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DRAFT DECISION
on the designation of providers with significant power on the specific relevant retail markets within the electronic communications sector

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EXPLANATORY MEMORANDUM
on the ANRC President's Draft Decisions regarding
the designation of providers with significant power
on the specific relevant retail markets within the electronic communications sector
identified by the ANRC President's Decision no.1124/2004

(Conclusions of the market analyses on the power on
the specific relevant retail markets within the electronic communications sector)

According to Article 1 paragraph (3) of Law no.304/2003 for universal service and the users' rights regarding the networks and services of electronic communications, ANRC „*shall ensure the promotion of competition as well as the protection of the rights and interests of end-users so that they obtain maximum benefits under the conditions of a competitive market, inasmuch as diversity of the offers, tariffs and quality of services are concerned.*" With a view to reaching these objectives, ANRC identifies the specific relevant retail markets within the electronic communications sector, analyses the identified markets and designates, as the case may be, the providers with significant power on the respective markets, with the possibility of imposing them, correspondingly, one or several obligations provided under Articles 15, 16 and 18 of Law no.304/2003.

According to the provisions of Article 33 paragraph (1) of the Government Emergency Ordinance no.79/20with amendments and completions, by Law no.591/2002, *„A provider of electronic communications networks or services shall be deemed to have significant power in a certain market if, either individually or jointly with other such providers, it enjoys a position equivalent to dominance in the market concerned."* Dominance in a certain market means the situation *"where a provider of electronic communications networks or services is able, to a considerable extent, to behave independently from competitors, clients, and consumers"*.

For the analysis of the competitive situation and for determining the possible providers with significant market power on the identified specific relevant retail markets within the electronic communications sector, ANRC considered the following criteria:

a) market share and market stability;
b) vertical integration;
c) number of competitors;
d) the users' countervailing power;
e) price evolution and profit rates;
f) product/services diversification;
g) overall size of the provider;
h) absence of potential competitors;
i) control over a network or the associated facilities, not easy to duplicate;
j) economies of scale;
k) economies of scope;
l) technological advantages;
m) easy or privileged access to financial resources;
n) existence of a higly developed distribution network.

The specific relevant retail markets under analysis are the following:

1. The market of providing access to a public telephone network at fixed locations, for residential customers;
2. The market of providing access to a public telephone network at fixed locations, for business cutomers;
3. The market of local calls at fixed locations, for residential customers;
4. The market of local calls at fixed locations, for business customers;
5. The market of long distance calls at fixed locations, for residential customers;
6. The market of long distance calls at fixed locations, for business customers;
7. The market of international calls at fixed locations, for residential customers;
8. The market of international calls at fixed locations, for business customers;
9. The market of calls to public mobile telephone networks at fixed locations, for residential customers;
10. The market of calls to public mobile telephone networks at fixed locations, for business customers.

Due to some similarities between the characteristics of the above mentioned markets, the analysis shall consist of two parts – the access market analysis and the calls markets analysis.

1. Analysis of the markets of providing access at a fixed location to the public telephone network for residential customers, respectively for business customers

1.1. Markets structure

When providing access at a fixed location to a public telephone network an operator must ensure the equipments and the provision of required services to the end users so that they could permanently benefit from publicly available telephone services. From the users' point of view, access to a public telephone network means the ability to make and receive calls.

S.C. „Romtelecom" – S.A. benefited, until December 31, 2002, from the exclusive right of providing publicly available fixed line voice telephony services and, at present, is the main provider of services of access, at a fixed location, to a public telephone network, which is also proved by the numbering resources used and by the number of subscribers. Following the liberalisation of the electronic communications market, by September 20, 2004, 202 providers expressed their interest in providing fixed telephone services, among which 144 providers intend to provide local calls, 149 – long distance calls (national) and 165 for international calls. Out of these, 54 providers were granted licenses for the use of numbering resources.

Upon the analysis of the available information[1], 23 providers of services of access to a public telephone network at a fixed location were found on the current Romanian market, whose market shares, depending on the number of end users by the end of 2003, are hereunder presented in Table no.1.

[1] Statistical data reported by the providers of electronic communications networks and services according to the ANRC President's Decision no.1332/2003 regarding the obligation of the providers of electronic communications networks and services to report certain statistical data.

Table 1

PROVIDERS	MARKET SHARE BY THE END OF 2003	
	RESIDENTIAL	BUSINESS
S.C. „Romtelecom” – S.A.	99.99%	99.38%
Other providers	0.01%	0.62%

Thus, S.C. „Romtelecom” – S.A. has the largest market share, i.e. 99.99%, on the residential market, and respectively 99.38% on the business market.

The providers of the service of access at a fixed location using electronic communications networks on coaxial cable support do not have a national coverage network and, therefore, can provide the respective service only on restricted areas, and have a larger market share only in certain regions.

The existence of 23 providers that offer services of access at a fixed location may be considered as a proof of the effective competition on the market. Despite all these, the degree of market concentration, determined by means of the **Herfindahl-Hirschman**[2] index, is very high (HHI = 9998 for residential and HHI = 9876 for business), indicating that S.C. „Romtelecom” – S.A. has a dominant position on the market of providing access to a public telephone network at a fixed location.

According to the *Rules for Conducting Market Analyses and Identifying the Significant Market Power*, approved by the ANRC President's Decision no.137/2002, the market share of more than 40%, stable in time, held by S.C. „Romtelecom” – S.A. is the first factor indicating that the incumbent has significant power on the analysed market.

1.2. Economies of scale; economies of scope; product diversification; existence of a highly developed distribution network; control over a network or the associated facilities not easy to duplicate; significant sunk costs

The presumption of S.C. „Romtelecom” – S.A. having significant power on the market of providing access, at a fixed location, to the public telephone network is supported by the low capacity of the new entrants to effectively compete with the incumbent, taking into account the high entry barriers. This situation is proved by the low degree of market penetration registered so far by the new entrants, as illustrated in Table 1.

At the same time, such an important provider as S.C. „Romtelecom” – S.A. can obtain and keep, in the long run, certain advantages as compared to its competitors, generated by *economies of scale* (amounts saved due to the large number of users), *economies of scope* (S.C. „Romtelecom” – S.A. registers common costs, given the provision of an extremely wide range of fixed-line telephony services), *the high service diversification*, *financial power* and *the*

[2] This index is used for the assessment of the market concentration degree and results from adding up the second powers of the market shares held by the providers on the respective market. If HHI<1000, the market concentration degree is low; if 1000<HHI<1800, the market concentration degree is medium; if HHI>1800, the market concentration degree is high; if HHI=10,000, there is a monopoly on the market.

extensive national distribution network. Furthermore*,* the economies of scale and of scope create gaps between the incumbent and the new entrants, as these are market advantages for S.C. „Romtelecom" – S.A. and, simultaneously, market barriers for the new entrants.

Part of the new entrants, such as the Group S.C. Romania Cable Systems S.A. & S.C. Romania Data Systems S.A. and S.C. Astral Telecom S.A., developed their market networks especially in the big cities, while others will enter only those market segments where the expected revenues could cover the investment and costs resulted from the provision of services. Thus, the most targeted market segment is that of the business, 93.5% of the total subscribers of the new entrants being represented by the business customers. Despite these conditions, the financial power of the new entrants is not enough to further support the rapid network development, even in the profitable areas of the market.

The high entry barriers ,such as control over a network or the associated facilities, not easy to duplicate, whose roll-out takes a long period of time and high costs, as well as the risk of losing the initial investment in case of building such a network discourages the new entrants on the market, indicating the fact that S.C. „Romtelecom" – S.A. benefits from competitive advantages as compared to the new entrants and can maintain over time the current market shares. The factors indicating the market share stability in time are represented by the users' low awareness of other providers of fixed telephony services except for S.C. „Romtelecom" – S.A., as well as from the low interest manifested for the former's offers, both by business and by residential. Thus, although according to the market studies conducted by S.C. Daedalus Consulting S.R.L. - 30.9% of the business respondents are aware of the existence of other providers of fixed telephony services and 46.6% of them would be interested in changing the current provider with another one, in fact, the number of the new entrants' end users is very small, provided the barriers encountered at the moment of changing the provider and the lack of information. (0.62% of the legal person - end users and 0.01% of the natural person – end users). As well, among the business users, the awareness of the new providers of fixed telephony services is very low – 80,9% of the respondents did not know any other providers except for S.C. „Romtelecom" – S.A.

1.3. Vertical Integration

The vertical integration of a provider may have a negative effect on the competition in the adjacent markets, because the respective provider takes control over the upstream and downstream markets. At present, S.C. „Romtelecom" – S.A. provides services of access at the level of both retail and wholesale markets. Its significant power on the wholesale market can be used in order to prevent or discourage other provider's entry on the retail market of providing access at a fixed location to a public telephone network, by means of charging tariffs which are not cost-oriented for the corresponding wholesale services. As well, S.C. „Romtelecom" – S.A. is a provider whose activity is horizontally integrated, providing a wide range of services which it can offer bundled or as a package (for example, access and services of voice or Internet access and voice services), at a lower tariff than in the situation where these services were offered separately. Thus, S.C. „Romtelecom" – S.A. benefits from a competitive advantage as compared to its competitors, which – due to the lack of the corresponding inputs on the wholesale market, cannot offer their customers the same facilities efficiently and within a short term.

The only providers who can offer service packages (telephony, Internet access, re-transmission of audio-visual programmes) at a competitive tariff, effectively competing with S.C. „Romtelecom" – S.A, in their operating areas, are the providers who have a bi-directed support network of coaxial cable, thus benefiting from the advantage of the economies of scope.

1.4. Absence of potential competitors / Accessibility on the market

The analysis of the potential competitors or the perspective of new providers entering the market in the short run, following a hypothetical tariff increase for the service of access is mainly influenced by the entry barriers (structural, legal or regulatory barriers).

The control of an infrastructure not easy to duplicate (such as access network), but is an essential input for a provider's activity on the market, represents an absolute barrier[3] for the new entry, while the fixed telephony services tariffs (by cross-subsidization), the national extended distribution network, the important investments in infrastructure or in the incumbent image are strategic barriers[4] imposed by S.C. „Romtelecom" – S.A. The sunk costs registered at the beginning in case of building an access network may be important barriers to market entry, as well. The incumbent, who is interested only in covering the operational costs, could set tariffs below the total costs (including the sunk costs) registered by the new entrants, so that the latter could not recover their costs and could not effectively compete on the market. Thus, the providers' incentive to enter the market is diminished by the existence of these discouraging factors regarding the level of tariffs and profits a provider could obtain on a certain market segment. The new entrants will not be able to duplicate the whole infrastructure of S.C. „Romtelecom" – S.A. in the short run. They will try to enter the market segments ensuring higher revenues than the costs of providing the services. The considerably greater investments required by providing the service of access in the rural areas, as well as the existence of a low potential demand in these areas, trigger the conclusion that a new entrant will be stimulated to invest and to offer services mainly in the urban areas, where the users' purchasing power is greater, and the profit margin which could be obtained is more attractive. This explains the higher penetration degree of the fixed telephony services in the urban areas (more than 80%) and the presence of the first alternative offers of access at a fixed location to a public telephone network in the big cities, especially addressed to business users.

The switching costs and barriers is a critical factor in assessing the potential competition on the market. The competition level on the market is influenced by the extent to which the users face difficulties when they want to change the current providers, as a reaction to the tariff differences for the same services in the market. Thus, a market is likely to be the less competitive, the more significant are the barriers to switching the current provider. Given the users' inertia in terms of the likelihood of switching to an entrant away from the incumbent, they could be attracted by the new entrants by the latter's lower tariffs, by means of loyalty policies or by offering highly differentiated and complex services.

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[3] The absolute barriers at the market entry appear when a provider has exclusive access to essential resources (inputs), which are not equally available to all the competitors.

[4] The strategic barriers at the market entry appear because of the strategic behaviour of a provider on a certain market, by means of price, pormotion, distribution and investment policy, in order top revent or limit the competitors' market entry.

These statements is also confirmed by results of the market studies conducted by S.C. Daedalus Consulting S.R.L. Thus, the tariff level is the main reason for the users' dissatisfaction with S.C. „Romtelecom" – S.A. (80.6% of the residential and 61.1% of the business are dissatisfied especially with the subscription tariffs), which triggers the fact that almost half of the residential and more than half of the business consider replacing Romtelecom with another provider[5]. At the same time, 43% of the residentials are complaining about the lack of a system of rewarding customer loyalty, therefore these are the most interested in replacing S.C. „Romtelecom" – S.A. with another provider, should the new provider offer lower tariffs, in general, as well as attractive customer loyalty offers. As for the business respondents, the reasons which would determine the users to consider the possibility of giving up the current provider of fixed telephony services are the excessively high tariffs for international calls (40.8%).

As well, the difficulty of switching to another provider may be a result of the users' low awareness of the services and tariff offered by S.C. „Romtelecom" – S.A., as well as of the alternative offers on the market. Thus, the users cannot assess the offers properly and make a knowledgeable decision. According to the studies conducted by S.C. Daedalus Consulting S.R.L., most of the residential customers do not know the off-peak hours when the tariffs S.C. „Romtelecom" – S.A. are lower and do not know the call tariffs, itemised by destination[6]. Approximately 70% of the residentials do not know an alternative provider of fixed telephony apart form S.C. „Romtelecom" – S.A.[7] Regarding the awareness of the providers of common fixed telephony services among the business custormers, 99.4% mentioned spontaneously S.C. „Romtelecom" – S.A., and 22.1% mentioned various providers of VoIP telephony services. As well, the great majority of the respondents could not spontaneously mention a provider of VoIP telephony services. Regarding the interest manifested by the business respondents in alternative providers of fixed telephony services, more than half of them (56.5%) considered the possibility of changing the current provider of telephony services. It is also important to highlight the fact that, for the residentials who do not have a fixed terminal equipment installed in their household, S.C. „Romtelecom" – S.A. remains the first option in choosing the provider of fixed telephony services, despite the existence of alternative providers on the market.[8]

The entry barriers may also result from additional costs encountered by the users when they decide to switch to an alternative provider. The significant tariffs charged for the connection with a different network, the necessity of installing terminal equipment compatible with the new public telephone network,require high initial "investment" from the user, result in increasing the users' reluctance to change. For access at a fixed location, the provision of a new service requiring a change of the physical connection between the user's location and the network or a change of the telephone number, where number portability is not available, discourage the users to consider alternative options on the market. As well, the differentiated

[5] S.C. Daedalus Consulting S.R.L. – Study regarding the use of fixed telephony and the impact of mobile telephony on fixed telephony – residential , p.57, S.C. Daedalus Consulting S.R.L. – Study regarding the use of fixed telephony and the impact of mobile telephony on fixed telephony – business, p.84.

[6] S.C. Daedalus Consulting S.R.L. – Study regarding the use of fixed telephony and the impact of mobile telephony on fixed telephony – residential , p.47.

[7] S.C. Daedalus Consulting S.R.L. – Study regarding the use of fixed telephony and the impact of mobile telephony on fixed telephony – residential , p.55.

[8] S.C. Daedalus Consulting S.R.L. – Study regarding the use of fixed telephony and the impact of mobile telephony on fixed telephony – residential , p.13.

tariffs of the incumbent, which are higher for calls to alternative fixed telephony networks, as compared to the tariffs charged for the calls within its own network, may represent a barrier for the S.C. „Romtelecom” – S.A. users who want to make calls to subscribers in other fixed public telephony networks.

1.5. The countervailing buyer power

Regarding the *users' countervailing power*, the analysis of the usage behaviour for telephony services, as well as of the existing offers on the market, proves that the competitive conditions are not homogeneous between the two categories of users (business and residential). There are significant differences between the residentials and the business in respect of the needs and usage behaviour for telephony services and of the volume of services they purchased, which directly have a significant impact on the types of services provided and the tariffs charged by the providers, for each user category.

Thus, a residential user purchases a negligible volume of the total services provided by S.C. „Romtelecom” – S.A., which triggers the conclusion that the market power of the respective provider could not be diminished by the countervailing power of the residential customers.

The situation changes in case of business category. Thus, the greatest part of the revenues of the fixed telephony services providers results from the business customers, which represent the most profitable user category. Therefore, these users have, at least theoretically, greater countervailing power than the residential users. Eventually, at present, the countervailing power of the business is likely to affect especially the call market, given the high competition level on the respective market.

Hence, upon the assessment of the competitive conditions on the market, ANRC deems necessary to designate S.C. „Romtelecom” – S.A. as a provider with significant power on the market for the provision of access, at a fixed location, to a public telephone network for residential and on the market for the provision of access, at a fixed location, to a public telephone network for residential , based on the following rationale:

- the market share exceeding 40% and the its stability in time;
- the high entry barriers due to the important costs registered for building and developing an access network, as well as the long period required for rolling-out such a network;
- the high degree of vertical integration;
- the low countervailing buyer power;
- economies of scale and scope, which are competitive advantages of S.C. „Romtelecom” – S.A. as compared to the other providers on the market;
- the existence of a highly developed distribution network.

2. Analyses of the markets of long distance calls, of international calls, and of the calls to public mobile networks, for residential and business customers

2.1. Calls markets volume and structure

The calls markets structure by volume, for the year 2003, is presented in the table below.

Table 2

PROVIDERS	Call volume (minutes)	Market share
Local calls at fixed locations		
S.C. „Romtelecom" – S.A.	6,874,871,976	99.90%
Other providers	6,941,777	0.10%
TOTAL	6,881,813,753	100.00%
Market concentration index (HHI)		9980
Long distance calls at fixed locations		
S.C. „Romtelecom" – S.A.	1,075,283,322	99.70%
Other providers	3,240,921	0.30%
TOTAL	1,078,524,243	100.00%
Market concentration index (HHI)		9940
International calls at fixed locations		
S.C. „Romtelecom" – S.A.	144,530,927	75.56%
Other providers	46,744,254	24.44%
TOTAL	191,275,181	100.00%
Market concentration index (HHI)		5799
Calls at fixed locations to the public mobile networks		
S.C. „Romtelecom" – S.A.	808,305,375	98.83%
Other providers	9,562,305	1.17%
TOTAL	817,867,680	100.00%
Market concentration index (HHI)		9768

The market shares exceeding 40% held by S.C. „Romtelecom" – S.A. on the calls markets and their stability in time are the first indicators of the significant market power of S.C. „Romtelecom" – S.A.

The effective competition on the market might be indicated by the number of the providers on specific markets: 13 providers offer services of local calls at fixed locations, 11 providers offer services of long distance calls at fixed locations, 24 providers offer services of international calls at fixed locations, and 9 providers offer calls at fixed locations to the public mobile networks. Nevertheless, the degree of market concentration, determined by means of the **Herfindahl-Hirschman** index, is very high (see Table 2), which indicates the fact that S.C. „Romtelecom" – S.A. has a dominant position on the market of these services.

2.2. Control over a network or associated infrastructure not easy to duplicate; high sunk costs

There are significant entry barriers on the calls markets, which prevents the increase of competition and offers S.C. „Romtelecom" – S.A. the possibility of charging tariffs exceeding the competitive level, given the lack of regulations of the retail markets. In order to provide calls at a fixed location on the retail market, a provider must have a network of access or to buy services from the corresponding wholesale market. Thus, one may enter the call market: using his own infrastructure, by means of indirect access (using the procedure of carrier selection or pre-selection), by purchasing access to the local infrastructure (local loop) of S.C. „Romtelecom" – S.A. or by re-selling services on the retail market.

Control over an infrastructure not easily duplicated in a short period of time, such as the fixed telephony network, as well as the *high unrecoverable(sunk) costs* registered in case of building such a network, are particularly relevant to electronic communications sector and represent the main entry barriers on the calls markets. Usually, the costs resulted from the investments incurred by a new entrant in order to efficiently offer services of access and calls, as well as the costs of providing effectively these services, shall be covered from the revenues earned. On the other hand, the incumbent, as compared to the new entrant, has already made its sunk investment and so will stay on the market as long as it can cover its operating costs. Thus, such a large provider as S.C. „Romtelecom" – S.A. may use the market advantage it holds by charging lower tariffs than the total cost registered by the new entrant, and is actually difficult for the latter to compete with it. Entry would, then, be deterred..

As they lack their own infrastructure and in order to avoid the entry barriers the alternative providers can offer calls to the end users by the following methods: by direct access to the infrastructure of S.C. „Romtelecom" – S.A. (direct access to the local loop) or using the carrier selection or pre-selection procedure (indirect access). Given the postponement of the implementation of the procedure of one-step carrier selection, the delay of the provision of access to the local loop and the lack of regulations for the carrier pre-selection procedure, the new entrants had to face important entry barriers on the call markets. Another important entry barrier resulted from the impossibility of making calls using prepaid cards from the public telephones .

Thus, the new entrants had three possibilities of entry on the call market: building their own networks, providing services by means of the two-step carrier selection procedure and providing calls by means of prepaid cards using the ISDN services provided by S.C. „Romtelecom" – S.A.

Starting with June, 2004, S.C. „Romtelecom" – S.A. made available, for the providers of public telephone services, the interconnection service for call origination by means of the one-step carrier selection procedure.

The services of local calls have been provided only by the providers of services who have an electronic communications network, and the available margin[9] resulted as a difference between the retail tariffs charged for local calls by S.C. „Romtelecom" – S.A. and the wholesale tariffs for the interconnection services with a view to originating and terminating calls is, in fact, insufficient to allow the effective market entry of new providers based on the wholesale interconnection services for call termination and origination. For the local calls, only 0.01% of the residential users and, respectively, 0.62% of the business users could benefit from an alternative offer, different from S.C. „Romtelecom" – S.A.

As for international calls, the difference between the retail tariffs charged by S.C. „Romtelecom" – S.A. and the wholesale tariffs for the interconnection services with a view to originating calls triggered the market entry of a significant number of providers (24 providers by the end of 2003), as compared to the other call markets. 21 providers used their own network

[9] The lack of local interconnection points prevented the provision local calls by means of carrier selection services or through prepaid cards, given the negative margin.

for the provision of the respective services and 17 providers took over calls from the network of S.C. „Romtelecom" – S.A. by means of the carrier selection procedure or by means of prepaid cards. According to the market data available, 63.21% of the international traffic of the new entrants was originated in S.C. „Romtelecom" – S.A. network. In the same time, the incumbent has significant market power on the wholesale market of access to the public networks of fixed telephony for call origination, termination and transit, so that it may use its market advantage in order to impose strategic barriers on the new entrants using the network of S.C. „Romtelecom" – S.A.

As for other call types (national calls and the calls at fixed locations to public mobile networks) the number of providers offering such services by means of prepaid cards and of the carrier selection procedure is very small, so S.C. „Romtelecom" – S.A. has eventually no real competition on these markets.

The fact that the providers of mobile telephony services develop fixed telephony services by offering professional solutions to the business users (E1 flows/capacities directly connected in the clients' telephone exchange or Premicell services) influence the current situation on the business market of calls to public mobile telephony networks. In this segment, the providers of mobile telephony services who benefit from significant power on the wholesale market of access to their own networks of mobile telephony, for call termination, offer calls at a fixed location to their own mobile telephony networks at very low tariffs, sometimes even smaller than the interconnection tariff for call termination at mobile locations. Thus, in order to benefit from discount tariffs for calls to all the mobile telephony networks, the users should conclude agreements with all the four providers of mobile telephony services, which is not profitable unless the respective business users make a large volume of calls to public mobile networks.

If the periodic monitoring of the market of calls at fixed locations to public mobile telephony networks reveals that the situation on the respective market has significantly changed, ANRC will conduct a new market analysis, and will apply measures in accordance with the existing situation.

2.3. Economies of scale, density and scope

The economies of scale and density resulting from the large volume of sales, respectively from the high density of the users, are also market advantages of the incumbent, allowing him to offer calls at a lower total cost than the one registered by a new entrant. Thus, in order to be competitive on the market, the new entrant must acquire a high market share by charging lower tariffs than those charged by the incumbent, which will make difficult the recovery of the initial investment. Moreover, following the selling of a wider and more diversified range of electronic communications services, S.C. „Romtelecom" – S.A. registers common provision costs, thus the latter benefiting also from the advantage of *economies of scope*.

2.4. Vertical integration

In the process of analysing the relevant specific calls markets, one must consider that the *vertical integration of a provider* may negatively affect the competition on the upstream or on the downstream markets. The fact that S.C. „Romtelecom" – S.A. provides both telephony services on the retail market, and the corresponding inputs services on the wholesale market, as well as this provider's significant power on the wholesale market, may also prevent the market entry of new providers on the retail call markets, by charging, for wholesale services, higher tariffs than the real costs or by charging squeeze tariffs on the retail markets. At the same time, a vertically integrated provider, which provides a wide range of services, such as S.C. „Romtelecom" – S.A., may also offer package services (for example, access and voice services or Internet access and voice services), at a lower tariff than the total tariff for their separate provision. Thus, this provider benefits from a competitive advantage as compared to the other providers, which, given the lack of the corresponding inputs services on the wholesale market, cannot offer their clients the same facilities effectively and in a short period. The only providers who can offer integrated package services (telephony, Internet access, retransmission of audio-visual programmes) at competitive tariffs, having the possibility of effectively competing with S.C. „Romtelecom" – S.A., are the providers with a coaxial cable network, thus benefiting from economies of scope.

Control over an infrastructure not easily to duplicate, high sunk costs, upstream vertical integration, together with the economies of scale, scope and density, which are the advantages of S.C. „Romtelecom" – S.A., are important barriers for the development of effective competition on the calls markets and support the significant market power assumption of S.C. „Romtelecom" – S.A.

2.5. Specific costs and barriers on the calls markets

The entry on the call market may be easier if the new entrants benefit from the advantage of economies of scope – e.g. the cable TV providers offering a wide range of services – or where the new entrant uses the network of the incumbent – S.C. „Romtelecom" – S.A., if the former provides calls by means of indirect access to the network and by re-selling traffic or capacities. Under these circumstances, the entry barriers on the calls markets are lower, given the fact that the new entrant does no longer have to make considerable investment in building a network, and the sunk costs are thus avoided. The market activity of the providers offering calls by means of indirect access depends on the regulatory activities in the field, which should allow for obtaining the corresponding wholesale services: call origination and termination from/to the network of S.C. „Romtelecom" – S.A., at cost-oriented tariffs[10].

The probability that a market be competitive, provided the significant costs and barriers the users face if they want to switch from the current provider, is very low. In order to win a part of the market share of the incumbent, a new entrant has to eventually offer significant discounts for different tariffs and services (of different quality and functionality) or for value-added services. The arguments for the above mentioned assumptions lie in the fact that the tariffs (for fixed-to-fixed, fixed-to-mobile and international calls) are the main reason of dissatisfaction with S.C. „Romtelecom" – S.A., making almost half of the residential users and

[10] The relevant wholesale markets in the electronic communications sector identified by ANRC also include the market of access to public fixed-telephony networks for call origination, ternimation and transit; on this market, ANRC identified S.C. „Romtelecom" – S.A. as having significant power, which drove to imposing certain obligations on this provider, meant to remedy the lack of competition on this market, among which – the obligation to keep separate accounts for the services offered on the wholesale market, the obligation to calculate tariffs based on effcetive costs, as well as the obligation to provide all the operators requesting interconnection with any services and information required for interconnection.

more than a half of the business users consider replacing it with other providers[11]. As well, 43% of the residentials are discontent with the lack of a loyalty rewarding system.

Furthermore, these reasons are also enhanced by the fact that the main incentives for a change of the current provider of fixed telephony, in case of the residential users are "commonly, lower tariffs", as well as "the attractive loyalty rewarding programmes for the loyal users". The same situation is available in case of the business users: "commonly, lower tariffs" and "advanced technology" are the factors which could influence the decision of changing the provider of fixed telephony services[12]. Taking into account these aspects, in fact, the revenues resulted from applying strategies based on above mentioned factors may prove insufficient for covering the costs of market entry or exit (should the activity fail). The new entrants will face even more difficulties, as switching to another provider triggers significant costs, such as using compatible terminal equipments for each particular fixed telephony network (the users have to buy a new terminal/modem). Moreover, for the calls originated by means of indirect access, the payment of two different invoices may discourage the users considering alternative offers on the market.

A specific category of entry barriers on the market of calls is represented by the necessity of dialling a longer sequence of digits (a prefix) before the call number and by registering additional costs in case of failure of the call initiated by indirect access to the network. Therefore, few users are likely to migrate towards alternative sources of purchasing call services.

As well, the users' inertia to changing the incumbent for a new entrant, and the lack of information, may act as important barriers to the new operators' entry or development on the market for the provision of calls at a fixed location. According to the studies conducted by S.C. Daedalus Consulting S.R.L., an important percentage of the residential users (70%) are not informed on the existence of alternative providers of fixed telephony services, apart from „Romtelecom" – S.A. As for the awareness of the providers of classic fixed telephony services among business, 99.4% of the subjects spontaneously mentioned S.C. „Romtelecom" – S.A., and 22.1% mentioned various providers of telephony services using IP technology, instead of classic telephony. Nevertheless, most of the subjects could not spontaneously mention any providers of VoIP telephony.

It is worth remarking that, apart form the low tariffs, the benefits expected from changing the fixed telephony provider, are: accurate invoicing and quality of client service, for residential respondents, and, respectively, coverage, quality of client service, sound quality and the technology deployed, fore the business respondents. As well, the difficulty of changing the provider may be a result of the users' low degree of information on the services and tariff schedules of S.C. „Romtelecom" – S.A., and on the alternative offers, excepting the offers of S.C. „Romtelecom" – S.A., therefore the users cannot accurately evaluate the offers and cannot make an informed decision. According to the studies conducted by S.C. Daedalus Consulting S.R.L., most of the residential users do not know the hours when the tariffs charged by S.C.

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[11] S.C. Daedalus Consulting S.R.L. – Study regarding the use of fixed telephony and the impact of mobile telephony on fixed telephony – residentials , p.57, S.C. Daedalus Consulting S.R.L – Study regarding the use of fixed-line telephony and the impact of mobile telephony on fixed telephony – business, p. 81.

[12] S.C. Daedalus Consulting S.R.L. – Study regarding the use of fixed- telephony and the impact of mobile telephony on fixed telephony – residentials , p.61, S.C. Daedalus S.R.L. – Study regarding the use of fixed telephony and the impact of mobile telephony on fixed telephony – business, p. 86.

„Romtelecom" – S.A. are differentiated or which call tariffs are charged depending on the destination[13].

2.6. The users' countervailing buyer power

The countervailing buyer power and the users structure may constraint the provider's market power. The market power could be diminished by the users' countervailing buyer power if, in the absence of the latter,,the tariffs charged by the provider increased. The users' countervailing power is obvious, usually, when a user buys an important volume of the provider's services, is fully informed on the alternative offers on the market, may migrate, at low costs, towards alternative offers for buying the respective products or could provide himself the respective products/services.

In case of the residential users, the call services purchased by the respective users represent a small quantity of the total volume of the S.C. „Romtelecom" – S.A. sales, which does not enable them to counteract the power of the incumbent.

On the other hand, the residential users benefit from the providers' diversified offers, according to various consuming needs; the existence of multiple choices offers the possibility of negotiation, and the purchase power of the business users will increase simultaneously with the growing number of providers able to provide all the required telephony services. Thus, for the calls markets, the purchase power of the business users is greater, given the bigger number of the providers who can enter these markets as compared to the number of the providers who can enter on the access market. Nevertheless, at present, there are no hints on the manner in which the market power of S.C. „Romtelecom" – S.A. may be diminished by the users' countervailing buyer power, be they business.

2.7. The number of competitors on the market

Although 13 providers operate on the market of local calls at fixed locations, and 11 providers operate on the market of long-distance calls at fixed locations, so far, the new entrants have not succeeded winning a significant segment of the market share of S.C. „Romtelecom" – S.A., so the latter still keeps the dominant position on the market of local and long distance calls at fixed locations.

As for international calls at fixed locations, the liberalisation of the electronic communications market had a stronger impact on the competition level. Using the IP technology, which triggers low costs and allows for charging lower tariffs, and targets mainly the business users (whose call volume represents a significant part of the total call volume of a provider), at present, 24 providers operate on the market of international calls at fixed locations. This situation brought immediate benefits for the end users, i.e. lower tariffs for international calls at fixed locations and a wider range of offers on the market. However, taking into account the above mentioned characteristics of the market of international calls at fixed locations, ANRC decided that the conditions for existing the effective competition have not been fulfilled. ANRC will monitor the market of international calls at fixed locations. Thus, if – according to the

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13 S.C. Daedalus Consulting S.R.L. – Study regarding the use of fixed telephony and the impact of mobile telephony on fixed telephony – residentials , p.47

market analyses to be conducted – ANRC established there are significant changes of the competitive environment, it will adopt the appropriate measures.

Therefore, ANRC deems necessary to designate S.C. „Romtelecom" – S.A. as a provider with significant power on the following specific retail markets:

1. The market of local calls, at fixed locations, for residential, respectively for business customers;

2. The market of long-distance calls, at fixed locations, for residential, respectively for business customers;

3. The market of international calls, at fixed locations, for residential, respectively for business customers;

4. The market calls, at fixed locations, to public mobile telephony networks for residential, respectively for business customers.