ANALYSIS OF THE EVOLUTION OF COMPETITION POLICY AND REGULATION METHODS IN ROMANIA, IN CORRELATION WITH THEIR ORIGIN AND HISTORICAL EVOLUTION

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Abstract

In the context of the world evolution of the market economy and the major transformations that the market has undergone, the emphasis placed in the competitive regulation process has also evolved considerably. Starting from the need to manage the relations of market actors in order to prevent abuses of market power, today we know a complex process of regulating competitive relations and protecting competition. Although the origins of the study and analysis of competition come from the United States, currently the policies and competitive regulation of most countries are based on 2 major platforms, that of the Federal Trade Commission of the United States of America (USA) and the European Commission of the European Union (EU). However, each country correlates competition regulations with the development stage of the internal market, and adopts its rhythm of the evolution of these policies, in the process of adjustment of regulations to its situation and needs. The process of evolution of competition regulations and its political orientations is usually influenced by the level and pace of market development, but also by political factors not least.

The paper reflects the evolution of competition policies and regulations in Romania in a historical context and presents an analysis of them in correlation with the evolution of US and EU competition policies and regulations. In this context, the stages of development of competition policies and the directions of development of market regulation methods are highlighted. Of interest is the extent to which they are influenced by market changes and adapted to their conditions for intervention in

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sectors at risk of distorting the competitive environment to maintain market equilibrium.

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1. Introduction

Competition policy can be considered as the basis of market policy, focused on property rights, freedom of agreement, and supported by policies to ensure monetary stability, the work of social welfare (Motta, 2004). The objective of competition policy has often been a controversial topic. On the one hand, there are strong proponents of economic freedom, who see economic freedom as a result of competition as an end in itself. And on the other hand, there are those who consider the competition policy an interventionist one, part of an industrial interventionist policy that aims to establish structures on the market and encourage companies to adopt a behavior beneficial to economic well-being.

The understanding of the need for market regulation evolves with theories based on the analysis of the behavioral impact of market actors on economic benefit, the development of the market economy.

The desire to liberalize competition in the economic environment of the market, as an echo of the theory of the invisible hand, has led to the development of policies to regulate it. The development of the first competition liberalization policies appears in the Fraiburg school. Its concept is to create the economic environment based on competition that offers a high quality of supply, not one that manipulates through market power. The antitrust regulation, which is applied in most countries of the world and involves methods of influencing the state of the market to prevent competition, was first enacted in Canada and the United States. But depending on the trend and speed of economic development, competition policies and regulations have followed different courses in their evolution.

2. The evolution of international competition policy

The years 1890 - 1900 characterized the market by a flourishing of trade. At international level, due to the development of rail transport and technologies that offered the possibility of optimizing production costs and large-scale production, trade reaches considerable proportions. With this, large corporations appear and develop, the actions of which lead to the emergence of monopolies. Therefore, this period led to the emergence of the first regulations on the behavior of subjects in the market. The US has a priority in this regard, which in fact has also experienced accelerated market transformations. Although the markets cannot be compared, making a chronological parallel, an attempt to control the market behavior appears in this period in Romania, which attests to the first rules of market behavior of traders..

In the USA in 1890, appeared the first regulation based on counteracting market restrictions and monopolies. The legislative act adopted in 1890 aimed to counter all possibilities of restricting the freedom of trade and activities that involve the creation of monopolies. Its emergence is associated with the growing dissatisfaction of small and medium-sized enterprises, as well as the general population, with the growing oppression of capital and monopolies. With the help of these laws, the state seeks to weaken the intensity of the antitrust struggle and to sow among the masses the reformist ideas by which state control eliminates the alleged domination of monopolies in modern society. The law was passed after the trusts were accused of limiting the placing of goods on the market in order to raise prices. The act, called Sherman's Law, therefore shows the political intention of the US Congress to protect the phenomenon of competition in the market, and to give economic agents the opportunity to compete, thereby contributing to raising the welfare of the population. The main idea in the antitrust regulatory procedure was "protection of competition, but not of competitors" (HULL, 2017). In essence, in 1887, attorney F. Stimson warned that "American resources have invented a legal mechanism that can absorb a hundred corporations and a hundred people; and then, with all the irresponsibility of the corporation, to keep its combined power in a compact form, concentrating this power in the hands of one or two persons. These trusts can fulfill the satanic desire - to acquire unlimited and irresponsible power, free from external control or control of conscience "(Gellhorn, 1994). In the conditions of economic depressions, of the scandalous financial transactions in which the trusts participated, the public demanded the destruction of the trusts by legislative means. Until 1889, both sides tabled rigidly worded antitrust provisions in Congress, and in 1890 Sherman's legislation was passed.

The US political, economic and legal elite were convinced that the market itself protected society as long as the legal right to trade - and especially the freedom to enter the market and freedom of competition, was guaranteed by the constitution. This discrepancy first emerged when it became clear that the revolutionary changes in rail transport, the industrial development of the South and the creation of new technologies made it possible for low-cost freight producers to conquer sales markets in regions that were previously served only by local companies. Investments and financial capital began to return quickly to new growing companies, there was a trend towards concentration of capital and resources. In addition, trust groups have begun to be actively set up, attracting securities to the temporary management of trust by shareholders in several companies. This tactic has allowed the largest trusted companies, such as Standart Oil Co., to control many large industries. At that time, the monopoly was extended to the main markets, namely: the market for cottonseed oil, sugar, coal, oil, jute, rails, lead and zinc. In all the areas listed, due to the fact that in some American states antitrust laws were enacted, production, between 1880 and 1890, grew faster than all American production as a whole. The first trust in the United States appeared in the field of railways. This trust allowed the railways to discriminate against imposed rates and services to consumers and business and to destroy potential competitors. In 1880, the Standard Oil Company controlled a number of markets, including the market for petroleum products, lead, and whiskey (FTC Guides). An impetus for the adoption of this act was the fact that by the end of the century. In the 19th century, Americans generally associated the negative side of monopoly domination with state power in the economy. They considered that the activity of most monopolies is harmful, because they were created and with them manipulated the almighty state.

The antitrust law, in fact, represented a specific intervention for that period of the state in the economy, characteristic of the era of state monopoly capitalism. It limited some of the most cruel and obvious methods of monopolistic activity, with a certain impact on the nature of competition, but did not extend to the prohibition of large monopolies. These ambiguities have led to opposite effects of this regulation, resulting in integrations and mergers of partner companies, which have resulted in the formation of monopolies.

In Romania, the first rules of conduct on the market were set in the Civil Code adopted in 1864. Based on this, trade was protected by the rule that no one can cause damage without covering it (Sachelarie, 1947). As a conceptual basis of this code they used several legislative acts, such as the Napoleonic Civil Code of 1804, the draft Italian Civil Code, the French law on transcription of March 23, 1853, the Belgian mortgage law of December 10, 1851 and provisions of the old Romanian law (Civil Code , 1865). The elaboration of the Civil Code was part of the great legislative reforms in Romania. These rules, however, contain general provisions and some limitations on conduct, not focused on counteracting serious competitive infringements. The period of the late 80's is characterized by the rise of concerns about market manifestation, and the tendency to balance market forces for the benefit of society. This stage is known as the "Law on itinerant trade of 1884", which tries to limit unfair behavior in the market process. The rules set out in it provided for an intuitive form of protection of the subjects in the market process.

In the years 1900-1950 the market experienced a continuous rise, in which international trade develops, but also new anti-competitive practices, such as anti-competitive agreements.

In 1914, in addition to Shermann's law, the United States passed the Federal Trade Commission Act (US SL, 1946) and the Clayton Antitrust Act (US SL, 1956-1965), which regulated specific categories of abusive behavior, such as: price discrimination, the conclusion of exclusive contracts, mergers which substantially reduce competition, etc. Restrictions on corporations have become clearer: price discrimination aimed at establishing monopoly dominance, signing contracts with conditions not to be allowed to enter into agreements with third parties, restrictions have been imposed on possible mergers of competitors. That is, the law goes against the practice that has been widely used in the United States since the early twentieth century and has been used by monopoly circles both to strengthen its position in relation to competitors and to strengthen its share. It is stated here that "no company engaged in trade will acquire, directly or indirectly, in whole or in part, shares or other share capital of another corporation participating in the trade, if the result of such an acquisition may be a significant weakening of competition between the corporation whose shares are purchased and the one making the acquisition, or trade restrictions in any part or region of the country or the tendency to establish monopolies in any commercial field ". An exception to the general rule is for those corporations that buy shares of other corporations only to invest their capital and do not use them to "substantially weaken competition". The purchase and sale of shares by railway companies is permitted, which should only happen under the control of the Committee on International Trade. Of particular importance is the reservation that the law does not apply to acquisitions of shares between corporations that took place before the law came into force. Thus, economically important mergers made by large corporations before 1914 were fully secured against possible prosecution under Clayton's law. Among other things, the law removed trade union activities from possible persecution based on the Sherman Act, establishing the special social quality of human labor - not as ordinary goods or services. At the same time, under Clayton's law, companies had the right to ask the court to recover damages from violations under Sherman's or Clayton's law, and to obtain a decision banning future anti-competitive action (FTC Guides). The provisions of Article 3 of Clayton's Law define the illegality of restricting competition by any market relationship, such as: conditions of sale, lease, restrictions on resale or prohibition of relations with competitors, in relation to business partners. This restricts the establishment of monopolies on commercial markets.

The Federal Trade Commission was set up in 1914 to prevent unfair competition in the market. The initial mission of the commission was to protect economic operators on the market, by prohibiting unfair and / or abusive methods of behavior in market relations. The commission's attention was focused on the relations between the actors, which, as an effect, harmed society and the consumer. The Federal Trade Commission has managed to gather the skills to counteract unfair market behavior and to effectively enforce the provisions of antitrust law. The Commission's work has created favorable conditions for the development of fair competition and the economic growth of the market. Thus, the legislation of Sherman, Clayton and the Federal Trade Commission formed the basis of US competition policy.

The interpretation and application of antitrust regulations was the most complicated task, which fell to the judiciary. Each case had to be analyzed separately, and the decisions individualized. And this allowed the improvement of the application of the legal provisions. The strength of the US judiciary is that it allows for the reinterpretation of regulatory rules by the judiciary and the setting of precedent in decisions taken, which can be the basis for the subsequent resolution of such cases. This significantly increases the role of judges in making decisions guided mainly by the "balanced approach rule". As a result of the investigated cases, the explanation of the essence of the prohibited practices was best made by the courts, in the process of solving real cases. Through the practical example, it was possible to explain certain behaviors and their consequences, established as anti-competitive, and prohibited / sanctioned. This is due to the fact that the assessment of the situation in the investigated cases was made individually. Also, in the process of investigating the cases, some subsequent consequences on the market were taken into account, and its dynamic character (FTC Guides).

Following the development of antitrust enforcement systems in practice, based on the experience of previously resolved cases, 2 principles were established:

1. The 'per se' principle, which establishes that once an anti-competitive agreement has been demonstrated, it is no longer necessary to prove the negative effect which it may cause. This principle has facilitated the prosecution of market players who have engaged in unfair practices.

2. The "reasonableness" principle, which provides for the decision to be taken in the light of all the pros and cons, in other words, weighing the harm against the benefit of the infringement. In this respect, decisions to prohibit certain practices are taken only if the injury to the benefit of the market prevails.

After all, the antitrust legislative basis was laid by the acts adopted until 1916, all subsequent acts constituted improvements to the acts already adopted, in accordance with the results of their application (FTC Guides).

One of these acts was the Robinson-Patmon Act. This comes to protect small traders from competition with large corporations. The law prohibited price discrimination under certain specific conditions, as well as some special techniques for such discrimination. For example, banning contracts for the sale of goods at "unjustifiably low prices" in order to eliminate competitors. To this end, the commission sought explanations in such cases from corporations, and if the explanations for the practice of low prices were not argued, they were defined as unfair competition and sanctioned. As a result of this law, the Federal Commission has been empowered to request annual reports from corporations and other acts that can inform about their behavior on the market. Moreover, periodically this information was published for the public interest, except for trade secrets (Stocking, 1961).

In the EU, the wave of market development and the emergence of the dimensional criterion that undermines competition in the market appears a little later, or at least, the rules governing anti-competitive activities appear from 1900 onwards. As in the United States, anti-competitive agreements were widespread on the European continent in the early twentieth century. The most common were cartel agreements.

Many industries were dominated by large companies following cartel agreements, and the courts did not have the leverage to counter them. In order to put an end to this problem, special commissions have been set up in several European countries to propose measures to regulate them. The commissions' opinions agreed on the need to ban anti-competitive agreements, but did not agree to the application of rules similar to those in the USA. As an argument, there were the alleged benefits brought to the market from the cartels, but also the denial of the existence of monopolies on the European market.

In order to protect the market, amendments were made in 1900 to the Paris Convention for the Protection of Industrial Property adopted in 1883, in order to oblige Member States to ensure fair competition. And in 1934, express provisions were introduced regarding which facts are considered actions of unfair competition.

In 1923, in connection with acute inflation and the increase of the antitrust provision of the leadership, the first formally directed act against cartels was adopted in Germany - the Decree on the Abuse of Economic Power. But the decree did not prohibit the creation of cartels, but on the contrary legalized them. The recognition of a cartel took place through a written contract, and the state could only be involved in the event of a threat to the economy or social welfare from their activity. According to Article 4, the threat was considered if the production or sale of goods were limited by economically unjustified methods; prices were rising or kept high; the economic freedom of suppliers or consumers has been unjustifiably limited by boycotts (termination) or discriminatory pricing and / or services in the contract.

Norway and Sweden also adopted a similar act in 1925 and 1926, respectively. However, with the Great Depression of 1929, competition law disappeared from Europe. It was relaunched only after World War II, when Britain and Germany, under pressure from the US, became the first countries in Europe to fully adopt competition laws.

During the mentioned period, Romania continues to adopt legal norms for regulating market behaviors, encountering the same unfair practices as the large markets (USA and EU). During this period, the regulation of competition in Romania was based on a series of laws, such as:

- Unfair Competition Act of 1932;
- Decree for the regulation and control of cartels from 1937;
- Law no. 26 of 1939 on monopoly agreements.

The law of unfair competition focused only on unfair acts. In relation to this law, acts of unfair competition were considered to create confusion and give false indications of origin. By the decree for the regulation and control of cartels in 1937, an attempt was made to control the appearance of cartels but also their behavior on the market. In fact, although the negative effects on the consumer of cartel agreements were known, the benefits for the industry were also appreciated on the other hand from the existence of cartels. The approved decree contained a set of rules, control over the cartels, which in fact did not prohibit the existence of cartels, but it was mandatory to register them for training. The control over them referred to the following:

a) Supervision of cartel activity.
b) Controlling the selling prices of the products.
c) Inviting the cartels to change the selling prices in force, if necessary.
d) Application of sanctions for violations committed.

At the same time, the control bodies of the Ministry of National Economy reserved the right to establish the selling prices and to set minimum and / or maximum price limits for the purchase of raw materials. The establishment, enlargement or relocation of factories was not allowed, except with the prior authorization of the respective ministry, in order to control the functioning of the industry and the rationalization of industrial production. This decree was completed in 1939 by Law No. 26 on monopolistic agreements, with the intention of preventing monopolistic behavior in the domestic market. By this act, the Ministry of Industries exercises a permanent control over the market in order to follow the restrictions of competition.

In this context, the economic magazine of that period, together with information on investments the number of enterprises and the value of production for them separated by industries, publishes data on the number of existing cartels for each industry, but also the value of investments on them in comparison for cartel and non-cartel industries. Also, the cartels were divided according to attributions and forms of organization, so they were called 5 types of cartel:

- Price cartels, characterized by setting sales prices;
- Conditional cartels, characterized by establishing the conditions and terms of sale;
- Geographical cartels, characterized by determining the areas of activity for each enterprise;
- Contingency cartels, characterized by setting production quotas for cartel members;
- Sales unions, which set up joint sales offices that took care of taking orders and distributing them to companies according to the quotas agreed between the cartel members (Opriş, 1939).

The characteristics attributed to cartel forms in 1939 are still found in competitive regulation, which indicates that while the market has experienced a huge evolution in terms of understanding, presentation and regulation, the manifestations of market players are the same in the tendency to obtain personal benefits.

Since the middle of the twentieth century, i.e. the 1950s, the market continues the course of evolution, and is actively developing both through forms of relationships and geographical expansion. At the same time, an evolution of the competition regulation norms can be registered at international level. Since the 1950s, the foundations of competition rules have been laid, with a clear definition of prohibited and sanctioned practices.
In the United States, the Celler-Kefauver Act (Mueller, 1967) was enacted in 1950, reforming and consolidating Clayton's Law. This act was adopted to cover gaps in the acquisition of assets and acquisitions involving undertakings that are not direct competitors.

During the 1970s and 1980s, approaches to competition regulation focused on the priority of market freedom. In 1976, the Hart-Scott-Rodino Act was passed, which developed the provisions of previous acts. Under the 1976 Act, any undertaking in order to merge with another undertaking or to acquire another undertaking must obtain that permission from the State (Hart-Scott-Rodino Act, 1976). All the antitrust acts and lawsuits that arise from them are based on the fact that the actions of any market leader aimed at competition are illegal. Legislative acts adopted in this regard do not regulate concrete and strict indicators or concrete violations. On the contrary, only general rules of principle are laid down to enable the courts to judge fairly and to properly analyze dynamic trade relations.

At the level of the European Union, the ECSC Treaty (European Coal and Steel Community) signed in Paris in 1951 was the first to regulate practices in the field of steel, coal and concentrations. In the formulation of the antitrust rules of the ECSC Treaty of 1951, the key position was held by Harvard professor Bowie, but the spirit of the rules also reflects the views of the liberal order school in Freiburg. Finally, Article 65 provided for the possibility of applying the cartel ban exception, however, imposing strict conditions for this (significant difference from the cartel ban in the USA: Sherman's Law did not recognize exceptions). Article 66 on mergers also reflected the harsh American antitrust principles: mergers that did not restrict competition were allowed (political issues did not matter) (Schumpeter, 1994).

Subsequent Treaties establishing the European Union have further strengthened competition regulations. Thus, according to the EEC (European Economic Community) Treaty of 1957, State action must be directed against distorting the common market. These provisions refer to market control in order to identify restrictive agreements or cartels, as well as the abusive exercise of market power. Likewise, verifications were provided regarding the granting of state aid (Schumpeter, 1994). EU law can be considered the best example of effective international competition law. It stipulates that, after the abolition of national trade protection measures in EU Member States, private companies will not raise individual barriers to trade development. It is prohibited to conclude agreements and carry out joint actions that would affect trade between EU Member States, the purpose of which would be to prevent, restrict or infringe competition in the common market.

The aim of the European Union's competition policy is "to influence the basic elements of the European economy, whereby national markets gain the necessary flexibility and to ensure the development of initiative, innovation, dynamism and resource efficiency" (EC, 1996). The EU experience perfectly illustrates the effective impact of competition laws on the dynamics and growth of international trade and the progress of industrial development (Cseres, 2005).

Given that Member States had national competition laws, it was necessary to create and adopt rules of procedure in order to be able to apply the Treaty establishing the European Economic Community. The rules of procedure were laid down in Regulation 17/62 and adopted in 1962. By that regulation, the control of competition policy is supranational, and is applied at the level of the European Commission (Regulation No 17, 1962).

An important moment in the evolution of this policy is the end of the 80s, when it would be necessary to optimize its application and increase decision-making transparency.

The largest multinational companies have begun to succeed in competing in world markets. Under these conditions, a number of states have changed their conceptual approaches to antitrust regulatory policy. Substantial changes have been made to competition laws in Germany, Japan, the United Kingdom, France and other countries to liberalize mergers and acquisitions that facilitate the company's expansion. The thesis that the efficient functioning of society and the competitive advantage of countries is achieved due to the active economic activity of large companies has found its answer in the liberalization of antitrust laws (Porter, 1986).

Changes in the political map of the world, economic changes on the European continent, active international integration and the globalization of the economy are an important step in the development of antitrust regulation. The main feature of this stage is the multifunctional nature and the fundamentally new approach from an economic and legal point of view of the antitrust regulatory policy itself. First, the transformation of the economic system in Eastern European countries (Poland, Bulgaria, Hungary, the Czech Republic, Romania, etc.) and the former Soviet republics influenced the adoption of antitrust laws in these countries, and the development of a competition strategy since the beginning of market transformations in the 90s.
Second, at the end of the twentieth century, there was a global trend towards the abolition of borders, the opening and unification of markets, the promotion of trade and, consequently, an increase in interest in competition policies. The intensification of world economic relations and fundamentally new phenomena in international economic cooperation (creation of the World Trade Organization - WTO) have required the adoption of legislation on the protection of competition in the markets of each state, in the light of international trade rules. In the last 10 years, virtually all developed countries (Germany, Denmark, Austria, France, Sweden, Switzerland, Ireland, Finland, Spain, Canada, Portugal, Australia, New Zealand) have improved their competition law. During this time, antitrust laws have been enacted in eleven African countries, eight in Latin America and eight in Asia.

Thirdly, the center of gravity in the concept of antitrust control and regulation has been shifted to the field of support and competition, avoiding administrative and interregional barriers on the part of state authorities. Therefore, in the foreign economic and legal literature, the concept of "antitrust regulation (legislation)" has been supplemented with new content and transformed into the concept of "competition policy" or "competition law".

The antitrust laws in force ensure such a state of the market when "the gap between the ideal of competition and the reality of some forms of private government does not become dangerously wide" (Gellhorn, 1994). Achieving this goal is based on different models of implementation and operation of competition laws through impact methods and the nature of regulation.

In Romania, the period after 1945 can be divided into 2 diametrically opposed stages, one of depression, and another of a new beginning. The period of 1945-1989, unlike the previous one, was a depression, characterized rather by the lack of competition policies. During this period, in the absence of market competition, the existing regulations were useless and there was no question of discussing new regulations. Therefore, the institute of market regulation, not only in the competitive direction has suffered.

The beginning of the 90s of the 20th century, formed the basis of the competition policy that Romania enjoys today. The active evolution of the competition policy in Romania started with the changes of the economic system under the influence of the European integration tendencies. In this context, in 1996 the Romanian Competition Law was adopted, on which the competition regulation is still based today (Law no. 21, 1996). Since 1996, competition law has undergone several changes, due to active actions to align legislation with the European one. Major changes to the institutional system and substantive rules took place in 2003/2004, 2010, and 2014. In 2004, the Competition Council (CCR) was created as an independent authority. The changes made in 2010 were related to the need to adapt them to EU law. They introduced a number of amendments to fines imposed for infringements and limiting the application of criminal sanctions in cases of abuse of a dominant position. These were aimed at better interaction with market subjects. One of these was the introduction of the possibility of provisions by which substantial reductions in fines could be accepted if the subjects of the investigation accept the allegations made. In 2014, the judicial requirements regarding unannounced inspections were extended. At the same time, steps have been taken to develop a leniency policy. The basic principles of market regulation set by law, however, have remained the same, being established from the outset according to the European model. Thus, the competition law, since its adoption, has covered both institutional and enforcement issues, as well as antitrust and merger regulation.

The policy objectives of the competition law in Romania are in accordance with the provisions of the Constitution, which protect free markets and market competition.

Derived from this, the idea that the market and free competition serve the consumer, Article 1 of the Competition Law, establishes consumer protection as the main objective of its application. From this point of view, consumer welfare is an indicator of the quality of the application of competition regulations.

Competition policy tends to limit the involvement of regulatory forces in the free formation of market relations and pricing. Involvement should only take place in the event of excesses and in crisis situations, or in the event of a market failure. This encourages the development of the market naturally.

With regard to the forms of ownership of market subjects, competition policy extends more nominally. For the protection of SMEs, a de minimis rule was included, intended for agreements in case the subjects have small market shares, but only in the hypothesis where small market shares represent an indicator of the size of the company. Another perspective for the protection of small firms is the limitation of the abuses of economic dependence on small firms by large ones.

In essence, the application of competition policy is aimed at increasing economic performance and market development (OECD, 2014). Therefore, increased attention is paid to the examination of priority market sectors, in order to contribute to the development of their competitiveness (Cărare, 2016).

The Law on the Protection of Competition in Romania stipulates the principle of extraterritoriality of its action, whereby its provisions on the protection of competition apply to all acts and actions committed within the state, as well as acts and actions committed outside its territory, which affect or may affect competition. Regarding the prohibitions on anti-competitive agreements and the abuse of a dominant position, the Law provides for the application of the relevant articles of the Treaty on the Functioning of the European Union. The actors subject to competition regulation are traditionally commercial entities, including legal and natural persons, as well as public authorities and local administrations. There are no direct derogations in the legal provisions from the scope of the legislation on the protection of competition of actions for the elimination of exclusive rights over the results of intellectual property.

Competition law as a whole corresponds to the general trends of European Union law by which it focuses on the conscious actions of market participants, which aim at restricting competition by concluding and implementing anti-competitive agreements (Law No 21/1996).

In general, concerted agreements are prohibited, for which the following conditions are laid down. Prohibited and null are agreements, decisions, concerted actions that:

1) establish directly or indirectly the purchase or sale price or other commercial conditions.

2) restricts or controls production, market, technical development or investment.

3) applies unequal conditions in equivalent transactions in relation to an individual market participant, which places such a participant in a less favorable position compared to competitors.

4) stipulates the conclusion of a contract or agreement by the acceptance by the other party of additional obligations which, by their nature and commercial customs practice, are not related to the object of the contract or agreement.

5) shares markets or sources of supply (Law No. 21/1996).

However, in connection with certain similar agreements, decisions and coordinated actions, the law provides for exemptions. Agreements of secondary importance, with insignificant effect on competition, are recognized as admissible. These include agreements, decisions, concerted actions, provided that the total share of their participants in the market for the goods or services covered by such an agreement does not exceed:

1) 10% if the participants are competitors (horizontal agreements);

2) 15% if the parties to the agreement carry out activities at different levels of production and distribution (vertical agreements)

3) 10% if the agreement has the characteristics of horizontal and vertical agreements or it is impossible to determine whether the agreement is vertical or horizontal.

Some concerted agreements may also be permitted if they make a beneficial contribution to the development of production, or to technical and economic progress. These agreements must provide consumers with a fair share of the benefits arising from their implementation, and do not impose restrictions on participating companies that are not necessary to achieve these objectives. The burden of proving compliance with the above conditions lies with the companies participating in such an agreement.

Legislation traditionally addresses the definition of the dominant position of an economic entity in the commodity market, where a dominant position is when an economic entity has the power to act in the market at will, regardless of present or potential competitors, suppliers or consumers, due to their market share. All these signs lead to the establishment of appropriate qualitative criteria for recognizing that an economic entity has a dominant position on the market. At the same time, the quantitative criterion that allows the competition authority to find that an economic entity has a dominant position on the market is usually a market share of more than 40%.

A dominant position can be defined both in relation to an individual entity, its group of individuals (individual dominant position), and in relation to several independent economic entities (collective dominant position).

Abuse of a dominant position is recognized in particular as:

1) the direct or indirect imposition of an unfair sale and / or resale and / or purchase price or of unfair business conditions, expressed in contractual clauses.

2) restriction of production, trade or technical development.

3) the use of unequal conditions in equivalent transactions in relation to another market participant, which puts such a market participant in a less favorable position compared to competitors.

4) the conclusion of a contract in the conditions in which the other party assumes additional obligations which, by their nature and commercial practice, are not related to the object of the contract.

The competition authority has in its arsenal a diverse set of measures that can be taken to eliminate the infringement, its consequences, restore a healthy competitive environment, punish infringers and prevent repeated or similar infringements. First, on the basis of the results of its examination of a competition infringement case, the Authority has the right to establish measures aimed at eliminating the detected infringement and to prevent the possibility of committing the same or similar infringements by issuing an injunction prohibiting certain actions (behavioral measures). If it is established that there is a serious risk of recurrence of the same or similar infringements directly affecting the change in the structure of market participants, measures may be taken to change the structure and restore the structure that existed before the infringement (structural measures). Structural measures include obligations to restore the existing structure of a market participant, in particular by selling certain parts or properties thereof to other persons not associated with that market participant. Structural measures are prescribed only if it is not possible to determine behavioral measures with equal or approximately equal effect or if the behavioral measures have a greater burden on a market participant than a specific structural measure. Or if the behavioral measures previously provided for the same infringement are not fully implemented.

For infringement of the law on protection of competition (conclusion of anti-competitive agreements, abuse of a dominant market position, unfair competition, non-authorization of concentration) fines may amount to up to 5% of total turnover.

In addition, fines were imposed for preventing unannounced checks by the competition authority, as well as for non-submission or incomplete transmission of information requested by the Competition Council.

Administrative responsibility is brought not only corporate, but also individuals who contributed to the infringement of competition law. In determining the amount of the fines, the gravity and duration of the offense, as well as mitigating and aggravating circumstances, shall be considered.

Criminal liability for violating the law on the protection of competition is provided only in serious cases of the cartel. One of the effective incentives for identifying and suppressing cartel agreements is the use of the leniency program, which reduces or exonerates from liability for participation in anti-competitive agreements. This program allows obtaining information about the cartel, including its duration, specific events, including evidence, from the direct participants in it. In turn, the leniency program offers cartel participants the opportunity to withdraw from the cartel with the least loss for their economic sustainability and return to normal economic activity based on the principles of healthy competition. The leniency program gives the competition authority a wide discretion in assessing the value of the evidence submitted by the applicant, the degree of cooperation of the leniency subject with the authority, and in deciding whether or not to subject the cartel to liability.

The immunity from liability is usually granted to the first participant to notify the existence of an agreement. The exemption is granted on condition that the competition authority at the time of the submission of the notification did not know of the existence of the agreement or did not have sufficient evidence to initiate a procedure and take a decision, and such evidence was provided by the leniency subject. For participants in the cartel, for whom the conditions for obtaining immunity are not met, the fine may be reduced by decision of the competition authority if that participant has provided evidence that would allow the procedure to be completed and a decision will be taken in case of recognition of the infringement.

Despite the stagnation of the functioning market economy during communism, and its slow recovery (economic reform took place later than in other European countries), currently, following ambitious efforts and reforms, Romania has a competition policy aligned with standards and internationally recognized practices. The process of implementing competition policy is transparent and the competition authority has taken a proactive approach to it. Investigative resources are directed towards the analysis of cartels and abuses of dominant position, and less on vertical agreements. At the same time, constant efforts are being made to improve the efficiency of the implementation of competition policy and the adoption of analysis criteria and international standards (OECD, 2014).

3. The direction of competition policy development

The essential transformations of the market economy that have taken place in recent decades have led to a revision of the methods of analysis and regulation of the competitive space. The causes being:

- globalization of markets, competition becomes global;
- competition between countries occurs;
- the importance of innovation and technology that become the main competition strategies;
- the transition to the knowledge economy, focused on science and innovation;
- consumer orientation;

- the transition from competition for market shares to competition for the creation of important products for the customer and the creation of a stable environment;
- the transformation from competition between companies to competition between business systems;
- reducing the life cycle of products;
- the disappearance of the classic monopoly models;
- developing competition focused on name, behavior, customer loyalty, etc .;
- implementation of marketing tools, focused on sales in networks, creation of buyer communities, etc .

Most existing legal rules are the most similar in terms of behavioral regulation, which usually acts as a prohibition of actions that restrict trade, reduce competition, or abuse the dominant position. In some circumstances, many of these controls to restrict competition can contribute to economic efficiency, and competition laws are generally designed to balance the damage to competition and increase efficiency. In this regard, competition laws in the US, Germany, and the EU interpret competition restrictions by stricter standards than other legal systems, requiring stronger evidence to reduce efficiency. In other countries (UK, Sweden), the regulation of trade restrictions is less strict (Toth, 2007).

Competition law intervenes in transactions between corporations (usually during mergers) when these transactions weaken the independence of competing suppliers and increase their concentration in economic markets. Until the 1980s, only in Germany and the United States did state authorities actively intervene in market structures, requiring prior notification of mergers and a ban on intra-corporate transactions, leading to a greater focus on economic markets. In other cases, the legal systems in question have not resorted to effective control over the structure of the market, assuming that large economic entities are better able to compete in international markets. However, as the economy developed and practice showed an increasing concentration of industry, there was a trend towards more effective government control over the market structure. In this area of competition law, the fastest changes were observed in the 1980s: the EU, the United Kingdom, Spain, France, and South Korea strengthened their supervision and control over market structures (Cseres, 2005).

A policy on the outcome by which the State corrects the situation created as a result of the activity of monopolies or as a result of restrictions on trade by fixing prices or quantities of products is, in principle, possible, but rarely applicable in market economy countries, because such measures are considered incompatible with the prevailing belief in all legal systems that the market is the best way to determine the prices and quantities of products. In improving competition laws, the US rarely uses such a policy, but it has been applied in Sweden, the United Kingdom, Germany and France; Similar measures are acceptable in Japan, Korea and the EU (Walker, 2009).

Competition laws are based on two different but related concepts - the concept of market power and the concept of market domination (Boner, 1991).

Competition policy is applied either to private providers the opportunity to use the power of the market or to prevent them from relying on their power to abuse their dominant position. This is because the use of market power is often incompatible with economic efficiency, and market dominance allows the supplier to create private barriers to trade, restrict competition, threaten economic freedom, and the viability of other participants.

Market power depends on the relative size (market share) and structure of the economic market, ie on the number of competing suppliers, ease of entry, the presence or difficulty of overcoming barriers to trade and the availability of interchangeable goods. Market power is the ability to change prices, without prejudice to the number of sales, which is practically due to the lack of alternatives. Competition laws, based on the concept of market power and efficiency, are driven by concern for consumer welfare.

Market dominance depends on the absolute size of the supplier, its relations with consumers and suppliers and the ability to determine the economic viability of its trading partners. Laws based on the concept of market dominance often protect competitors than protect competition.

The recent rapid development of the common market in Europe and the attention paid to the legal part of competition indicate that international competition law can make concessions in the interests of economic development. Many countries pursue such an industrial policy that substantially favors local industry, excluding export cartels from the scope of competition law, which has a negative effect on prices.

Competition laws that use legal restrictions, including protectionism and benefits, are designed to protect the interests of one nation and not to reconcile the conflicting interests of other nations. International competition law better promotes the development of the whole world by resolving conflicts internationally and administering business in accordance with the law, taking into account the more international effect than the national effect of this management. International competition is governed by special intergovernmental agreements as well as documents of the United Nations Commission on Industry and Trade (UNCTAD).

Competition regulations aim to counteract competitive infringements and restore a fair market environment in the relationship between the actors. The evolutionary character of the markets but also of the approaches to the competitive problems led to the development of the way of solving the restrictions caused by the unfair behavior and the optimization of the time and expenses for it. In addition to the executive methods of action of regulators, prevention and accountability methods have been widely used in recent years.

Irrespective of the regulatory methods applied, competition policy is based on a series of actions aimed at market activities:

- It is built on the promotion of economic liberalization, sometimes encouraging or forcing independent buyers and sellers to compete.
- It essentially contains measures aimed at demonopolizing the economy and supporting small businesses.
- Strict control and monitoring of the behavior of subjects with a dominant position.
- Prevention of unauthorized agreements, restriction of mergers.
- Removal of restrictions on mergers and acquisitions if the parties to the transaction prove that the positive effect of their actions outweighs the negative consequences on competition in the market.
- Preventing the actions of the authorities that restrict competition and establish administrative barriers.

4. Factors influencing the development of competition policies

One of the main factors influencing the development of competition policies is the continuous changes to which the market is subjected in the evolutionary process. This factor influenced both the perception of the need for competitive regulations and the form of regulation and tools used and criteria for identifying unfair practices.

Restrictions on competition under a market system impede the free movement of market mechanisms, and lead to a number of negative effects, such as: disproportion of supply and demand, irrational use of production capacity and development factors, and as a result , reducing the effectiveness of the market system. Therefore, the most important problem in the application of competition policies is the identification and justification of the methods of studying the competitive environment, the approaches for the analysis of the restrictive processes, in order to develop methods to combat the anticompetitive tendencies. Consequently, market analysis is paramount in the competition assessment process, and is the key benchmark in the development of competition policies. Thus, market orientation has essentially determined the evolutionary nature of competition policies and their direction of development. In this context, the evolution of the market has directly influenced the emergence of normative acts or the transformation of existing ones. In the current context, where the market is the engine of economic development, and is of particular complexity, both in structure, form and the multitude of situations created by restrictive market players, the rules governing the competitive relations of market players are completed of a series of recommendations and regulations, created following market research. Correlating the evolution of competition policies for the periods in which they were analyzed above, with the stages of market development, the causal link between the two is obvious. The improvement of the normative acts and their modification occurred as a result of the attestation of new risk situations for the distortion of the competitive environment and the appearance of new anti-competitive practices. In the USA, due to the size of the geographic market, the first problem resonated was the emergence of monopolies, which preceded the first legislation to regulate these practices. Subsequently, during the 1950s, the spread of cartel practices led to the adoption of measures to counteract them both in the USA and in the EU. The same trend was followed in the following periods. The adaptation of legislation on competition regulation thus seeks to create a competition protection mechanism for each level of market development, and to counteract the anti-competitive practices that have emerged in this process.

This link is more evident during the last decade, when the evolution of the market has adopted an accelerated regime due to the development of the information sphere and the intense international expansion. Under these conditions, international competition regulations aim at implementing prevention practices, and involve market studies acquired in market investigation processes but also some market studies for information purposes, in their process of change. Thus, the current orientation is towards the optimization of regulatory procedures and the adaptation of analysis tools for the development of a harmonious competitive environment.

In this context, Romania, especially since 2007 (its accession to the EU), has focused on identifying sectors at high risk of competitive infringements, thus conducting several market studies with the identification of their structure, existing violations, and therefore taking measures to eliminate them. The result of market studies provides relevant information for adapting analysis tools as well as optimizing measures to prevent unfair practices. Thus, during the years 2010-2012, an extensive study was conducted for the analysis of key sectors, such as: food retail, banking, rail transport, telecommunications, energy, and insurance.

As an example, following the market studies carried out, a redefinition of the market was carried out for the food retail sector, this being structured on the basis of certain established criteria for differentiating the marketing points in order to determine the relevant market. As a result, the analysis of the food retail market provides for the classification according to the type of trade, and according to the area of the points of sale. The geographical limits for the food retail market were set in terms of distance / time for consumers to reach the point of sale. The EC set this distance, which was between 10 and 30 minutes by car. In general, the market analysis method used on the food retail market is based on surveys conducted throughout Romania, to establish buyers' preferences regarding the time allotted both for the distance to the point of sale and for making purchases (RO Competition Council, 2014).

In the current market conditions, in which the digitalization and development of e-commerce have grown, the pace of which has been accelerated by the global pandemic situation of 2020, the EC has launched a new direction of competition policy. Namely, the need for changes to the current rules, so that at the international level the competitiveness of the markets can be continued. Thus, in the EC's view, a new competition tool is needed to cover the scope of the online market. In the Commission's view, as stated in the statement on antitrust policy: "… it is very likely that ensuring accountability and fair functioning of markets in all economic sectors will require a holistic and comprehensive approach, focusing on the following three pillars :

(1) the continued firm application of existing competition rules, making full use of Articles 101 and 102 of the Treaty on the Functioning of

the European Union (TFEU), including the use of provisional and remedial measures, as appropriate.

(2) the possibility of specific ex-ante regulation for digital platforms, including additional requirements for those acting as controllers of information flow; as well as

(3) a possible new instrument in the field of competition, to address structural competition issues in all markets, which cannot be solved or addressed with maximum efficiency on the basis of current competition rules (eg to prevent imbalances in markets) ”(CE Initiatives, 2020).

5. Conclusions

The historical evolution of competition theories and regulations identifies the fact that harsh regulations and sanctions have existed on anti-competitive behavior since ancient times. Thus, today's regulations have their roots in classical theories and regulations, when the negative impact of these practices on the economy, competitors, consumers have been understood and measures have been taken to combat them. Even if there were periods when anti-competitive agreements were admitted, trying to argue their benefit on the economy, however, along the way it was returned to their ban. The evolution of theories and regulations has resulted in the fact that, at the moment, the prohibition of anti-competitive agreements is examined first in terms of the benefit on the economy, consumer welfare, technological progress, etc. The evolving nature of competition theories, gradual changes over time, both in competition theories and market processes, denotes the interdependence of competition theories and ideas, and the development of the market economy. In the contemporary era, the primitive principle of the absolute prohibition of anti-competitive agreements is avoided and competition is promoted in favor of economic development, consumer welfare, and the development of market relations.

The evolution of competition policies has been primarily influenced by the evolutionary nature of the market, and its study. An influential factor on market research and the development of approaches and principles of market analysis and regulation was the behavior of market subjects. Each case analyzed in the context of an entity's behavior in relation to market competitors, contributed to the improvement of analysis methods, and the completion of evaluation criteria for further investigations.

The problem of market analysis in the competitive context is a persistent one despite the multitude of market studies that have been carried out both in historical and current context. Due to the dynamic nature of the market, but also to the multitude of factors that characterize the market subjects, the diversity of sectors, the particularities of the market, etc., it is not possible to establish unique criteria for defining the relevant market.

The most important problems facing competition authorities are the use of generalized market analysis methods, and not adapted to the particularities of specific markets. Compared to approaching markets on a global scale, there are markets that need more attention in analysis and regulation. In this respect, in the EC's view, there are two categories of markets: those in which infringements persist and the distortion of the competitive environment; and those on which, although no anti-competitive relationships are identified, competition is restricted. And in this context it is necessary to adapt the market valuation methods, modeling analysis criteria according to the particularities of the analyzed market, in order to obtain more accurate results on the market situation, and to find solutions to develop a sustainable competitive environment.

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