
MEASURES FOR STIMULATING COMPETITION ON MOBILE SERVICES MARKET IN ROMANIA TO MAXIMIZE BENEFITS FOR END USERS

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Abstract:

In the last years, the market of mobile services in Romania had a huge success; the number of users of this type of services is constantly growing. The interest of the investors who were encouraged by statistics and have recently appeared on the market shows that Romanians are leaders in mobile services and that people are very attached to their mobile devices. ANCOM – the National Authority for Administration and Regulation in Communications) is the institution governing the mobile services market in Romania which establishes the rules and ensures that the market players comply with these regulations. Its mission is to ensure arbitrage on the communications market and genuine competition for the benefit of users. The major objectives of this authority are: to promote competition, protect the interests of users, the use of the limited resources, encourage efficient investment in infrastructure, promote innovation. To achieve these objectives, the regulatory activity in the communications sector is based on the following principles: need, opportunity, proportionality, obligation, technological neutrality, transparency, predictability, stability and resource efficiency.

Keywords: *stimulating competition, social welfare, regulation, mobile services market*

Mobile services market in Romania functions as an oligopolistic structure, characterized by the existence of a small number of companies that offer similar services. The small number of mobile services suppliers on the market determines their mutual interdependence in terms of sales, services, investments in new technologies and advertising plans.

The *entry barriers* (highlighted by the investments required, limited-resource management – the spectrum and numbering resources, environmental restrictions on the installation of transmitters and international support of the existing operators – the power of the groups they belong to) are the main cause of the existence of an oligopoly

on the market. These are relevant in terms of explaining how things happen on this kind of market/the phenomena on this kind of market.

At present, in Romania, there are five providers of telephone services by means of public land mobile networks: S.C. Orange Romania S.A., S.C. Vodafone Romania S.A., S.C. Telemobil S.A. (the brand name "Zapp") - Company purchased by Cosmote RMT S.A in the summer of 2009, S.C. Cosmote Romanian Mobile Telecommunications S.A., S.C. RCS & RDS S.A (since 2007) and S.C. Romtelecom S.A.

At retail level, there has been identified a group of mobile services which includes all the services provided by means of mobile networks (received calls, dialed calls, SMS, international calls, international roaming, emerging services - video and data). This group of mobile services is independent of geographical area, generation of the technology used or type of consumer (natural or legal person).

At wholesale level, there have been identified three segments: access and origin, termination and international roaming, with similar scope and content of relevant markets identified in the European Commission's recommendations on relevant markets of products and services in electronic communications sector which can be the object of existing regulations mobile services in accordance with Directive 2002/21/EC of the European Parliament and the Council on a common regulatory framework for electronic communications networks and services.

In fulfilling its statutory role and functions, ANCOM - Autoritatea Națională pentru Administrare și Reglementare în Comunicații (The National Authority for Administration and Regulation in Communications) constantly consults and cooperates with the Competition Council and the National Authority for Consumer Protection, for mutual supply of information necessary for implementing the provisions of competition law and the provisions of the law on electronic communications and protection consumer.

Promoting competition in the electronic communications sector requires taking action in the following areas:

- a) preventing actions that are intended or have the effect of distorting or restricting competition in electronic communications and information technology;
- b) taking all measures necessary for users, including those with disabilities or special social needs, to maximize the benefits of a competitive market conditions, in terms of diversity of offers, rates and service quality;
- c) encouraging efficient investment in infrastructure and promoting innovation;
- d) promoting the efficient use and ensuring effective management of limited resources.

A supplier of electronic communications services is considered as having significant power on a particular market if, individually or together with similar suppliers enjoys a dominant position. A *dominant position* on the market means that a supplier of electronic communications services is able, to a significant extent, to be independent in relation with competitors, customers and consumers. Among competitors, there are also potential competitors, that is, those persons who, in the given economic data,

have the ability to enter that certain market providing services on other geographic areas or by adapting quickly the available technology, in acceptable efficiency conditions.

To determine the significant power of a supplier on a specific relevant market there are taken into account one or more of the following criteria: market share and its stability, vertical integration, the number of competitors, the power to deal with users, development of prices and profits, degree of products diversity, size of suppliers, the absence of potential competitors, control over a network or associated infrastructure, hard to duplicate, scale economies, economies of purpose, technological advantage, easy or privileged access to financial resources, the existence of a developed network of distribution.

The main criteria that can be used to determine market shares of suppliers are: turnover, number of users, traffic volume, capacity of installation, traffic amount.

For two or more suppliers to jointly enjoy significant power on a relevant specific market (collective significant power) it is necessary that they are legally and economically independent and to act towards users and competitors as a single entity that has significant power on the relevant specific market.

In determining the existence of significant collective power on a relevant market specific, we may consider one or more of the following criteria:

a) *market concentration* - a high concentration of the market may indicate the existence of significant collective power;

b) *market transparency* - collective significant power may arise when suppliers can easily obtain information about prices and customers of the competitors;

c) *maturity of the market* - a high degree of maturity of the relevant specific market makes more difficult the entry on the market and to attract new customers;

d) *stagnation or moderate growth of demand* - a rapid increase in demand stimulates competition on the relevant specific market, suppliers have the opportunity to increase market share and profits;

e) *low elasticity (flexibility) of demand* - if demand does not change significantly in response to price changes, there is a low motivation of suppliers to reduce prices with the purpose to increase their market share;

f) *homogeneity of products* - the higher the homogeneity of products is or it is perceived by users in this way, the more suppliers' motivation to adopt a similar behavior on the market will increase in order to avoid price competition and lower profits;

g) *similar cost structure* - at a given price, a similar cost structure will cause a similar level of profits and it may lead to a mutual agreement suppliers on prices;

h) *similar market shares* - adopting a similar behavior on the market by suppliers can be encouraged by the existence of similar market shares;

i) *lack of technical innovation and technology maturity* – the higher technology maturity is, the more the competition by means of technological innovation decreases;

j) *absence of extra capacity* - it may prevent the occurrence or maintenance of agreements between providers, being stimulated to use additional capacity to increase profits;

k) *high market entry barriers* - the existence of a significant collective power on a relevant specific market is favored by high barriers at entry on the market;

l) *lack of power to deal with users* - a high counter-power power of users can prevent the appearance of the significant collective power on a relevant specific market;

m) *lack of potential competitors* - the perspective of entry of new competitors on the relevant specific market limits the possibility of existence of a significant collective power on that particular market;

n) *different types of informal links providers likely to have significant collective power* - although setting informal links between providers may have a legitimate purpose of solving some common problems raised by their activity, the existence of such links may indicate a controversial action on the market;

o) *existence of mechanisms for counter-attack* - providers will be encouraged to keep the agreements on the market whether they can expect the implementation of measures to counter-attack their competitors in case of breach of such agreements;

p) *lack of competition or low degree of competition in terms of prices* – in case suppliers anticipate a strong competition in terms of prices, they may try to prevent effective competition between them by an agreement on prices on the market. The existence of such agreements might indicate reduced stability or fluctuation in prices over time.

The increase of competition and the improvement of the transparency of prices on retail market were identified as the main guidelines of action that have guided regulatory intervention in the mobile services sector.

Intervention options to *increase competition* in mobile phone industry, take into consideration the following: regulation of end calls charges of mobile points (reduction MTR - Mobile Termination Rate - The average mobile termination rate of the operators with significant power on the market, number portability (MNP - Mobile Number Portability), granting of the fifth mobile license, prohibiting terminal block, sharing infrastructure and interconnection, national roaming and MVNO (Mobile Virtual Network Operator) access regulation.

To improve *price transparency* of retail mobile services, in such a way to help users to understand the actual price they pay, there has been identified a number of possibilities for intervention.

In the context of almost reaching the saturation level in terms of mobile services penetration, most potential customers already benefit from electronic communications services and attracting new customers will be achieved mainly on the account of competitors' portfolio. Under these conditions, low fluidity (the fluidity of the market occurs when buyers can freely choose their suppliers, and manufacturers can freely enter or leave a particular market. In this case, there are no legal or institutional barriers for entry of new competitor producers on the market of a particular product) on

the retail market segment means that the effective competition occurs at a particular reduced scale as a whole segment; this means that this reduced competition is manifested mainly at consumer's level as they may change the service provider based on contracts or agreements that can be easily terminated.

According to economic theory, perfect competition is characterized by a series of cumulative characteristics: atomicity of participants, mobility of production factors, fluidity and market transparency (market transparency defines that situation in which all players on a given market, whether suppliers or consumers are perfectly informed about the structure and operation of the market and can anticipate changes that may occur), product homogeneity. As pure and perfect competition does not match the actual functioning of economies and markets, promoting this model of competition cannot be a goal of regulation. Implementing legislation requires minimizing intervention to promote that level of competition that maximizes social welfare.

Thus, one can think that the extension of competition area by improving the fluidity of retail segments and as well support for rational and informed consumer behavior represent regulatory options to maximize social welfare.

In terms of actions to improve competition on retail markets by encouraging their fluidity, dynamic segments indicate the need to supplement at wholesale asymmetric interventions, aimed primarily to stimulate supply (introduction of selection / preselection of the carrier), by creating the conditions for alternative operators to compete with symmetrical regulatory instruments aimed at all active operators on the retail market, in the corresponding homogeneous segments (number portability).

Theory and practice of regulation in various sectors have indicated that the asymmetry between the information available to consumers against suppliers of the services provided and fees, distort consumer behavior by increasing the artificial demand based on the complexity of charges. Consumers should be helped to adopt a rational behavior, according to their needs, both in terms of choice of service provider and in terms of the option for a particular service offer. Increasing consumer demand based on consumer information asymmetry is not likely to increase social welfare (see Figure 1).

The policy of stimulating fluidity and transparency does not aim at direct intervention in retail markets, or limiting its value to the creative imagination of marketing policies, but aims at ensuring that suppliers' market actions are not at the expense of consumers. This policy must consider the extent to which, on the one hand, the information consumers need to make choices are available at a reasonable level of transparency and accessibility, and, secondly, that users can switch services without facing undue obstacles.

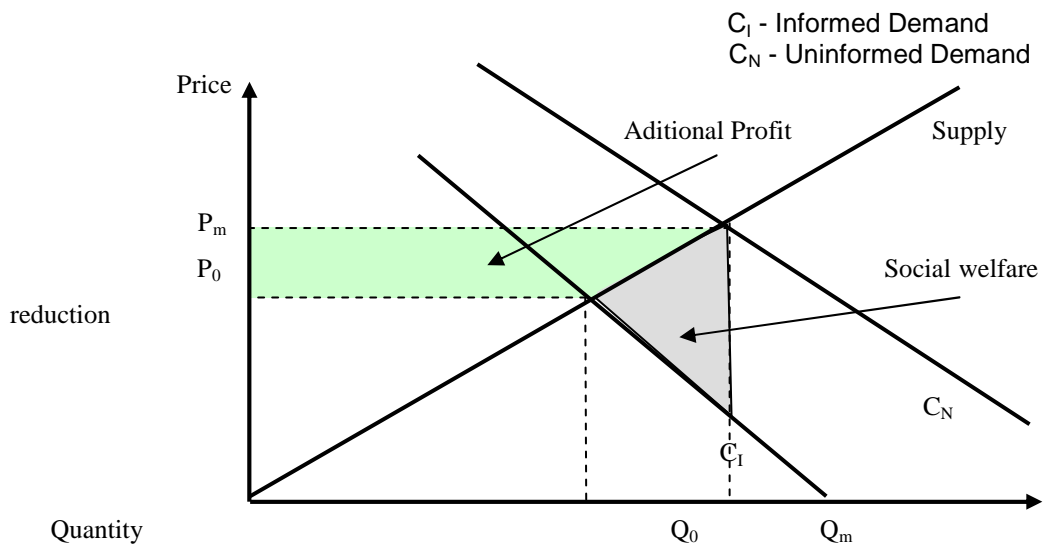


Figure 1. The effects of information asymmetry

Policy elements to stimulate fluidity and transparency in the retail market is intertwined with elements of access policy (in terms of network access solutions for carrier selection and preselection), interconnection policy, etc.

Packages and schemes for end-user prices have become increasingly complex over time: multiple pricing plans, rates for calling within / outside network, to the mobile / fixed network, at / off rush hour, according to destination, the favorite numbers and many other options.

Such complexity makes practically impossible for the end user to control expenditure on communications services and he/she is moving away from taking rational decisions on the choice of provider or even of his/her consumer behavior.

Improving the level of information for users and reducing the complexity in retail rates help to improve consumer power, which will make the consumers to defend better their interests. Also, increased transparency in terms of comparative levels of charges depending on the type of supply or traffic light profile is likely to help citizens to make consumer choices based on rational criteria.

Given these considerations, the strategic objective of the regulation aims "to create an environment where information on availability, supply conditions and tariffs of services must be transparent, easy to access and available to all citizens" (Document by ANCOM regarding the Regulation Strategy in the electronic communications sector in Romania during the period 2007-2010).

In achieving this goal, the regulation authorities require from operators the following:

Develop a web page dedicated to information needs of users - such instrument would aim to provide a user-friendly interface for citizens, in a non-technical language,

to provide relevant information and answers to questions on key issues concerning their relationships with suppliers of electronic communications services and to reduce information asymmetry of demand in relation to the supply of electronic communications services.

Detailed Billing (Invoices) – Establishing the information to be presented in the detailed invoices issued by the mobile service providers is a regulatory tool that provides end users a minimum of information to help improve awareness of tariffs, to facilitate understanding of pricing services used and to allow verification of content of the bills issued by providers in terms of protecting users' privacy rights of callers and the called subscribers.

Tools for comparing prices (completion of this project is estimated in the third quarter of 2011) - making available through Web pages, a tool to enable comparison of information on rates and conditions offered by different suppliers, to ensure potential users make independent assessments. This instrument takes the form of "search engine" available online, updated with efficiency, to generate the best offers available at any given time for a specific consumer profile. An additional facility would provide an existing classification of tenders based on predefined criteria (e.g. "the best offers for calls to fixed networks).

The regulation authority action has a limitation effect on the free competition and replaces the market forces; therefore it must be temporary and have a limited range of action; in addition it must be suppressed as soon as effective competition can be supported by the market forces. Thus, in order to avoid market distortion or the creation of premises for dominant position abuse by the economic agents subjected to the regulations, the regulation actions need to be approached through the perspective of the competition law, by thoroughly applying its principles. Consequently, regulations must be justified, proportional, appropriate, undiscriminating and limited both in duration and in range as far as the imposed remedies and the operators subjected to the regulations are concerned. The regulation authority must identify those measures which either open the market and insure new entries, or, as in this case, replace the market force.

In order to regulate some markets, the regulation authorities must analyze if the following criteria are cumulatively fulfilled:

- the presence of untransitory barriers (of structural or legal nature) at entering the market;
- the lack of analyzed market features that would determine its trend towards effective competition (this criterion shall be considered even if there are barriers encountered at market entrance);
- only the compliance of the competition law cannot efficiently remedy the deficiencies that the market presents.

Any public mobile network operator has a monopoly on the end calls services market in their own network. Due to the lack of competition constraints made on mobile spots end calls service suppliers, their action to reduce the price of mobile spots end calls services to an efficient level is unlikely. Another important aspect is that,

considering that the average prices for the calls made in the same network are nearly 50% lower compared to the average call prices to other public mobile networks, the percentage of same network calls within the total public mobile calls in Romania remained constantly at high levels of 76 - 78%, within the period 2004 – 2007. Consequently, the operators have both the possibility and the interest to apply excessive prices for supplying these services to their competition both to raise their costs, and to maximize thus the benefits of their own end users at the expense other networks users. Thus, mobile service providers can show a discriminating behavior by charging higher tariffs for end calls originating from networks of other providers, compared with domestic supply of services; the consequence is the increase competitors' costs by increasing the afferent costs of providing services at the level of retail market. If the difference between the retail network and end calls rates in the wholesale market is unable to provide sufficient margin for the supplier competitor activity in the retail market and to offer reply, there may appear practices of "predatory pricing" or "margin squeeze".

Economic theory has highlighted the need for a balance between the need to ensure a framework to encourage market entry (by anticipating a reasonable level of profit for potential new players, with the prospect of depreciation of infrastructure investments) and also stimulate competition on merit principle designed to ensure consumer welfare. Therefore, imposing obligations on authorized operators there must be taken into account the investment made by that provider to allow for a reasonable rate of return on capital invested, considering the risks associated with investment. Any cost recovery mechanism or pricing methodology required by the Authority must promote economic efficiency and competition and maximize consumer benefits. Thus, ANCOM must provide correct economic signals to the economic operators who wish to enter the market and to increase business efficiency, investment and innovation in a dynamic perspective, creating a fair and predictable competitive environment. Therefore, the regulation authority must ensure that, on the one hand, this regulatory action has no adverse effects, to deter new entry and reduce competition at infrastructure level, and on the other hand, it leads competition stimulation and a normal competitive environment to promote consumer interests.

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