

## 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.

[Alexandru Reff](#)

Attorney-at-law  
+40 21 207 52 48

[Florentina Munteanu](#)

Attorney-at-law  
+40 21 207 52 75

[Andrea Grigoras](#)

Attorney-at-law  
+40 21 207 98 16



For further information please contact us at:  
[Romania@deloittece.com](mailto:Romania@deloittece.com) or visit the web page  
[www.deloitte.com/ro/tax-alerts](http://www.deloitte.com/ro/tax-alerts)

This Alert is provided as a guide only and should not be construed as advice. Professional tax/legal advice should be sought before acting upon any of the points raised in this document.

This publication contains general information only, and none of Deloitte Touche Tohmatsu Limited, any of its member firms or any of the foregoing's affiliates (collectively the "Deloitte Network") are, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your finances or your business. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/ro/about](http://www.deloitte.com/ro/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte has in the region of 200,000 professionals, all committed to becoming the standard of excellence.

Reff & Associates SCA is an independent law firm member of Bucharest Bar and represents Deloitte Legal in Romania. Deloitte Legal means the legal practices of Deloitte Touche Tohmatsu Limited member firms or their affiliates that provide legal services. Visit the global Deloitte Legal website <http://www.deloitte.com/deloittelegal> to see which services Deloitte Legal offers in a particular country.