

PROCEDURAL LEGAL RELATIONSHIP IN THE FIELD OF COMPETITION

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Abstract

The procedural legal relationship in the field of competition is a superstructure relationship that develops depending on the social order. Large variety of different countries conditions requires modernization of criteria, norms and standards of competition regulation and methods of enforcement. The elements of competition procedural legal relationship are established in the paper and developed the application of competition legislation in Republic of Moldova. Originality and practical applications of research are based on empirical studies completed by Moldovan Competition Board.

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JEL classification: *K2, K4*

1. Introduction

The multitude of social relations governed by the competition procedural rules forms a distinct category of legal relationships. Legal relationships of competition procedural law emerge, change and cease within the process of undertaking by the competition authorities of their legal powers.

The procedural legal relationship in the field of competition is a superstructure relationship that develops depending on the social order, being subordinated to the general objectives and principles of the society, reflected in the Constitution of the country. Procedural law relationships can only exist as superstructure relationships, since they have a specific content and are done in their own form to demonstrate their superstructure character, playing an

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important role in guiding and correcting human behaviour under general requirements of social progress within general social system. It is worth mentioning that the principle of free competition is a fundamental principle for the establishment and functioning of the European Union. In the European Union, alongside with the national authorities, the Competition Directorate General, which is a supranational body, has powers of competition law monitoring and enforcement.

2. Theoretical support

The procedural legal relationship in the field of competition has a volitional character. It should be noted that the procedural legal relationship is an area to meet two wills: the will of the state stipulated in the rules of competition law and the will of the subjects participating in competition procedural relationships. In competition procedural relationships the relation between individual will and the general will is determined by the mandatory nature of the competition procedural rules.

The procedural legal relationships in the field of competition promote, encourage and defend social values. The market economy, private property, fair competition, the rights of defence etc. are social values sanctified in the Constitution and protected by the competition law. Attempting on social values aimed at ensuring a functioning market economy is punished.

Another feature of competition procedural legal relationships is that they are an expression of the historical development of social relations. Only with the transition to a market economy we can talk about economic competition and competition regulation. Within the centralized economy the rivalry between companies was missing as the prerequisites for the existence of competition were missing, too. The establishment of market economy mechanism imposed the adoption of competition legislation and the creation of a competition authority competent in applying competition rules. The relationships of the subjects participating in anti-competitive practices with the competition authorities are based on principles of legality, the principle of the right to defence the independence of the competition authority, etc. and they have resulted in procedural rules of competition.

Thus, we can observe that the procedural legal relationship in the field of competition is a relationship governed by the rules of competition procedural law. These rules establish the legal capacity of undertakings and public authorities as well as the powers of the competition authority.

Although in the field literature there are some different nuances in defining the legal relationship, the elements of substance are the same. All authors observe that the legal relationship is a social relationship governed by the legal norm. None of the definitions fail to make clear that this relationship is defended, if necessary through state coercion. In the conception of Professor Mircea Djuvara (1913), the legal relationship is a relationship governed by the legal norm "between persons through the legal act referring to a particular object." This relationship "has a categorically normative character"; "represents a command"; "implies the idea of obligation"; "establishes values."

Professor Dumitru Mazilu (1999) defines the legal relationship as a social relationship, a superstructure relationship that emerges on the basis of legal norms between two or more parties who are holders of rights and mutual legal obligations, guaranteed if necessary by the coercive state power.

In the light of the analysis carried out we can observe that the procedural legal relationship in the field of competition is a social superstructure relationship that emerge based on competition procedural norms that arise between the competition authority and the participants in anti-competitive actions, which are holders of rights and legal obligations, the realization of which is guaranteed by the coercive state power.

The specific features of the procedural legal relationship in the field of competition are:

a) The competition authority is the mandatory subject of the procedural legal relationship in the field of competition, empowered to enforce competition law. Other subjects of the competition procedural legal relationship are the participants in anti-competitive practices. In this particular case we have the complainant that is usually the company that suffered as a result of actions / inactions of limiting competition, and the defendant – the undertaking or the public authority which limited the competition.

b) The subjects of the competition procedural legal relationship are not equal in rights and obligations. Thus, it is necessary to exist two categories of relationships: 1) between the competition authority and the participants in anti-competitive actions and 2) between the participants in anti-competitive actions. Referring to the relationships between the between the parties to anticompetitive actions we believe the principle of legal is to be respected.

c) Competition procedural legal relationships emerge, change or cease based on unilateral manifestation of will, and this will is unilaterally manifested ex officio or upon request.

d) Another feature of the competition procedural legal relationship is that it contributes to resolving legal disputes arising from the breach of competition law on a relevant market.

e) The last feature of the competition procedural legal relationship is the competitive nature of liability of the relationship subject that do not respect its obligations deriving from the legal relationship in which it is a part. Violations of the obligations arising from the competition procedural legal relationship entail sanctions for violation of procedural rules of competition law.

The concept of the legal relationship involves primarily specifying the premises and its constituents. Any legal relationship implies the existence of legal norm; subjects that have legal capacity, legal facts.

The legal norm, legal subjects, legal actions are the prerequisites of legal relationships. In the field literature, legal norm and legal capacity are considered as general premises of legal relationships and legal actions are the concrete premises.

A) Competition procedural legal norm established by the Competition Law No. 183 of 11.07.2012 allows individuals and legal persons, particularly undertakings, addressing to the competition authority to restore violated rights and legitimate interests.

B) Competition procedural legal capacity is identical to the term of legal subject of the competition procedural legal relationship and reflects the recognised by the state possibility of a subject to have competition procedural legal rights and obligations.

C) Legal facts of which existence the law binds the emergence, modification and termination of competition procedural rights and obligations are the violations of the substantive rules of competition law. Competition Law establishes several legal facts of which existence is linked the emergence, modification and termination of competition procedural rights and obligations, namely: anti-competitive agreements, abuse of dominance, actions of public authorities to limit competition, unfair competition, illegal state aid or misused aid.

The elements of competition procedural legal relationship

Each competition procedural legal relationship has three characteristic elements: subject, object and content.

A) The subject is a distinct and important element to identify any competition procedural relationship. As mentioned above, the competition

procedural relationships can be divided into several categories: competition authority, subjects carrying anti-competitive practices, other subjects of competition procedural relationships.

a) The competition authority represented by the Competition Council employees, is one of the main subject of competition procedural relationship without which the process cannot be undertaken. The Competition Council is an autonomous public authority responsible to the Parliament, which ensures the enforcement and observance of the competition, state aid and advertising laws, within its competences. The Competition Council is entitled with power of decision, regulation, prohibition, intervention, inspection and sanctioning, in the limits set up by the legislation.

Given the procedural powers of the Competition Council there can be identified several entities entitled with defined powers:

- The Plenum of the Competition Council;
- The Secretariat of the Plenum of the Competition Council;
- Executive body of the Competition Council;
- The rapporteur responsible for the investigation.

b) Subjects carrying out anticompetitive actions

Art. 2 of Law no. 183/2012 refers to forbidden deeds - actions and inactions that have or may have as an object or effect the restriction, prevention or distortion of competition, as well to acts of unfair competition, committed by:

- legal persons, registered in the Republic of Moldova or registered in foreign states and natural persons;
- local or central public administration authorities, to the extent they, by the decisions issued or the enactments adopted, interfere in the market, influencing the competition directly or indirectly, except for the situation when such measures are taken with regard to the enforcement of other laws or for the defence of a major public interest.

Following the analysis of the presented above legislative text we can observe that there are to be forbidden the anti-competitive practices committed by: undertakings, natural persons and central and local public authorities.

A definition inspired from the Community law is provided under art. 4 of the Competition Law No. 183/2012, which mentions that an undertaking is

any entity, including the association of undertakings, involved in economic activity, regardless of its legal status and the way of financing.

Octavian Manolache (1997), mentions as a separate subject of the competitive relationship, in addition to natural or legal person, the group, composed of at least two of them, defining the undertaking as an organized group of resources which does not require a specific legal form, and can be a natural person, legal person or a group of at least two of them, and who should operate as an independent economic unit, autonomous and carry out an economic activity on a sustainable basis.

Analysis of Community law and national legislation allows concluding that to be considered as a subject of competition relationships, the entity must meet the following elements:

1. Not imposing a specific legal form.
2. Operation of the undertaking as an independent and autonomous economic unit.
3. Performing an economic activity, any activity consisting in offering goods on a given market.

Given the fact that the applicability of competition rules relates to the economic nature of activity and not to the quality of the operator or the form in which it intervenes in the market, we can mention that besides companies, the freelancers, associations, foundations and trade unions as well as central and local public authorities when they directly intervene in market operations, without thereby exercising public powers, are considered as undertakings.

c) Other subjects of competition procedural relationships represent that category of

the subjects of competition procedural relationships that are directly involved in the investigations of anti-competitive practices, and on their participation depends the progress of the case. Other subjects of competition procedural relationships can be:

- interested persons,
- regulation authorities,
- the expert (specialist),
- the witness,
- the interpreter (translator),
- lawyer or authorized representative under the law.

B). The object of the competition procedural relationships represents a fact on which the actions of the subjects of competition procedural relationship are directed and, namely those resulting from the investigations of anti-competitive practices. This is a general object characteristic for all competition procedural relationships. However, each competition procedural relationship might have a particular object. For example: the particular object of the relations between the competition authority and the representative represents the rights and interests of the representative protected by law; the particular object of procedural relations between the competition authority and witness represents the information about facts that are important to the case.

C). The content of the competition procedural relationship is represented by competition procedural rights and obligations of the competition authority and other participants in the process, allowing separating a competition procedural relationship from other legal relationships. The rights and obligations which form the content of the competition procedural relationship are subjective rights and obligations. The legal relationship as a form of will relationship is to be characterized by a close connection between the participants in these relationships, determined by mutual nature of rights and obligations they have in the investigation of the cases of competition legislation violation.

3. Conclusion

We will continue discussion on the issue of the application of competition law in the next edition of the magazine. It will be analysed case study Competition Council of the Republic of Moldova.

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