition Council issued a favourable binding opinion;
- *Binding opinion on the draft GEO repealing certain positions of the Annex to GEO no.36/2001 concerning the regime of the regulated prices and tariffs established considering the opinion of the Competition Office* – the binding opinion was issued under the condition that certain principles must be set; subsequently, GEO no.56/16.06.2011 establishing the principles concerning the application of the tariffs for the general service in the railway transport of persons was adopted;
- *Binding opinion concerning the draft law amending and completing Law no. 230/2006 concerning the public lighting service* – the conditions stipulated by the binding opinion were not observed;
- *Binding opinion concerning the draft Decision of the Bucharest General Council concerning the construction of gas stations* – the binding opinion for the draft normative act was favourable, without conditions;
- *Binding opinions concerning the draft Law approving the Support agreement concluded between Romania, Nabucco International Company and Nabucco National Company in respect to the Nabucco pipe system* – the binding opinion for the draft normative act was favourable, without conditions;
- *Binding opinion on the draft GEO concerning the tender related to the certificates for the emission of greenhouse gases allocated for Romania at the EU level;*
- *2 binding opinion on the GEO establishing a contribution for the financing of health expenses (the claw-back system)* - the binding opinion was favourable, with a recommendation to the Ministry of Health to analyse with regularity the impact of the measures on the market;
- *Binding opinion on the draft Law for the application of the Criminal Procedure Code and for the amendment and completion of certain normative act containing criminal procedural provisions* – the binding opinion was favourable, under the condition to reformulate certain proposals to amend an article of Law no.11/1991 on combating unfair competition, which is in the process to be amended;
- *Point of view on the definition of relevant markets susceptible to ex-ante regulation corresponding to the termination of services in each fixed public telephone network and on the analysis of the competitive situation on the identified markets* – it was considered necessary for AARC to review the new maximum level tariffs for supplying the services on the relevant markets, the slope of their adjustment, as well as separate bookkeeping in order

to ensure the possibility of controlling if the operators practice excessive prices; AARC issued a decision on the adjustment of the tariffs;

- *Point of view on the definition of relevant markets susceptible to ex-ante regulation corresponding to the termination of services in each mobile public telephone network and on the analysis of the competitive situation on the identified markets* – it was considered necessary for AARC to review the new maximum level tariffs for supplying the services on the relevant markets, the slope of their adjustment, as well as separate bookkeeping in order to ensure the possibility of controlling if the operators practice excessive prices; AARC did not accept the Competition Council's proposals;
- *Point of view over the draft Government Decision (GD) determining the amount of the licence fee for the extension of the period of validity of licences for the use of radio frequencies in the bands of frequencies 890-915 MHz/935-960 MHz and 1722.7-1747.5 MHz/1817.7-1842.5 MHz* – there draft normative act did not included any competition problems;
- *Point of view regarding the project GEO on the awarding of public procurement in the field of defence and security* - the Competition Council's recommendations have been accepted in part;
- *Point of view concerning the draft GEO transposing Directive of the European Parliament and Council no.72/2009 amending Electric Energy Law no. 13/2007* – the point of view contained a number of comments and proposals relating, in particular, to the relationship between the National Regulatory Authority in the field of Energy (NRAE) and the Competition Council, the final draft of the GEO is expected to be the subject of a future binding opinion of the competition authority;
- *Point of view concerning the draft GEO transposing the Directive of the European Parliament and Council no. 73/2009 amending Natural Gas Law no.351/2004* – the point of view contained a number of comments and proposals relating, in particular, to the relationship between NRAE and the Competition Council, the final draft of the GEO is expected to be the subject of a future binding opinion of the competition authority;
- *Point of view concerning the draft memorandum entitled "Singing of the Support Agreement concluded between in respect to the Nabucco pipe system by Romania, Nabucco International Company and Nabucco National Company* – the draft memorandum observes the national provisions on competition and State aid;
- *Point of view concerning the draft order for the approval of the Procedure and the criteria for the evaluation and approval of collective organizations so as to take over the responsibility of attaining the minimum levels of collecting the waste resulted from batteries and portables accumulators, industrial and automotive batteries and portable accumulators, and recycling of batteries and portables accumulators, industrial and automotive batteries and portable accumulators and for approving the plan of operation for individual producers* – the analysis has not identified any issues that could affect the competitive environment;
- *Point of view on the draft GEO amending and completing Law 346/2007 concerning measures for ensuring the safety in the supply of natural gas and for the approval of the Action plan for emergency situations for the winter season 2011-2012* - the provisions of this draft act does not require any adaptations or changes in order to ensure the compliance with the legislation in the field of competition and State aid;
- *Point of view on the law amending the GO 80/2000 concerning the approval of the certificates for the products and operating materials used in road vehicles* - the "repair clause" issue in the EU was presented and a reference was made to the sector inquiry carried out by the Competition Council at that time on the motor vehicle spare parts market;
- *Point of view referred to the National Health Insurance House and to the Romanian Pharmaceutical Employers Federation on the potentially anticompetitive impact provisions contained in the Framework contract concerning the conditions of granting medical assistance within the system of health insurance for the year 2011* – the Competition Council considered

that the introduction of family pharmacies would be contrary to its own objective, since the cost borne by consumers as a result of the lack of competition might be greater than the benefits achieved through the regulatory measures – the observations were accepted;

- *Point of view transmitted to the Department for the Relationship with the Parliament on the proposal for the modification and completion of GEO no.99/2000 on the marketing of products and services* – the point of view was accepted by the Government and was introduced as part of its point of view on the legislative proposal; the proposal for this regulation has been rejected;
- *Point of view transmitted to the General Secretariat of the Senate on the legislative proposal for the modification and completion of Law no. 294/2004 concerning the Code of Consumption, GO nr. 99/2000 on the marketing of products and services, and of Law. 97/2001 on the regulating of the production, circulation and marketing of food products* – the legislative proposal is still on the agenda of the Chamber of Deputies;
- *Point of view transmitted to the Ministry of Health and to the National Health Insurance House on GEO for the modification and completion of the Health Reform Law no.95/2006 in respect to the claw-back system* – the recommendations were accepted, and the claw-back system was revaluated;
- *Point of view transmitted to the Department for the Relationship with the Parliament regarding the legislative proposal on the regulation of the marketing of breast milk substitute* - the Competition Council submitted a proposal for amending two articles so as to avoid an interpretation which would lead to a possible favouring a certain category of children entitled to benefit from the products concerned, namely the children in the care of families; although the point of view of the Competition Council was taken over by the Government and introduced in its point of view on the legislative proposal, the form adopted by the Senate does not include these proposals;
- *Information note transmitted to the Romanian Presidency on the pharmaceutical sector inquiry* - the conclusions of the inquiry were transmitted alongside the recommendations of the Competition Council concerning the National Health Programs, the lists of drugs used by the patients treated outside hospitals, as well as concerning the acquisition of the drugs used by the insured persons receiving hospital treatment;
- *Point of view transmitted to the Ministry of Health regarding the claw-back system* – the recommendations were accepted and the claw-back system was revaluated;
- *Intervention to change GEO no.109/2005 on road transportation* which, after it was modified by GEO no.74/2008, approved with amendments and completions by Law no.218/2009, affects the activity of licensed car instructors – the action was not successful;
- *Observations on the draft HG for the amendment and completion of Annex 1 of HG no.1239 approving the detailed arrangements for implementing the Public-Private Partnership law* - the observation were not accepted remarks to the Council of competition have not been taken;
- *Observations on the draft GEO for the amendment of the GEO no. 30/2006 on the verification of the procedural aspects relating to the award of procurement contracts, concession of public contracts and works contracts, and of the concession contracts of services* - Competition Council's recommendations have been taken over in part;
- *Opinion on the GEO for the establishment of temporary measures in the field of natural gas and for completing Law no.351/2004* - the Competition Council drew the attention on the potential effects of the proposed action and recommended the consideration of the draft act in the light of the provisions of Directive 2009/73/EC;
- *2 addresses containing observations and proposals requested by the Romanian Government concerning the draft Law on the promotion of the production and use of biofuels and other renewable fuels for transport* – the project contains provisions leading to the elimination of the competition on the market of biofuels production and marketing, and support measures

likely to constitute State aid, which may be instituted in accordance with the relevant Community legislation;

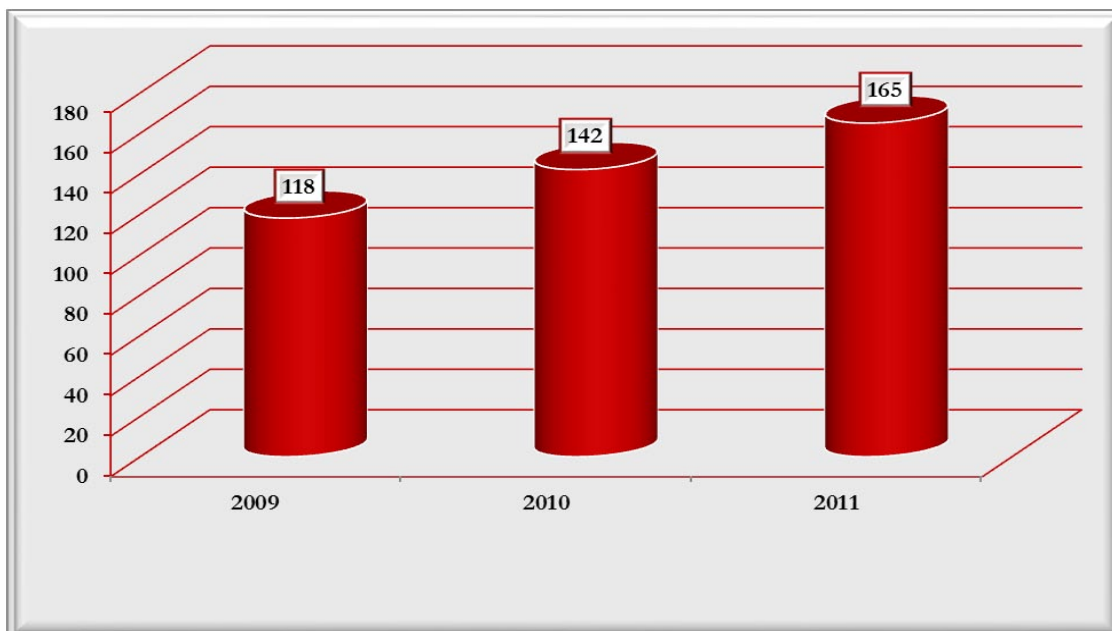
- *Observations and proposals requested by the Romanian Senate on the draft Law on temporary measures to combat the rise of fuels prices* – the draft normative act contains provisions contrary to the general principles laid down in the competition law; the Competition Council has requested some explanations and underlined the possible impact of the State aid legislation;
- *Opinion transmitted by the Ministry of Environment and Forests on the draft Law on the waste treatment* – the Competition Council proposed for the draft law to be supplemented by an obligation on local authorities to select operators through public auction; this completion has not accepted;
- *Opinion transmitted to the Ministry of Environment and Forests on the draft Order laying down the detailed rules for establishing and managing the financial guarantee for the manufacturers of electrical and electronic equipment* - the conditions imposed by the Competition Council were accepted;
- *2 recommendations transmitted to the General Secretariat of the Government, the Department for European Affairs and to the Ministry of Economy, Trade and Business Environment on the modification of GD no.14542004 on the implantation of large commercial premises* – the recommendations were accepted;;
- *Recommendation addressed to the Ministry of Health and to the National Health Insurance House as a result of the completion of the pharmaceutical sector inquiry*, with this occasion, were submitted the findings of the procedure alongside the Competition Council's recommendations on the National Health Programmes, the lists of drugs used by the patients treated outside hospitals, as well as concerning the acquisition of the drugs used by the insured persons receiving hospital treatment – the proposal to introduce referenced prices for the drugs granted within the National Health Programmes has been accepted;
- *Response to the Romanian Pharmacists Employers Association and to the Federation of the Romanian Pharmacists Employers' Associations regarding the settlement prices of the drugs granted within the National Health Programmes and their adjacent procedures* - following the intimation submitted by the two bodies, a copy of the response was sent to the Ministry of Health; the observations of the Competition Councils were accepted;
- *2 addresses transmitted to the Ministry of Administration and Interior on the draft Government Programme for supporting the pensioners "Basket of solidarity"* – the observations of the Competition Councils were accepted;
- *Opinion transmitted to the Ministry of Health concerning the settlement prices of the drugs granted within the National Health Programmes and their adjacent procedures* – the opinion of the Competition Council was accepted;
- *Opinion transmitted to the Ministry of Health on the claw-back system* - the opinion of the Competition Council led to re-examination of the regulatory proposal;
- *Opinion transmitted to the Romanian Senate on the draft Law for the completion of article. 12 of GO no. 99/2000 on the marketing of products and services* – the draft regulatory act is still under debate at the Romanian Senate;
- *Intervention carried out to the Giurgiu City Hall on the possible distortions of the markets of electronic communications services as a result of a favourable treatment granted to an undertaking in relation to its competitors* – the local public authority will act in the future as required by the competition authority;
- *Intervention to amend GEO no. 109/2005 on road transportation following its amendment by GEO no. 74/2008, approved with amendments by Law no. 218/02.06.2009* – the provisions of regulatory act concerning the activity of training in order to obtain driving the license are likely to have anticompetitive effects – the Competition Council proposals have been accepted;

- *Intervention to amend GEO no. 117/2010 amending and completing of Law no.571/2003 on the Fiscal Code and on regulating certain financial and fiscal measures and of GEO no.77/2009 on the organization and functioning of gambling* – the intervention referred to the introduction of a tax for the slot-machine gambling, which is a levy applicable for using a slot-machine by a player; the intervention envisaged the framing of the “video-lottery” and the payment exemption by the Romanian Lottery of this charge; the proposals of the Competition Council were not been accepted;
- *3 interventions to the Commission for Budget, Finances and Banks of the Chamber of Deputies, to the General Secretariat of the Government and to the Ministry of Public Finances for amending GEO no.77/2009 on the organization and operation of gambling, amended and completed by Law no. 246/2010, as well as of its Methodological application rules, approved by GD no.870/2009 and amended by GD no.823/2011* – the interventions for amending the ordinance envisaged the elimination of the provisions possibly creating a competitive advantage for the Romanian Lottery in the detriment of others market operators; accordingly, all the undertakings must receive the free association rights, or the limitation must also be applied for the Romanian Lottery; the amendments proposed to affect the application rules envisaged the experience in providing full and continuing services concerning network solutions and the establishment of a maximum tariff for the monitoring and reporting service (on-line gaming); the proposals of the Competition Council were not been accepted;
- *Intervention to the Ministry of Justice following the Judgment of the Court of Justice of the European Union of 24 May 2011 on the citizenship condition of the notaries, which envisaged the reconsideration of the legislative framework governing the profession of public notary and of bailiff* – a pilot programme is being prepared so as to liberalize the fees for certain notary procedures for one year.

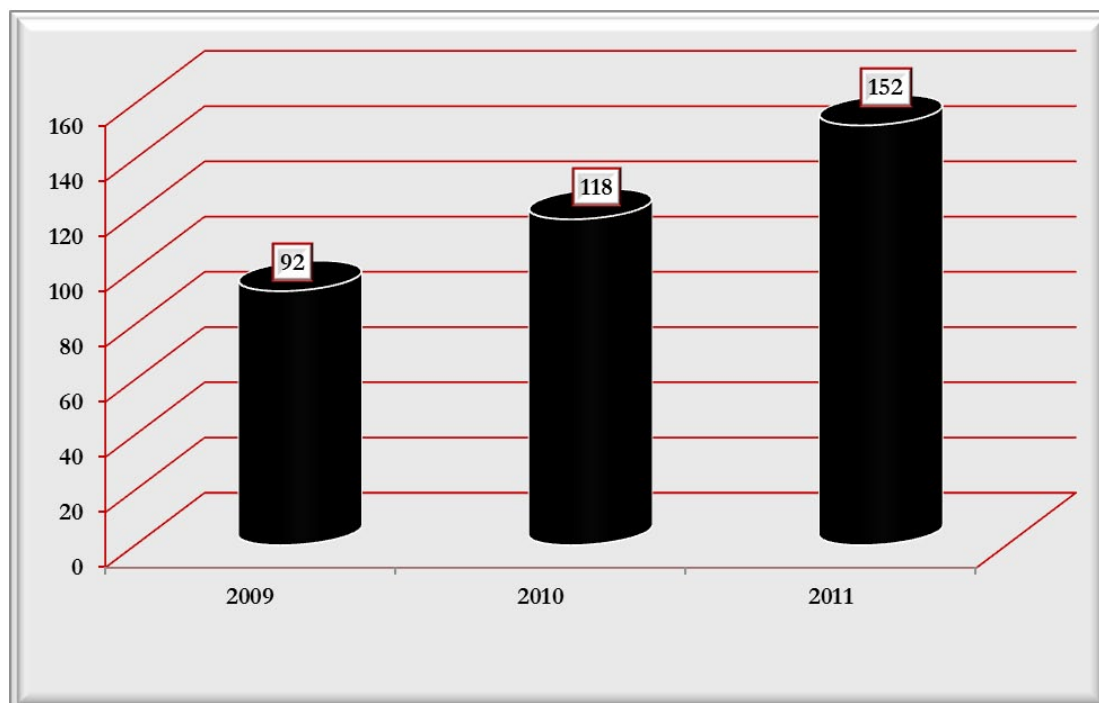
When available, the binding opinions, points of view and the interventions of the Competition Council can be accessed on the website of the institution, at: www.competition.ro/official_documents/formal_opinions.

IV. Statistics on the Competition Council's acts challenged in justice

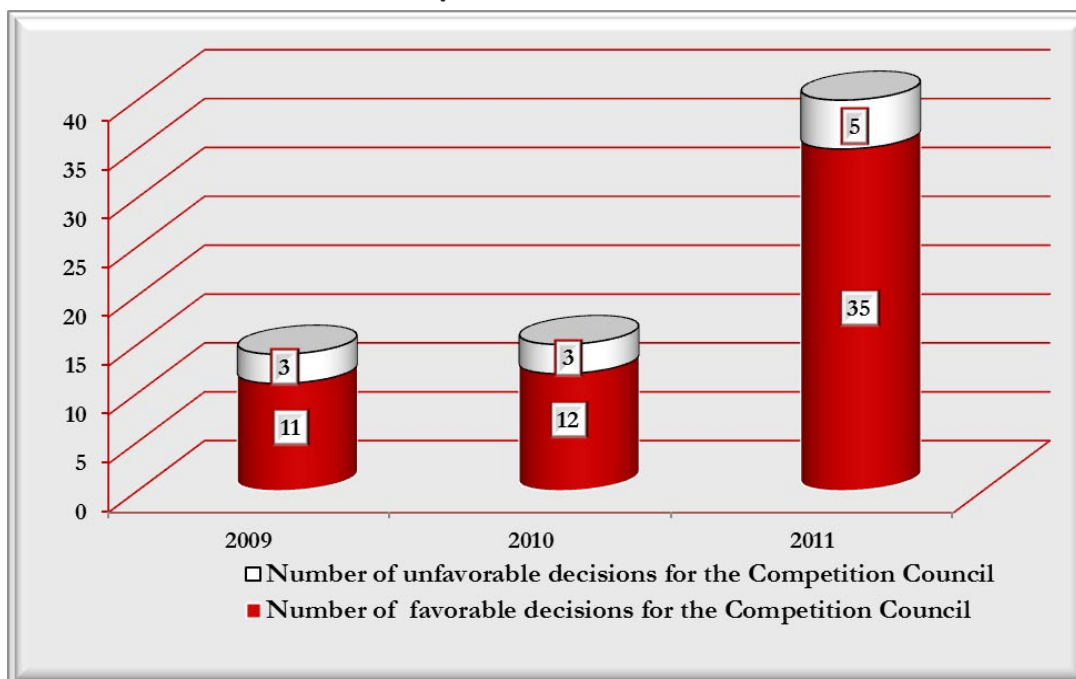
Graph no.32. Number of dossiers involving the Competition Council, 2009-2011



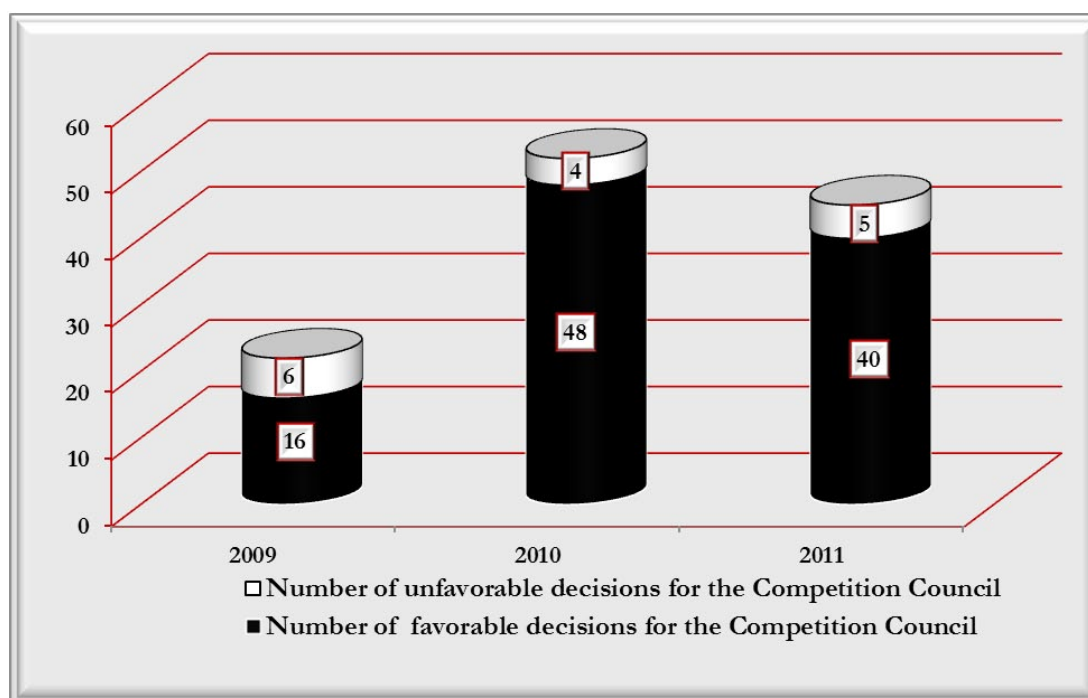
Graph no.33. Number of dossiers on competition, 2009-2011



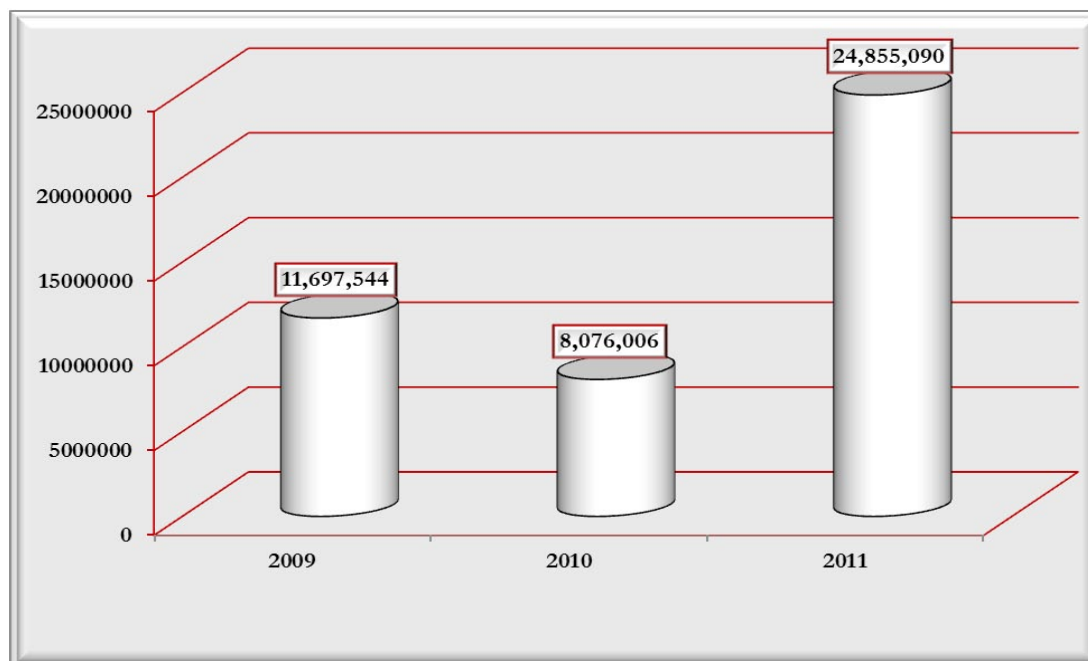
Graph no.34. The structure of the irrevocable decisions of the courts in dossiers on competition, 2009-2011



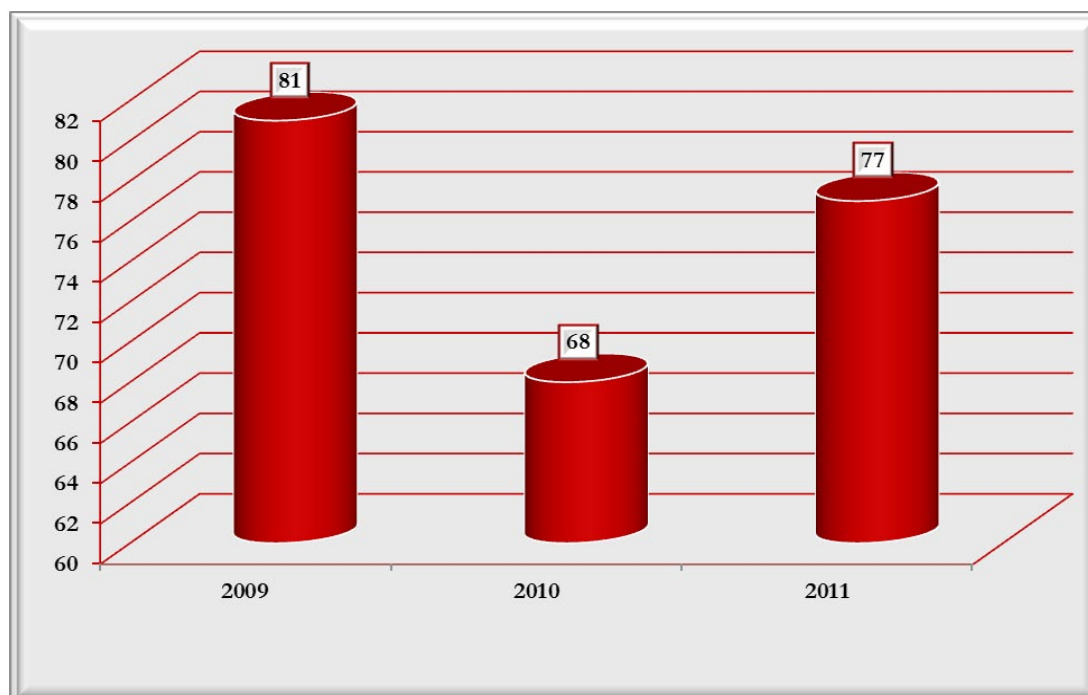
Graph no.35. The structure of the final decisions of the courts in dossiers on competition, 2009-2011



Graph no.36. The value of the fines maintained through irrevocable decisions of the courts in dossiers on competition, 2009-2011 (RON)



Graph no.37. The quantum of the fines maintained irrevocably by court decisions in dossiers on competition, 2009-2011 (%)



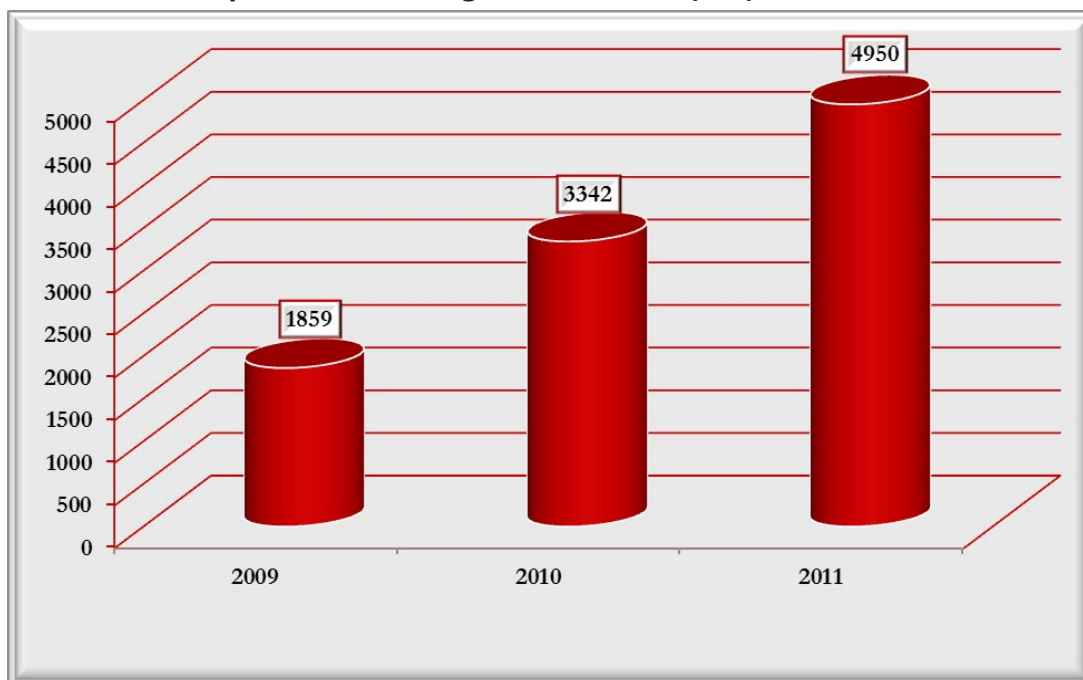
V. Formal opinions in the State aid field issued by the Competition Council in 2011

- Formal opinion on the Draft of Decision of the Inter-Ministry Committee for Financing, Guarantees and Insurances for the approval of the Norm on setting up a State aid scheme aimed to facilitate the access to finance in the present economic and financial crisis, consisting in state guarantees granted to SMEs and large enterprises in 2011;
- Formal opinion on the amendment of the State aid scheme “Support for the consolidation and modernization of the productive area through the investments undertaken by large enterprises”, approved by the Order of the minister of economy, commerce and business environment no.479/2008;
- Formal opinion on the amendment of the State aid scheme “Support for the consolidation and modernization of the productive area through the investments undertaken by small and medium enterprises”, approved by the Order of the ministry of economy, commerce and business environment no.477/2008;
- Formal opinion on the amendment of the regional State aid scheme on the capitalization of the renewable energy resources, set up by the Government Decision no.750/2008;
- Formal opinion on the Support scheme on the system of compulsory levels of electricity combined with the transaction of green certificates set up by the Law no.220/2008 for the establishment of the system for promoting the production of energy from renewable energy resources, republished, with the subsequent amendments and completions;
- Formal opinion on the amendment/prolongation of the State aid scheme entitled “Money for staffing”, approved by the Order of the minister of labour, family and social protection no.308/2009;
- Formal opinion on the amendment/prolongation of the State aid scheme “Money for training” approved by the Order of the minister of labour, family and social protection no. 309/2009;
- Formal opinion on the Information sheet regarding the State aid scheme for the “Development of the support structures for business of national and international interest – Competitiveness Poles”;
- Formal opinion on the State aid measures enclosed in the Closing Plan of the un-competitive coal mines belonging to the National Company of Coal Petroșani SA;
- Opinion on the Draft of Government Emergency Ordinance on the establishment of the “Common electronic communication infrastructure”.

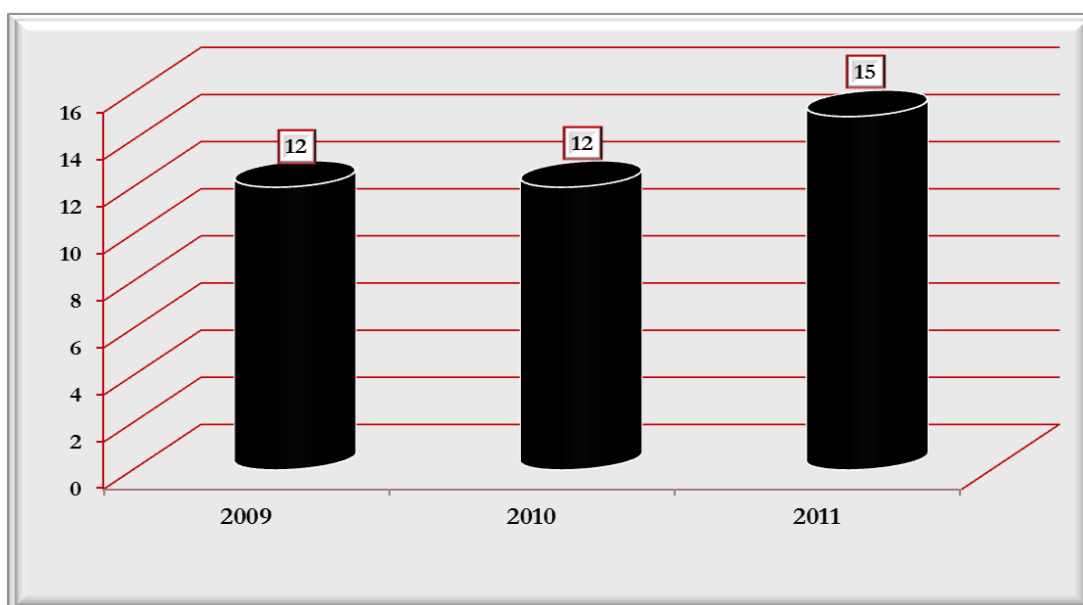
The formal opinions can be accessed at www.stateaid.ro/formal_opinions.

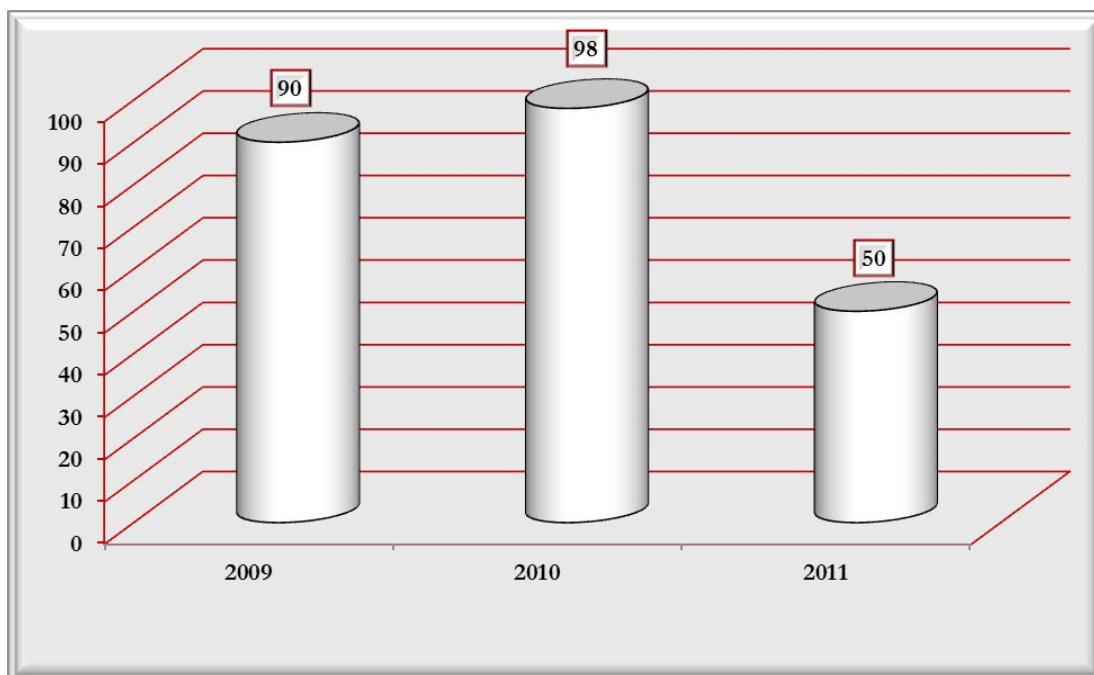
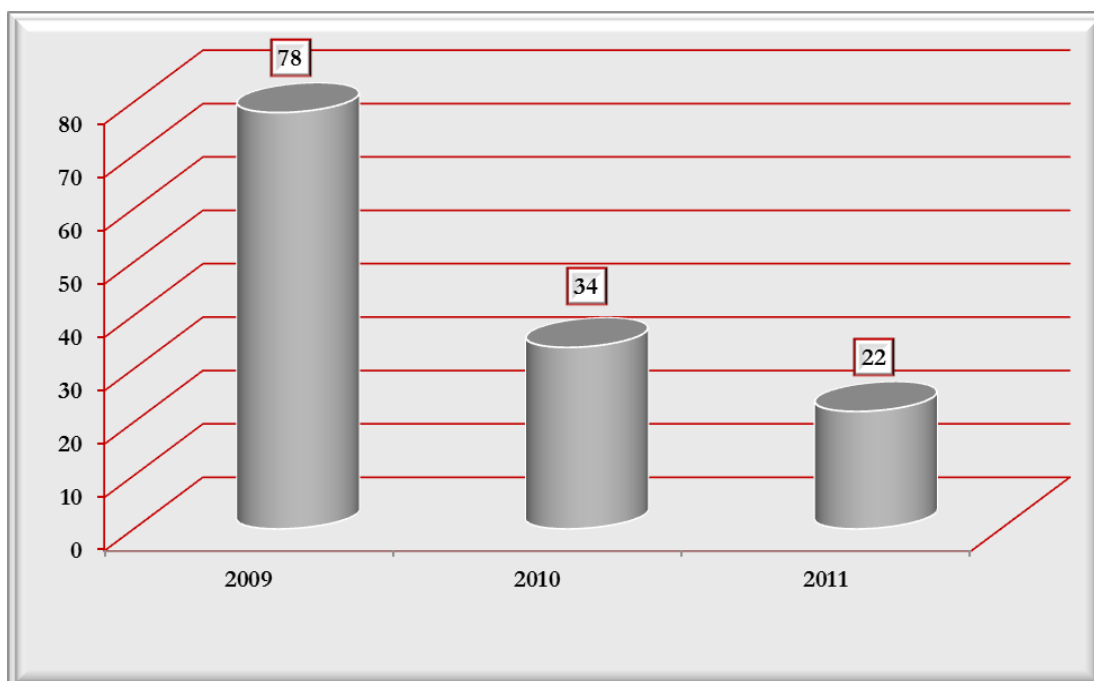
VI. Promoting actions

Graph no.36. Postings in the media (no.), 2009-2011

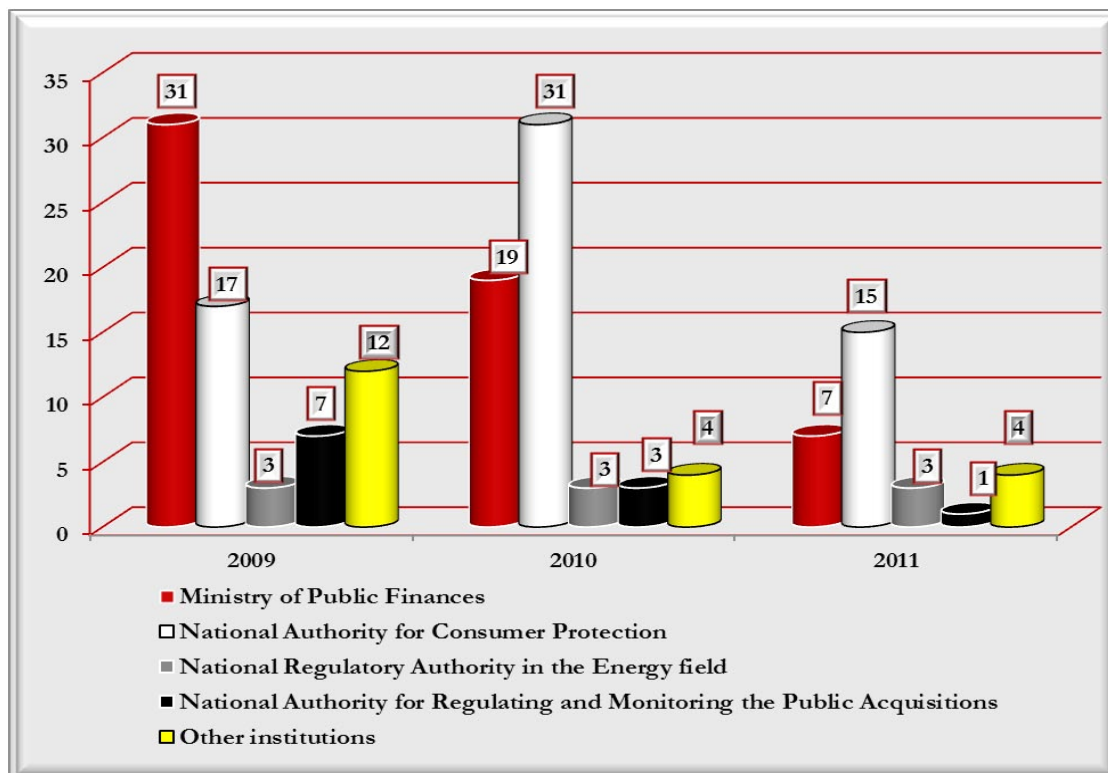


Graph no.37. Organised press events (no.), 2009-2011



Graph no.38. Issued press releases (no.), 2009-2011**Graph no.39. Requests for information of public interest (no.), 2009-2011**

Graph no.40. Petitions forwarded to other institutions (no.), 2009-2011



VII. Human and financial resources of the Competition Council

Table no. 8. The approved and the effectively granted budget - the main allocations (thousands RON), 2009-2011

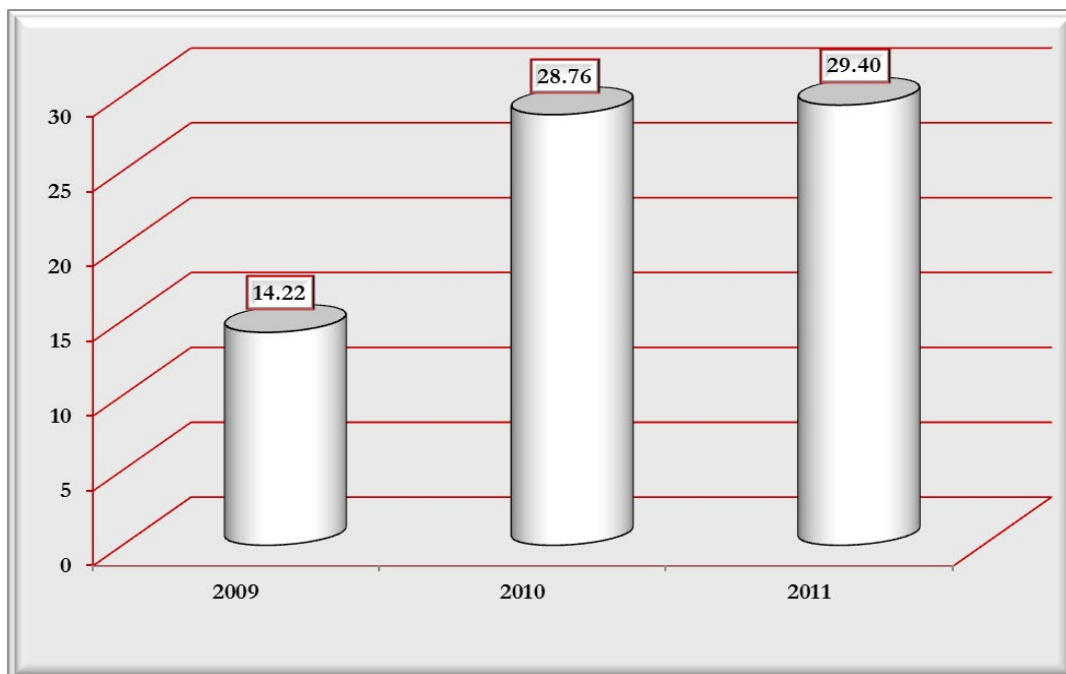
	Granted budget		
	2009	2010	2011
Total	41,887	36,640	34,328
Personnel expenses	34,667	31,641	28,838
Goods and services	4,646	4,260	4,555
Other transfers	527	-	46
Nonfinancial assets	2,047	739	889
Non-reimbursable external funds	-	-	-

Synthetic data on the approved budget of the Competition Council can be accessed at: [www.competition.ro/about us/public information](http://www.competition.ro/about-us/public-information).

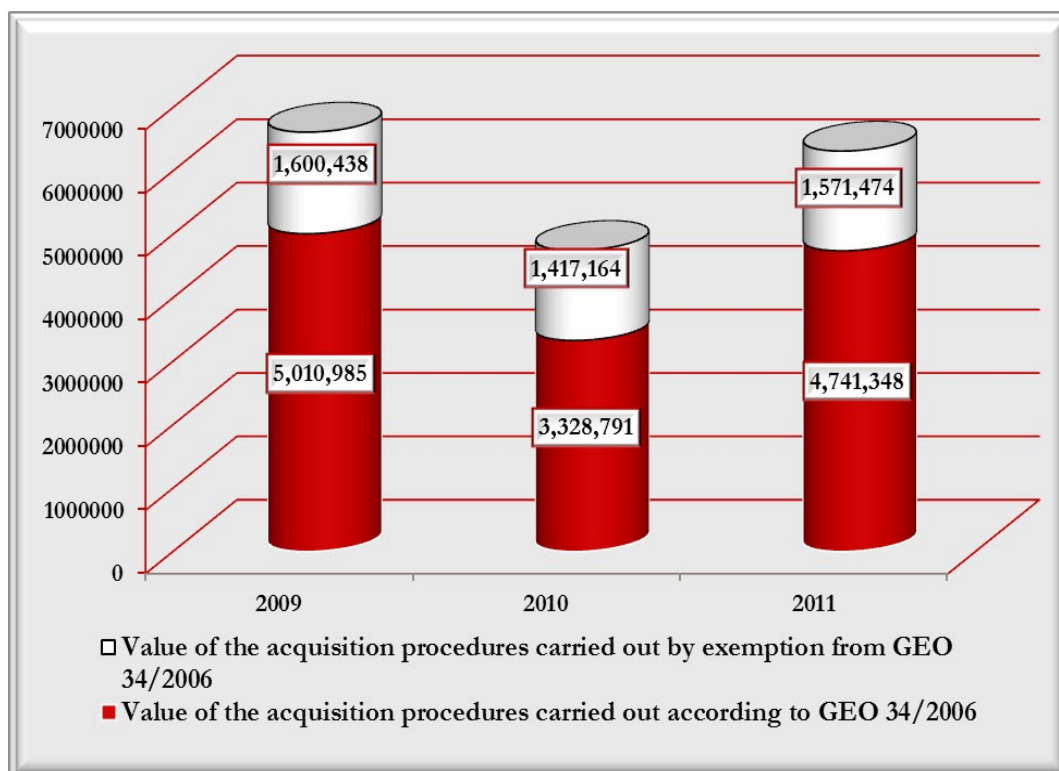
Table no.9. Budgetary execution level (%), 2009-2011

Budgetary execution level	2009	2010	2011
Total	99.43	99.05	99.64
Personnel expenses	99.82	99.74	99.57
Goods and services	96.57	97.11	99.98
Other transfers	99.99	-	99.90
Nonfinancial assets	99.10	95.79	99.72

Graph nr. 41. The weight of the number of procedures through the Electronic Public Acquisitions System in the total number of procedures carried out based on GEO no.34/2006 (%), 2009-2011



Graph nr.42. The value of the acquisition procedures (RON), 2009-2011



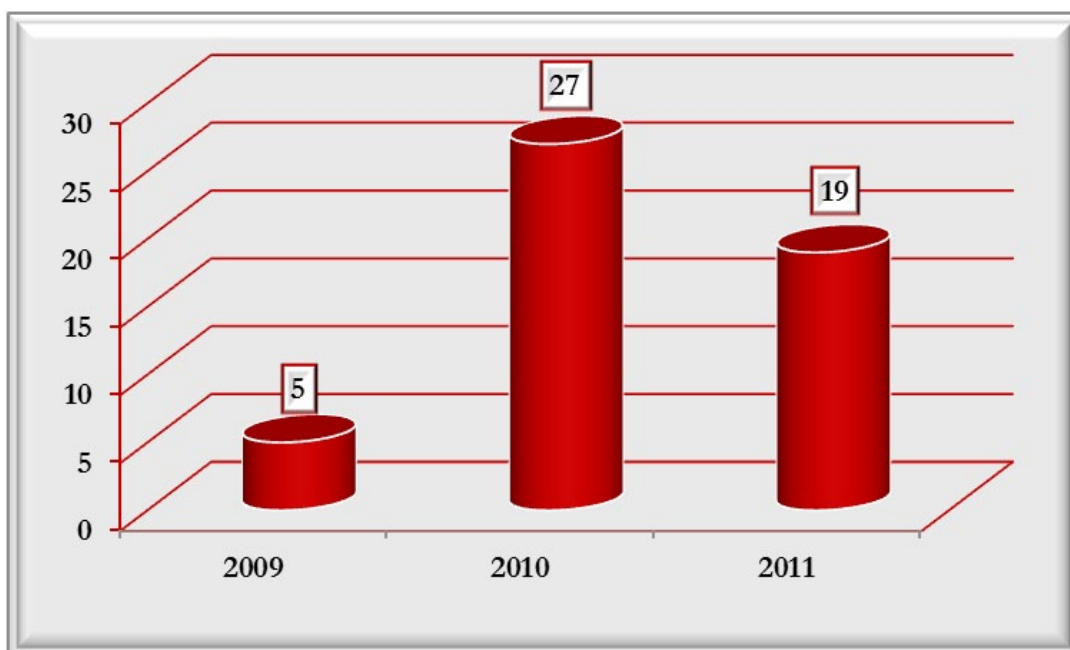
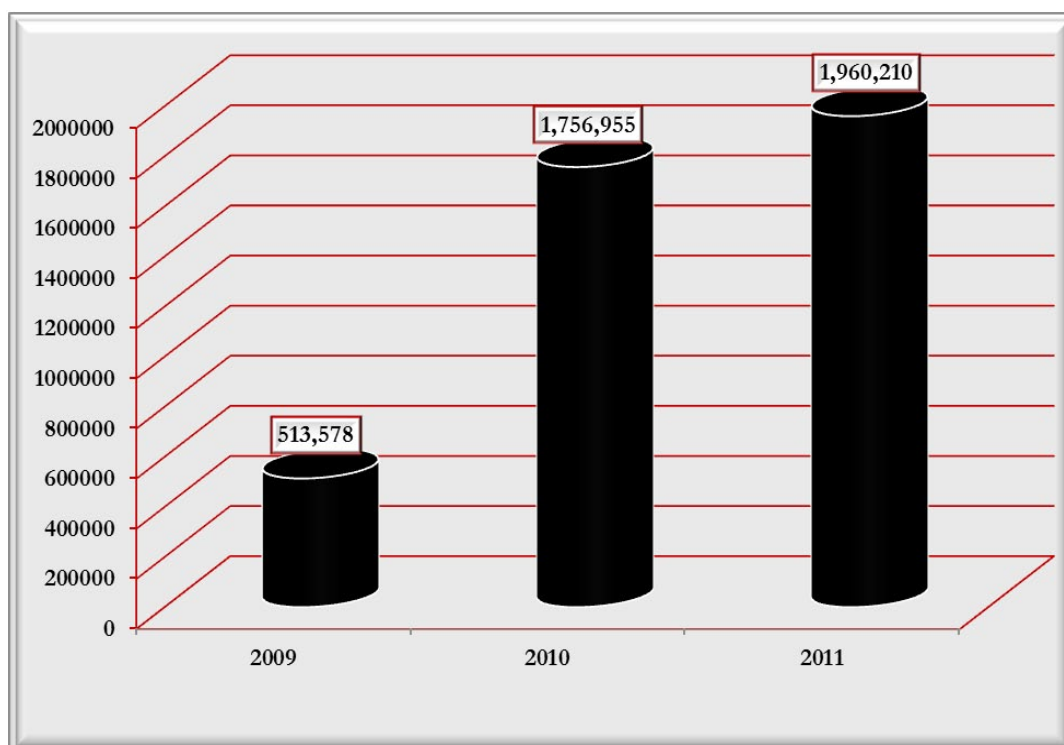
Graph no. 43. Number of the carried out projects, 2009-2011**Graph no.44. The budget allocated for the projects (RON), 2009-2011**

Table no.10. The weight of the personnel categories (%), 2009-2011

Year	Competition inspectors	General public functions and contractual personnel	Dignitary cabinet personnel	Management personnel
2009	72.9	20.4	0.7	6.0
2010	72.5	20.0	1.4	6.1
2011	72.9	20.4	0.7	6.0

Table no.11. Recruitments based on the hiring manner (%), 2009-2011

Recruitments	Weight in the total personnel	Competition inspectors	General public functions and contractual personnel	Dignitary cabinet personnel	Management personnel
2009					
For a non-determined period	33.3	50	28.6	-	100
For a determined period	25	50	-	100	-
Detachment	41.7	-	71.4	-	-
2010					
For a non-determined period	17.6	20.0	25	-	-
For a determined period	47.1	80.0	-	100	-
Detachment	23.5	-	50	-	-
Transfer	11.8	-	25	-	-
2011					
For a non-determined period	10	16.7	-	-	-
For a determined period	70	83.3	33.3	100	-
Detachment	20	-	66.7	-	-

Table no.12. Departures from the institution based on the leaving manner (%), 2009-2011

Departures from the institution	Weight in the total personnel	Competition inspectors	General public functions and contractual personnel	Dignitary cabinet personnel	Management personnel
2009					
Retirement	42.9	66.6	25	-	-
End of the determined period	7.1	-	12.5	-	-
Resignation	7.1	-	12.5	-	-
Amiable agreement to and the job rapports	35.8	16.7	50	-	-
Other reasons	7.1	16.7	-	-	-
2010					
Retirement	35.3	45.5	33.3	-	-
End of the determined period	11.8	9	33.3	-	-
Amiable agreement to and the job rapports	52.9	45.5	33.4	100	100
2011					
Retirement	42.9	66.6	25	-	-
End of the determined period	7.1	-	12.5	-	-
Resignation	7.1	-	12.5	-	-
Amiable agreement to and the job rapports	35.8	16.7	50	-	-
Other reasons	7.1	16.7	-	-	-

Table no.13. The structure of the personnel based on the age category (%), 2009-2011

Age category	Weight in the total personnel	Competition inspectors	General public functions and contractual personnel	Dignitary cabinet personnel	Management personnel
2009					
Up to 30 years	11.4	12.8	6.6	50	5.6
Between 30-40 years	38.1	42.2	29.5	-	22.2
Between 40-50 years	16.1	14.2	19.7	50	22.2
Over 50 years	34.4	30.7	44.3	-	50
2010					
Up to 30 years	8.5	8.9	6.8	50	-
Between 30-40 years	37.6	43	23.7	25	22.2
Between 40-50 years	20.3	17.8	27.1	25	27.8
Over 50 years	33.6	30.4	42.4	-	50
2011					
Up to 30 years	5.9	7.4	3.3	-	-
Between 30-40 years	38.8	41.4	30	75	31.6
Between 40-50 years	21	18.2	28.3	25	26.3
Over 50 years	34.3	33	38.3	-	42.1

Table no.14. The structure of the personnel based on the sex category (%), 2009-2011

Sex category	Weight in the total personnel	Competition inspectors	General public functions and contractual personnel	Dignitary cabinet personnel	Management personnel
2009					
Women	56.5	56.4	57.4	50	55.6
Men	43.5	43.6	42.6	50	44.4
2010					
Women	56.9	56.5	57.6	75	55.6
Men	43.1	43.5	42.4	25	44.4
2011					
Women	54.9	55.2	55	50	52.6
Men	45.1	44.8	45	50	47.4

Table nr.15. The structure of the personnel based on the education level (%), 2009-2011

Education level	Weight in the total personnel	Competition inspectors	General public functions and contractual personnel	Dignitary cabinet personnel	Management personnel
2009					
General school	0.7	-	3.3	-	-
High school diploma	12	-	59	-	-
University diploma	57.2	67.9	24.6	50	38.9
Master diploma	27.8	29.8	11.5	50	55.6
PhD studies	2.3	2.3	1.6	-	5.5
2010					
General school	0.6	-	3.3	-	-
High school diploma	7.1	-	35.6	-	-
University diploma	61.4	66.8	47.5	75	38.9
Master diploma	27.8	30.4	11.9	25	50
PhD studies	3.1	2.8	1.7	-	11.1
2011					
General school	0.6	-	3.3	-	-
High school diploma	6.6	-	31.7	-	-
University diploma	61.2	66	50	75	42.1
Master diploma	28.3	31	13.3	25	47.4
PhD studies	3.1	3	1.7	-	10.5

Table no.16. The structure of the personnel based on the type of the functional unit where it is allocated (%), 2009-2011

The type of the functional unit	Weight in the total personnel	Competition inspectors	General public functions and contractual personnel	Dignitary cabinet personnel	Management personnel
2009					
Competition directorates	20.7	25.8	4.9	-	16.7
State aid directorates	10.7	12.8	3.4	-	11.1
Territorial directorate (including the territorial inspectorates)	34.4	44	6.6	-	16.7
Legal directorate	5	6	1.6	-	5.6
Research directorate	5.7	6.4	1.6	-	11.1
External relations directorate	4	5	-	-	5.5
General secretariat	17.7	-	80.3	-	22.2
Internal audit	0.3	-	1.6	-	-
Public managers	0.7	-	-	-	11.1
Dignitary cabinets	0.7	-	-	100	-
2010					
Competition directorates	24.4	30	6.7	-	22.2
State aid directorates	9.8	12.1	1.7	-	11.1
Territorial directorate (including the territorial inspectorates)	30.2	40.2	1.7	-	11.1
Legal directorate	5.1	6.1	1.7	-	5.6
Research directorate	5.8	6.5	1.7	-	11.1
External relations directorate	6.8	5.1	11.9	-	11.1
General secretariat	15.6	-	72.9	-	16.7
Internal audit	0.3	-	1.7	-	-
Public managers	0.7	-	-	-	11.1
Dignitary cabinets	1.3	-	-	100	-
2011					
Competition directorates	25.9	31.5	6.6	-	31.6
State aid directorates	8.7	10.8	1.7	-	10.5
Territorial directorate (including the territorial inspectorates)	30.4	40.9	3.3	-	10.5
Legal directorate	4.9	5.4	1.7	-	10.5
Research directorate	4.9	5.9	1.7	-	5.3
External relations directorate	5.6	5.4	6.7	-	5.3
General secretariat	17.1	-	76.6	-	15.8
Internal audit	0.3	-	1.7	-	-
Public managers	0.7	-	-	-	10.5
Dignitary cabinets	1.5	-	-	100	-

Table no.17. The structure of the competition inspectors based on the professional grade (%), 2009-2011

The type of the functional unit	Weight in the total personnel	Debutant	Assistant	Principal	Superior
2009					
Competition directorates	25.7	-	39.7	26	18.2
State aid directorates	12.8	-	10.3	22	10
Territorial directorate (including the territorial inspectorates)	44	-	19	30	63.6
Legal directorate	6	-	13.8	6	1.8
Research directorate	6.4	-	8.6	10	3.6
External relations directorate	5	-	8.6	6	2.7
2010					
Competition directorates	29.9	-	40.4	32.7	23.4
State aid directorates	12.1	-	10.5	18.4	10.3
Territorial directorate (including the territorial inspectorates)	40.2	-	19.3	26.5	57.9
Legal directorate	6.1	-	14	6.1	1.9
Research directorate	6.5	100	7	10.2	3.7
External relations directorate	5.1	-	8.8	6.1	2.8
2011					
Competition directorates	31.5	-	38.1	39.7	24.3
State aid directorates	10.8	-	4.8	19.0	8.7
Territorial directorate (including the territorial inspectorates)	40.9	-	26.2	20.7	58.3
Legal directorate	5.4	-	11.9	6.9	1.9
Research directorate	5.9	-	9.5	6.9	3.9
External relations directorate	5.4	-	9.5	6.9	2.9

Table no.18. The structure of the personnel with general public functions based on the professional grade (%), 2009-2011

The type of the functional unit	Total public servants with general functions	Assistant	Principal	Superior
2009				
Competition directorates	8.3	-	-	11.1
Territorial directorate (including the territorial inspectorates)	8.3	33.3	-	5.5
General secretariat	70.8	66.7	100	66.7
Internal audit	4.2	-	-	5.6
Public managers	8.3	-	-	11.1
2010				
Competition directorates	13	22.2	-	8.4
Territorial directorate (including the territorial inspectorates)	13	-	-	25
General secretariat	60.9	66.7	100	50
Internal audit	4.3	-	-	8.3
Public managers	8.7	11.1	-	8.3
2011				
Competition directorates	13.6	25	-	9.1
Territorial directorate (including the territorial inspectorates)	4.5	12.5	-	-
External relations directorate	9.1	-	-	18.2
General secretariat	59.1	50	100	54.5
Internal audit	4.5	-	-	9.1
Public managers	9.1	12.5	-	9.1



COMPETITION COUNCIL

1st Piața Presei Libere, sector 1, Bucharest, Postal code 013701

Tel: 021.31.81.198, 021.31.18.11.99, **Fax:** 021.31.84.09

www.competition.ro

E-mail: presedinte@consiliulconcurente.ro, presa@consiliulconcurente.ro