

WORLD TRADE ORGANIZATION

WT/WGTCP/W/132
29 July 1999

(99-3206)

**Working Group on the Interaction
between Trade and Competition Policy**

Original: English

COMMUNICATION FROM ROMANIA

The following communication, dated 8 June 1999, has been received from the Permanent Mission of Romania with the request that it be circulated to Members.

I. COOPERATION AND COMPETITION

The development of international trade requires a more efficient enforcement of the competition rules, especially now, when the transnational anti-competitive practices gain more and more space. The international cooperation in the competition field aims at obtaining a better coordination of the competition policies promoted by the partners and favouring the cooperation where possible, even if it is limited only to the exchanges of non-confidential information and to the refusal of authorizing the commercial information dissemination.

The cooperation would permit the use of such instruments as positive comity, by which a country can ask another country to take action when the incriminated practice falls under the jurisdiction of the second country but it prejudices the major interests of the first one. At the same time, the cooperation would lead to the adoption of certain provisions regarding the bilateral notification of the transaction. The cooperation in the late stage would aim at coordinating the countervailing measures of anti-competitive practices.

The cooperation is not the only means to avoid the contradictory opinions because the parties preserve their independence of analysis and decision-making, but it also favours, no doubt, a more efficient enforcement of the competition legislation by the involved parties and reduces the risk of adopting contradictory decisions.

The objectives of cooperation in the competition field could follow such aspects as:

- promoting the competition on the international arena;
- guaranteeing that the restrictive practices neither annul nor affect the advantages resulted from suppressing the tariff and non-tariff barriers;
- developing and enhancing the efficiency of international trade by protecting the competition;
- promoting and protecting the social welfare, in general, and consumers' interests, in particular.

In order to put in practice the above-mentioned objectives, the undertakings should refrain themselves from two main anti-competitive practices: the horizontal restraints and the abuse of dominant position.

As from the horizontal restraints, the undertakings should avoid concluding price-fixing agreements, inclusively the export and import price-fixing, the agreements of sharing the markets and clients, the allocation by quota of sales and production, the joint actions with compulsory character, as concerted refusal of selling, the restraint of access on the market with a substantial impact on competition.

To reach these objectives, it is necessary to enforce some measures, either at the state level or at the international level. Such measures could be manifested in:

- setting up the consulting procedures by which a state could consult other states concerning the control of anti-competitive practices;
- controlling the anti-competitive practices, the states having the obligation to guarantee a fair, equitable and non-discriminatory treatment, the transparency of legislation and to respect the confidentiality of commercial information;
- setting up certain procedures at the state level that would make available the necessary information provided by undertakings, as well as drawing up mechanisms that would favour the exchange of information referring to these practices, at regional and sub-regional level;
- prevention by the state of anti-competitive practices which fall under its competence, especially when it is demonstrated that these practices prejudice the international trade;
- disseminating the state experience to those who want to develop or improve their systems in this field;
- providing public information or, where the legislation allows, other information necessary to that state interested in efficiently controlling the anti-competitive practices.

II. THE ROMANIAN EXPERIENCE

For the Central and Eastern European countries, the competition rules play an important role when enforcing the European agreements as well as the pre-accession strategy of these countries, adopted by the EC. Therefore, it can be estimated that the removal of the barriers, which affect the trade between states, should be sustained by the enforcement of legislation in the competition field. This legislation should guarantee that the barriers removed by the public authorities are not replaced with other barriers of private undertakings having the same effect as the former.

The competition policy is one of the fundamental elements and a main pivot of the integration of Romania into the multilateral trading system, as it is regulated by the World Trade Organization.

In the commercial field, the increase of freedom of action by eliminating formal and informal barriers does not imply only deregulation. In addition, it is necessary to properly regulate the behaviour of undertakings and state, as an economic agent. The commercial liberalization and

competition consolidation must be coordinated with all the efforts necessary to sustain the cooperation at the state level among the competition authorities.

When the effect of commercial barriers is mitigated or they are removed, the temptation of association of undertakings to dominate the market, to control the competition by private means or to abuse their dominant position increases.

It is obvious that in the case of EC countries and Romania the market monopoly incumbs to great producers. Within the integration process in the regional and international commercial system, the competition environment is characterized by the free game of strategic alliances in the form of acquisitions and mergers aiming at maximizing their profits. Although such a behaviour is an accepted business strategy, it is desirable to create an environment that would permit a control of this international business strategy in order to avoid the generation of any abuse of dominant position, appropriation of revenues obtained as a result of such an abuse and decrease in overall welfare.

It is well known that the objectives of the trade policy can contrast with those of the competition policy. However, for some reasons, this is especially valid in the case of the economies in transition, where the pressures to raise revenues, to protect specific industries (mainly "national champions"), or to restrict the consumption of specific goods are much stronger.

At the same time, most of the former socialist economies are becoming more and more involved in dealing with transnational corporations. On the one hand, these countries badly need foreign direct investment and, therefore, they are ready to adopt measures facilitating the entry of big corporations. On the other hand, the competition rules are the same for everybody; but the young national competition authorities have not the necessary expertise in dealing with multinational companies, especially in the context of the privatization process. There is a consensus on the danger of transforming a state monopoly into a private one.

This is why the Romanian Competition Council considers that an issue to be taken into consideration could be the international anti-competitive and restrictive business practices of transnational corporations. This could enhance national authorities' ability to create and protect competition on the domestic market.

Taking into account the particular interest of competition law and policy issues, the influence upon the privatization process and the increase of economic efficiency, it is very important to strengthen the international cooperation in different forms among the involved authorities.

III. RELEVANT FACTS

Romania has already taken a reasonable number of administrative decisions, especially in the recent period.

In 1998, Competition Council analysed 257 cases compared to 171 in 1997.

The table below presents the evolution of the cases worked out by the Romanian Competition Council within the period 1 February 1997 (the date of coming into force of the Competition Law) and 31 December 1998:

Analysed cases	1997	1998
Agreements, decisions, concerted practices (Article 5) and abuse of dominant position (Article 6)	72	82
Economic concentrations (Article 11)	10	50
Requests for advice	41	57
Viewpoints and different requests for clarifications	19	7
Other	29	41
Total	171	237

The development of the liberalization process of the Romanian economy as a result of enforcing the competition legislation places our country on the global trends. In consequence, the cases analysed by the Romanian Competition Council underline an increased concentration of national and foreign companies. This state of facts is pointed out by the large number of notifications for authorization of such transactions - 50 cases in 1998 compared to only 10 cases in 1997. Another business practice that falls under the competition law and has a significant impact upon the competition environment is the abuse of dominant position - 27 cases in 1998 and 6 ongoing cases.
