

Energy & Resources

Industry News

Competition Council releases report on its inquiry of the Romanian electricity market

On March 3, 2015, the Competition Council published its report on the preliminary results of its inquiry of the Romanian electricity market, conducted during 2008 – 2013 (the "Report"). The Report may be accessed at the following [address](#).

The Competition Council's analysis focused mainly on identifying the features of the domestic energy market, defining the relevant markets in the energy system, establishing the market shares of the participants on the market, existing barriers to entry, the interconnection links with neighbouring countries (with impact on the electricity export), as well as identifying the main competition constraints for participants on the market.

1. Existing relevant markets

Based on the features of the energy system, the special quality of electricity that has a seasonal character and the activities conducted by the companies active in this sector, the Competition Council has identified the existence of four relevant product markets, respectively:

- The electricity generation and trade market;
- The electricity supply market;
- The electricity transmission market;
- The electricity distribution market.

As regards the geographic market, due to the impossibility of storing electricity and the need to constantly balance production with consumption, the Competition Council has established that these markets have a national character, represented by the Romanian territory, with the exception of the electricity distribution market, which is a local market, represented by the geographical area where each distribution company operates, according to the licenses granted by the Regulatory Authority for Energy.

2. The main competition issues identified by the Competition Council

After analysing the relevant markets mentioned above, the Competition Council has pointed out several competition issues, such as:

- Suspected dominance of state-owned electricity producers

The Report underlines the fact that the most important energy producers, which together hold a monopoly position with a combined market share of approximately 85 – 90%, have the Romanian State as main shareholder. Furthermore, from the analysis of the relevant legislation, the Competition Council has concluded that the Romanian State, through the relevant ministry, has management rights over the activity of the respective energy producers.

Therefore, the Competition Council has determined that prior to 2013 the relevant ministry did not have a management right over the current activity and the right to determine the commercial behaviour of the economic operators in its portfolio. In contrast, after 2013 following the transfer of the energy companies to the portfolio of the Energy Department, the latter has received the management right over the economic operators with state-owned capital active in its areas of coordination. The Competition Council considered that this right equals the control right the mother company has in a company group.

We mention that on January 28, 2015, the Energy Department was abolished and its attributions and patrimony were taken over by the Ministry of Energy, Small and Medium Enterprises and Business. The new structure has however also taken over the attribution of "*exercising all rights arising from the state's quality of shareholder regarding the management, restructuring, privatization, reorganization and, if the case, liquidation of the national corporations, national companies and other companies in the field of production, distribution and supply of electricity and heat, as well as the field of exploitation, processing and evaluation of energetic mineral resources: coal, uranium, oil and gas, as well as their subsidiaries*".

- The necessity of eliminating the legislative interdiction concerning the export of electricity

The Competition Council has underlined that the provisions of the Electricity and Natural Gas Law No. 123/2012 that force market participants to conclude *wholesale* transactions solely on the centralized national markets (therefore to supply internally the entire amount of energy produced) may be interpreted as an interdiction for the Romanian energy producers to export. The Competition Council proposes the interpretation of the mentioned piece of legislation in the sense that it allows the energy producers to export their produced energy directly and recommends the elimination of this limitation.



- **The necessity of introducing financial instruments**

The Competition Council also notes the necessity of introducing financial instruments specific to the energy market (i.e. difference contracts, contracts with option) in order to help operators manage the financial risks generated by any potential inconsistencies that may appear at a certain moment between demand and supply.

- **Existing transmission tariffs may cause distortions on the trading market**

The Competition Council has reached the conclusion that the sale price of energy is directly influenced by the regulated transmission tariffs. In this context, the existence of transmission tariffs regulated at a local level (as this is the current situation) is not justified given the national character of the electricity transmission market and leads to an unjustified segmentation of the market which brings no benefits for the consumers.

3. The start of individual investigations

Following its sector inquiry of the energy market, the Competition Council has ordered the beginning of two individual investigations regarding possible breaches of the Competition Law no. 21/1996, as follows:

- (i) An investigation regarding the potential breach of Article 5 paragraph (1) of the Competition Law by the long term agreements concluded between **Hidroelectrica SA and some of its clients**;
- (ii) An investigation regarding the potential breach of Article 8 paragraph (1) of the Competition Law by **the Regulatory Authority for Energy**, considering that certain regulations issued by the authority may be viewed as discriminatory and may create distortions on the electricity generation and trading market.

If you have any questions regarding the amendments, or require our assistance in assessing your potential exposure, please do not hesitate to contact us.

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