

# Kluwer Competition Law Blog

## Romania: The Romanian Competition Council accepted the commitments undertaken by PROGAZ P&D SA

Cristina Mihai (bpv Grigorescu ?tef?nic? ) · Thursday, November 15th, 2012

The Romanian Competition Council (“RCC”) accepted the commitments undertaken by PROGAZ P&D SA in view of relieving the concerns regarding infringement of the antitrust rules by abuse of a dominant position on the local market of natural gas installations planning and execution and closed the related investigation.<sup>[1]</sup>

The RCC opened *ex officio* the investigation against PROGAZ P&D SA in June 2010 based on information according to which the latter had used its monopoly position held on the market of natural gas distribution abusively on the local market of natural gas installation planning and execution, in certain localities in the Prahova and Ilfov counties of Romania, considering the tariffs imposed for the approval of natural gas installation plans and for the takeover of such installations.

The monopoly position of PROGAZ P&D SA on the aforementioned market of natural gas distribution resulted from the exclusive right of PROGAZ P&D SA to perform natural gas distribution activity in the localities mentioned above on the grounds of its distribution license. Based on the same distribution license, PROGAZ P&D SA also had the exclusive right and obligation to perform the services of approval of natural gas installation plans and to perform the technical takeover of such installations in order to put them into use and effectively provide gas to the consumers. This was despite the fact that the design and installations works themselves could have been performed by any other undertaking properly authorised by the Romanian Energy Regulatory Authority (“RERA”), as per the legal provisions in force. PROGAZ P&D SA activated also on the market of natural gas installation design and execution works, as an undertaking authorised by the RERA.

The relevant markets assessed by RCC were the market of approval of the natural gas installation plans from certain localities in the Prahova and Ilfov counties and the market of takeover of natural gas installations from certain localities in the Prahova and Ilfov counties.

The RCC concluded that the monopoly position held naturally by PROGAZ P&D SA on the market of natural gas distribution resulted in a monopoly position of PROGAZ P&D SA also on the assessed relevant markets.

The RCC revealed that during the period between 01.01.2006 and 06.03.2011, the tariffs applied by PROGAZ P&D SA for approval of the natural gas installation plans and technical takeover of such installations performed by other authorized undertakings were increased between 665% and

2,627%, while during the same period the approval services for the natural gas installation plans and the technical takeovers performed by the investigated undertaking itself were not charged, or they were charged by much lower tariffs respectively. At the moment the investigation was opened by the RCC, the tariffs applied by PROGAZ P&D SA for approval of the natural gas installation plans executed by other undertakings were 3 to 10 times higher than those applied for the plans carried out by PROGAZ P&D SA itself, and the tariffs for takeover of the natural gas installations realised by other undertakings were 3 to 18 times higher than those applied for the installations realised by PROGAZ P&D SA itself. Also, the tariffs for such services applied by PROGAZ P&D SA to other authorised undertakings were much higher compared to the ones applied by other natural gas distributors for the same services in their own distribution areas.

As a result, between 2006 and 2010, 99% of the natural gas installation plans and 92% of the natural gas installations on the relevant markets were performed by PROGAZ P&D SA.

The RCC's concerns referred in particular to the potential abusive use by PROGAZ P&D SA of its monopoly position held on the market of approval of the natural gas installation plans and the market of takeover of the natural gas installations from certain localities in the Prahova and Ilfov counties. Compared to the tariffs applied for the same services supplied for projects and installations it performed itself, it applied much higher discriminatory tariffs for the approval services of natural gas installation plans and the takeover services of natural gas installations performed by other authorised undertakings, competitors of PROGAZ P&D SA on the relevant markets. This put its competitors at a distinct competitive disadvantage. In addition, they applied excessive tariffs for the services of approval of natural gas installation plans and the services of takeover of the natural gas installations performed by other authorised undertakings, competitors of PROGAZ P&D SA, for the purpose of eliminating its competitors.

The RCC stated that such behaviour of PROGAZ P&D SA is likely to lead to the potential distortion of competition on the relevant markets by elimination of PROGAZ P&D SA's competitors and by the possible increase of its dominance on these markets triggered by subsequent consumer demand for the concerned services from PROGAZ P&D SA.

The commitments proposed by PROGAZ P&D SA referred mainly to the modification of the tariffs applied for the services of approval of natural gas installation plans and the services of takeover of natural gas installations as of 01.01.2012. Moreover, PROGAZ P&D SA undertook to implement a unitary, objective and transparent system for establishment and adjustment of tariffs for all the services which are not subject to regulatory provisions in relation to which PROGAZ P&D SA held a monopoly position; this was in view of preventing future occurrence of similar situations as the ones under the RCC's investigation.

Specifically, the commitments undertaken by PROGAZ P&D SA had the effect of eliminating the discriminatory tariffs practice considering that the tariffs applied by PROGAZ P&D SA as of 01.01.2012 for the services of approval of natural gas installation plans and the services of takeover of natural gas installations were no longer differentiated depending on the authorized undertaking performing such services. The tariffs applied as of 01.01.2012 by PROGAZ P&D SA were lower by 49-91% for the services of approval of natural gas installation plans and by 59-88% for the services of takeover of natural gas installations performed by other authorised undertakings compared to the tariffs previously applied by PROGAZ P&D SA, which prompted the opening of the investigation. Also, compared to the tariffs applied by PROGAZ P&D SA as of 07.03.2011 for said services, following the proposed commitments such tariffs were reduced by 31-44% for

approval services of natural gas installation plans and by 47-66% for the takeover services of natural gas installations. The modified tariffs were based on an assessment of the costs implied by such services and by taking into account a reasonable profit margin. Moreover, the investigated undertaking committed to implement a tariff adjustment mechanism, providing their annual modification based on the economic parameters influencing the tariffs such as wage increases, tax amendments, changes regarding social contributions, raw materials and fuels prices, and by taking into account a profit margin corresponding to the one considered on the date the commitments proposal was drawn up. PROGAZ P&D SA has undertaken to apply the same system of determination of the tariffs for all services which are not subject to regulatory provisions with respect to which it held a monopoly position, considering that such services are ancillary to the natural gases distribution activity. In order to increase the transparency and the level of information provided to the consumers, the investigated undertaking committed also to post the tariff lists at all its working units and on its Internet web page.

Furthermore, during the investigation, the legal framework relevant for the investigated practice was changed as of 16.07.2012. As a consequence, the obligation of prior approval of natural gas installation plans and of takeover of natural gas installations by the natural gas distributor was eliminated.

In view of the above mentioned circumstances, the RCC concluded that the commitments undertaken by PROGAZ P&D SA were sufficient for eliminating the competition concerns identified during the investigation. To this end, the RCC deemed that the commitments improve the competitive environment by eliminating the possibility of exclusion by the investigated undertaking, acting simultaneously as natural gas distributor, of its competitors on the assessed relevant markets. In addition, the rights of consumers regarding the free choice of suppliers of approval services of natural gas installation plans and takeover services of natural gas installations are ensured, leading to an increase of competition on these markets and consequently to lower prices for the consumers. The RCC was also reassured about the effective implementation of its commitments by PROGAZ P&D SA since the latter has voluntarily implemented the commitments regarding the tariffs for the concerned services as of 01.01.2012.

The RCC has also decided to perform the monitoring of compliance itself of the undertaken commitments by PROGAZ P&D SA, considering the reduced complexity of such commitments. The monitoring will be ensured by assessing the tariff lists to be sent by PROGAZ P&D SA to the RCC on the occasion of each adjustment of such tariffs.

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