

FUNDAMENTAL PRINCIPLES OF COMPETITION LAW ENFORCEMENT

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Abstract

Large variety of different countries conditions requires modernization of criteria, norms and standards of competition regulation and methods of enforcement. Competition law is the composite branch of law which consists of rules that ensure the existence of economic competition and its enforcement. Competition advocacy is a type of complementary activity exercised by antimonopoly authorities additional to enforcement measures and increasing the understanding of the benefits of competition. Originality and practical applications of research are based on empirical studies completed by Moldovan Competition Board.

Keywords: *Competition norms; Competition advocacy; Composite branch of law; Principles of civil law procedure; Antimonopoly authorities.*

JEL Classification: *K2, K4, D4*

The "traditional" antitrust and regulatory instruments is challenged by regulatory authorities and the judgment system. It generates active discussions among researchers of different markets and between the leading practitioners in the domain of broad competitive processes (Baker Jonathan B., 2007). "Competition advocacy – a systematic management activity by the competition authorities, aimed at establishing mutual understanding between the government, society and business, including complex communication,

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advocatory and educational activities, and informing market participants about their rights and obligations to the society and the market.” (Knyazeva p.7, 2013). Competition advocacy, to promote competition, is focused on two perspectives: advisory and educational. Two specific traits of Moldova cause different competitive approach: is a former Soviet Union’s republic and a small country. From these two traits come some important constraints: small size of the domestic market; natural monopolies; market dominance zones of influence; high barriers to market entry; jurisdiction that can be influenced. In smaller jurisdictions, imposing forced removal of unfair competition acts can sometimes be harder than in larger countries. It happens because social networks and inter-family are much more important.

In these circumstances, in small countries direct imposing may be ineffective, favouring other methods, united under the name of competition advocacy. Promoting competition culture among citizens, to make them aware of the benefits of competition policy, are promising in this regard. It is important for competition authorities to be transparent and explicit. Although competition advocacy is important in all jurisdictions, large or small, probably is needed more for small economies. In addition, smaller jurisdictions are turning more often to price control systems, and this leads to the belief that regulated prices are fair prices and that competition leads to instability. As already noted, government involvement influences a long perspective inefficient state of the market contrary in free competition.

The theme of fundamental principles of law enforcement was studied in the international literature by several authors in different periods. This theme has been the subject of numerous studies, especially in the aspect of their application in various branches of national and international laws. We shall mentioned (C.H. van Rhee, 2004), (A. Zuckerman, 2013), (I. Leş, 2010). At the same time, special attention was accorded to the topics of competition law (Cento G. Veljanovski, 2007), (David J. Gerber, 2009). In what concerns the analysis and comparison of the fundamental principles of civil procedural law and competition law are far fewer sources, which motivated us to elaborate this study.

Competition law is the composite branch of law which consists of rules that ensure the existence of economic competition and its enforcement. A "composite" branch of law is which preconditions are in other branches and justice. Competition law derives many of its structural elements from administrative law, civil law, civil procedure law and commercial law.

The most important principles of civil procedure law are: the principle of legality, the principle of judicial independence, the principle of truth, principle of the active role of the judge, the principle of equality of parties to justice, the principle of publicity, the principle of morality, the adversarial principle, the principle of the right to defence, the principle of availability, the principles of eliminating barriers, principle of continuity of debate. These principles are viable in the process of material norms of competition law and will be described below.

The principle of legality is one of the pillars of judicial activity, legality representing a generally recognized principle in democratic states and building a market economy and on this basis the rule of law cannot be conceived without compliance. Judges should monitor compliance with all laws, from the substantive law affecting litigious legal relationship, continuing with reference to the organization, establishment, and duties.

In civil procedural law principle of independence refers to the independence of the judge and his obedience only to the law, this principle refers also to the Competition Council Plenum members in accordance with the provisions of competition law. They must be independent in decision-making, may not be part of the political party and can't be detained, arrested unless there is an official request of the General Prosecutor. Independence principle should apply to all levels: decision making, investigations within cases and authority.

The principle of truth is one of the main themes of courts activity and also Competition Council starting with petition examination and till the end of investigation. Procedures and human justice decisions are not infallible this is why some authors have noted that the judge cannot claim that he reveals always the truth content, he is being satisfied with a "temporary but substantial truth which is procedurally defined". Same principle is applied by the Competition Council Competition Council by not being obliged to take into account the circumstances that have not been disclosed by the claimer which could not be ascertained unless the investigation was proceeded.

The principle of pro- active activities of civil procedural law is about the active role of the judge to order the ex-officio evidence which are considered to be mandatory in order to solve the case also the examiner from Competition Council has the right to order the ex-officio proof of evidences in order to inform the decision making body of the authority regarding the anti-competitive practices within the complaints procedure.

The principle of equality of parties to justice implies that citizens are equal before the law and public authorities without any privilege or discrimination. This principle implies the implementation of the rights of defence by giving the parties access to their dossier. In this way the same elements are viable for the Commission and also for the Competition Council in respect of the principle of equality of parties to justice.

The principle of public debate has a constitutional value. Public advertising is the right of every foreign person to attend the debate process. Public advertising within competition domain is widely implemented through the following instruments: public meetings of the plenary, interviews with the parties, consultations provided by employees of the Competition Council, public meeting of prior hearing, access to the dossier, advertising to the general public, consultations for notification's submission. EU Commission distinguishes parties which must be given the opportunity to be heard and which might be provided such an opportunity. The concept of legitimate interest is treated by the European Court via legal or economic interest which is or may be affected in a negative way by the infringement or the Commission's decision, but the competition law of the Republic of Moldova requires that the concerned party must demonstrate that the economic or legal effects may negatively influence its activity, and this is the only procedure for demonstrating legitimate interest.

In competition law, also European law and Moldavian one is a mixed form that foresees combining the principle of morality with written procedure. In EU legislation the official refusal of complaints shall be made only after the complainer had the opportunity to be heard. In Moldovan legislation refusing is done after the undertakings are given 10 days additionally to provide relevant evidence in writing. The Commission has always complex powers to grant third parties who show enough interest or possibility of expressing his views in writing or to participate in oral hearings compare to the Competition law which foresees only oral hearing.

Adversarial principle is a fundamental principle of the civil procedure and criminal procedure law and is linked to equality of arms and requires the judge to ensure that any successive element to influence the solution regarding contestation in the matter of subject to discussion between the parties. The right to be heard in cases concerning competition before the Commission indicates two important issues: the Commission must familiarize undertakings about his case and the right of the undertakings to respond. So, adversarial

principle in competition law is implemented not only in writing via project opinion presentation and evidences but also arguments within hearing. The principle of the right of defence has two meanings one material and one formal. Rights of the defence includes in its content opportunity of the parties to get acquainted with all documents in the dossier, to elaborate requests, request samples, to invoke procedural exceptions, to exercise legal remedies, to challenge the judges. Commission must be able to demonstrate that it has taken all steps to provide access to the dossier. I would like to mention that in the legislation of the Republic of Moldova are the same provisions.

The principle of availability includes in its contents following most important prerogatives: the claimer's right to relinquish to action or to subjective right, the defendant's right to accept claims made by the applicant, the right of both parties to end the process with a transaction, the parties' right to exercise legal remedies, the right to accept the announced decision and the right of winning party to request urgent enforcement of the decision. Within competition law principle of availability is manifested by the applicant's right to give up to the action.

The principle of continue debate is the rule that requires solving the whole process in one hearing. Continuity contributes to solving civil litigation cases and in this way decisions upon Competition Council dossiers are adopted by the Plenum of Competition Council which mandate is set for five years, in this way assuring the principle of continuity.

Promoting competition in dialogue with public authorities.

One of the instruments for promoting competition culture in society is different dialogue with the public authorities and institutions. In this regard the competition authority develops a continuous dialogue with all institutions related to its area of involvement. In collaboration with the Moldovan parliament were presented information on the sugar market and oil market, through competition concerns related terms. Ensure the establishment of dialogue and cooperation relations with the authorities and institutions of the country was achieved through participation in public debates, launched by central government authorities, where the Competition Council representatives participated as experts on competition and state aid.

Establishing an effective dialogue with public authorities and the cooperation with courts.

In collaboration with public authorities, the Competition Council intends to carry out actions such as:

- Assist in conducting studies and market analyzes in order to more accurately reflect market knowledge of the field.
- Sustained cooperation in competition law enforcement in preventing and deterring anti-competitive practices which may have the effect of restricting, preventing or distorting competition in the field.
- Supervision of compliance with competition law and the legislation. According mutual information between authorities and on measures taken in breach of the law in these areas.
- Mutual consultation, both at management level and between experts on various issues arising in connection with the competition.

It is also important to increase the competitive culture of judges for the correct application of the Competition Law no. 183 of 11.07.2012 and Act No. 139 of 15.06.2012 state aid, enhancing the quality and uniformity of decisions making decisions on similar cases.

The principle of eliminating barriers is the rule governing the civil process and expresses the requirement that the court must find by its own the barriers links and remove them in order to elucidate the case. The implementation of the principle of eliminating barriers is assured by the Plenum Members of the Competition Council by supporting the decision of the case via their vote.

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