

THE ROLE OF THE STATE IN ACCOMPLISHING THE HEDGING OF ECONOMIC COMPETITION

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Abstract

SMEs are the main player in the economic development of a country and also the main source of support the GDP. Joining to the EU area increased visibility of Romanian retail market thereby increasing the internal competitiveness. Thus, SMEs in Romania face the digital divide and the effect of competitive pressure from both outside and from SMEs that have adopted ICT. Adoption of ICT helps companies to develop new business opportunities, reduce costs and minimizing the competitive pressure. Therefore, this paper will present the effects of ICT adopting in SMEs and involvement of local and global competition.

Keywords: *economy, law, development, competitive pressure*

1. Introduction

The state policy in the competition area is closely linked to the level of development of the economy and acts according to the industrial policy promoted by that country. To maintain an appropriate competitive environment, the state involvement is meant to be a domain marked by economic and political controversies. Opinions of specialists on this issue are diverse.

According to the principles stipulated in the Romanian Constitution that nobody is above the law, some necessities and correlations are being established: freedom of trade, hedging of loyal competition, creation of a favourable environment to rend profitable production factors and the

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protection of national interest. Therefore the imperative of putting into practice such necessities and correlations become obvious.

Within this context, on February 1st 1997 the Law of Competition 21/1996 is enforced; this has the role to protect, to maintain, to stimulate competition and to create a normal competitive environment in order to promote the interests of consumers.

The Law was meant to be the first normative act which contributed to the improvement of Romania's legislation in this domain, tallying with that of the European Union, with the legislation of the countries that have a developed market economy.

According to article 81 and 82 in the Treaty of Setting up the European Union (Rome, 1957), any agreements among enterprises are incompatible with the joint market and they are forbidden as well as any decisions to associate enterprises and any practices that can entail the trade among member states and that have as object or outcome, the hindering, the contraction, the distort of competition within the unique European market.

The abusive way by one or more enterprises of a dominant position held on the unique European market or on a significant part of it is seen as incompatible with the joint market and it is forbidden if it might entail the trade among the member states.

To enforce the norms of competition within the European Commission, a general management for competition was set up, which permanently collaborates with authorities in a competitive domain in each member states of the European Union. The Council of Competition works in Romania as autonomous administrated authority with legal body invested by the Law of Competition in this respect. As national authority of competition, the institution puts into practice and ensures the keeping of national and community provisions in the domain of competition.

The Council has the role of national authority to contact in the domain of state help between the European Commission on one side and public institutions, suppliers and beneficiaries of state help on the other side.

Lately, the Competitive Council has taken in charge the administration of law regarding unloyal competition and it has done this from the Ministry of Public Finance regarding the fight of unloyal competition.

2. Norms of competition

To put into practice the norms of competition in article 81 and 82 in the Treaty of Rome, 1957, the regulation no. 1/2003 of the Council has been enforced. To enforce legislation in the domain, some regulations and instructions have been taken:

- The regulation no. 139/2004 of the Council regarding the control of economic concentration among enterprises;
- Commission communication regarding cooperation within the network of competitive authorities;
- The regulation of the Commission regarding the functioning of some categories of Research & Development agreements.

By getting the statute of EU member country, Romania tuned the secondary legislation in the domain of competition by enforcing regulations and adequate instructions, such as:

- The new regulation for the organization functioning and proceedings of the Competitive Council, 2 February 2012;
- The new regulation regarding economic concentration, 11 January 2012;
- The new instructions regarding the proceedings to accept and evaluate commitments within anticompetitive practices, 4 March 2011.

Regarding the implementation of competitive legislation in Romania, we must underline the fact that at the anniversary of 10 years since the setting up of the Competitive Council (1 February 2007, when our country became EU member), the statute of membership with full rights has been obtained for the European Competitive Network by attaining the maturity standard asked by the European ones in the domain, the proof being its notable performances.

Before adhering to the EU, Romania got the statute of functional market economy and it ended the chapter regarding competition and it became observer at the Competitive Committee within OECD and it ended with a favorable assessment of competition in country reports since 2005 and 2006.

The Organization for Economic Co-operation and Development is a multilateral organization which reunites 30 countries whose market economy all over the world and has the headquarters in Paris. OECD was set up in 1961 and is the successor of the Organization for European Economic Co-operation created in order to implement the Marshall Plan for European Reconstruction after The Second World War.

OECD can be considered as the most efficient promoter of open, competitive, innovative market economies within the international organizations.

The division of competition within the OECD organizes every year started with 2001 a global forum of competition where representatives both from the member states and non-member states take part. This important international forum is offering a good environment for debates regarding competition politics and its relationship with important aspects of economic development. The global competitive forum reunites 70 authorities in competition all over the world and it does this every year.

The first reunion of the global competitive forum took place in Paris in 2001 and here the Romanian delegation had a written contribution with the theme: Politics and the Competitive Law in Romania.

Collaboration with competitive national authorities and their collaboration with the European Commission is regarded as an important instrument at the disposal of persons involved in the domain of competition connected with the development of national jurisdiction.

By promoting the competitive rules at a world level we find the regional center for competition with the headquarters in Budapest and which was set up in February 2005.

This center aims at enlarging the access on non-member countries within the Center East and Southeast of Europe to OECD activities in the domain of competition. The center supplies technical assistance to countries in this region by organizing workshops, seminars and training programs in the domain of competition politics and law.

3. The countries to which the activities of the centre are addressed to

By enforcing the legislation in the competitive domain, there are several philosophies and several standards to put them into practice. Therefore, with the first conference of the international competition network, held in Napoli, 2002, the chief of the authority of competition in Italy states that the Atlantic Ocean is not a one-way street and he did this by referring to the endless debate regarding the test that must be put into practice to control concentrations, dominations and reducing competitions.

In this context, the Italians wanted to see that less experienced competitive authorities have something to say to the world and a message to be transmitted.

The International Competitive Network is an informal one based on precise projects, based on consensus, reuniting competitive authorities in developed countries and developed countries. This network contributes to enlarging the experiences and exchange of ideas, opinions, points of view on competitive matters that derive from the more and more accelerated globalization of the world economy and in encouraging the spread of experiences and the best practices in this domain.

The creation of this network was officially announced on 25 October 2001 in New York and starting with 2002 it organizes conferences every year with the participation of all those in charge with national competition.

The legislation within competition aims at hedging, maintaining and stimulating competition and a normal competitive environment to promote the interest of consumers and where anticompetitive agreements among companies are forbidden as well as the abuse of dominant position and economic concentrations that might lead to significant retreat of competition on a specific geographic market or on one side of it.

In this context, we must underline the fact that in this highly important domain, the way in which the competitive authority understands and applies the specific legislation must be highlighted. Therefore, the implementation of the competition rules is not just a simple juridical exercise, but it is also needed the ability of economic analysis. For this, it was needed, besides harmonizing the Romanian legislation with the communitary, international one, the adhesion of The Competitive Council (Romania) to the great family of European, international competition, which implies the consolidation of the administrative capacity.

Thus, the competition policy being a component of the economic life and being in a continuous movement, The Competitive Council has the task to be the first to give the signal of adapting to the challenges which must be faced.

For those practices and antitrust agreements which affect the trade between the EU member states, The Competitive Council (Romania) will directly apply the communitary *acquis* in collaboration with the European Commission and with the competitive national authorities. This collaboration between the Competitive Council, the European Commission and the rest of the competitive European authorities is realized within the Competitive European Network.

The Competitive Council (Romania), as an autonomous authority in the domain, has had an intense activity from setting up until now, marked by many challenges. Many mechanisms have been created for the activity to be

more dynamic, and the identification and punishment of anticompetitive practices to be more prompt.

For adjusting the phenomenon which affects the normal competitive activity, The Competitive Council applied the biggest fees from its history in 2011, of about 300 million Euros, representing the double of the fees applied from setting up the authority until the end of 2010. It must be kept in mind that after ending the investigation in 2011, linked to the “concerted” market withhold of the “Eco Premium” gas, record fees of over 200 million Euros have been applied to the involved companies. Also, the companies “Orange” and “Vodafone” have been sanctioned with over 63 million Euros for the dominant position abuses, stopping a smaller competitor from entering the market.

Lately, the involvement of the state in resolving the problems in the competitive domain was proved through promoting the Law of competition in a new form, for adapting the legislation and procedures to the new economic reality, but also for promptly responding to the requests of the other competitive authorities from the EU member states.

Also as a necessity of the intervention of the state in adjusting the economic relations between companies, the Competitive Authority from Romania identified some indicators for monitoring the markets, allowing the evaluation of the competition grade in certain strategic economic sectors. This monitoring system gives the state the possibility of concentrating its efforts to the suspicious areas regarding the possible anticompetitive acts.

From the perspective of applying the competitive legislation and monitoring the competitive sensitive markets, the Competitive Authority firstly focuses on the energetic sectors, the roads and highways national constructions, food retail, but also on the public auction procedures for making regional development projects. Neither will the other economic sectors be neglected, they will be monitored as they need to respect the provisions of the Law of competition. Taking into account the current EU economic changes, The Council of Competition intensifies its activity year after year, to support the business environment and to satisfy the interests of consumers.

Thus, the Competitive Council – as a national authority in the domain, has the state mission to apply effective measures in order to maintain a normal competitive environment and to guarantee the normal and correct functioning of markets, by strictly applying the competition rules, so that, finally, we assist to an ideal promoting of the interests of consumers.

According to the official data presented by the Competitive Council through its annual activity reports, it results that in 2011 it initiated 27

investigations, from which 24 regarding the possible violations of competition regulations and 3 regarding certain economic sectors. A part of the investigations were initiated by self intimation, and others were initiated due to diverse intimations. There were also situations when the Competitive Council collaborated with the High Court of Cassation and Justice in order to finalize its actions.

The sectoral investigations from 2011 refer to:

- The banking payment system;
- A wide consumed product, beer;
- Distributing home appliances and confections through virtual stores.

In 2011 were finalized 22 investigations, from which 20 regarding possible competitive regulations violations and 2 sectoral investigations.

Depending on the nature of the competitive regulation violation, the investigations finalized in 2011 have had different resolving periods:

- 6 years for antitrust agreements and dominant position abuse;
- 5,3 years for dominant position abuse;
- 3 years for cartel.

At the of 2011, the lasting average of the finalized investigations was of 1,9 years, and the fines amount had a value of approximately 300 million Euros, when 64 companies were sectioned for anticompetitive practices, 39 for giving information's during the sectoral investigations and two for putting in practice of some economic concentrations before issuing the decision of the Competition Council.

Also in 2011, The National Authority of Competition has ended a series of investigations carried out on the products and services markets with a direct impact at costumer's level. As consequence of those acts, the Competition Council has issued decisions through which the normal competitive environment has been restored, but the effects came upon the final consumers.

At the same time – the Competition Council – as contact authority in its relations with the European Commission, ensures implementation and compliance by public authorities and the private sector, of the rules in the granting of state aid and effective communication with the community forum.

As well, in 2011, representatives of the Competitive Council participate to a technical reunion with the representatives of the European Commission, International Monetary Fund and the World Bank; where they analyzed the possibilities of solving the arrears related to state companies. At the reunion were present also representatives of the authorities involved in

Romania (Ministry of Transport and Infrastructure, Ministry of Economy, Ministry of Trade and Business Environment and Ministry of Public Finance), as well as representatives of the respective companies. The purpose of these reunions was to fundament solutions for the companies interested in developing of materials by the Romanian authorities to prove compliance with the Community legislation on state aid, with the support of the Competition Council. These materials must be sent to the European Commission, in the forthcoming notice of the measures.

Here are some actions taken by state authorities that can improve competitive activities of companies in Romania in the coming period. In 2011, the Competition Council's activity focused also the cooperation with other competitive authorities, with international organizations in the field.

Therefore in the antitrust field, the Competition Council has informed the European Commission on a total of 18 cases in areas such as: pharmaceuticals, telecommunications, financial services, automotive fuels sector.

Through the European Competition Network (ECN) is realized the mechanism for cooperation between the competition authorities of the EU Member States and the European Commission for the unitary application of the Community competition provisions, representing the necessary elaboration of common position documents, the exchange of information and coordination on terms of investigations.

The opening of investigations for new cases of anticompetitive practices can be achieved both by the European Commission and the national competition authorities of ECN, by the Treaty on European Union. Also, economic globalization involves a permanent consolidation of the national competition authority efforts for international cooperation in competition policy field.

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