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EUROPEAN UNION COMPETITION POLICY

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ABSTRACT:
EU competition policy aims to enforce rules that ensure that companies operate in conditions of fair competition, thus creating a normal competitive environment, the fundamental objective of which is to ensure the proper functioning of the internal market and to promote competition.

KEYWORDS: *competition, internal market, anti-competitive practices, competitive environment, anti-competitive agreements, abuse of a dominant position, State aid, economic concentrations.*

INTRODUCTION

Competition puts constant pressure on businesses, stimulating entrepreneurship and economic efficiency, the ultimate goal being to promote the interests of consumers, offering them a wider range of products and services at the best value for money. It has been demonstrated and proved both theoretically and practically that the beneficiary of such a policy of creating a normal competitive environment and protecting competition is the consumer. Sometimes companies try to distort competition in the fight to acquire and retain customers. Traders tend to eliminate their competitors and remain alone in the market in which they operate, in order to achieve and maintain a monopoly position.

The rules of competition law or "antitrust law" are not directed against the fight against commercial competition (which is considered an engine of economic development), but against abuses in the exercise of competition. In order to ensure the proper functioning of markets, competent authorities, including the European Commission, must prevent or correct anti - competitive behavior.

1. General considerations on European Union competition policy

Competition policy is a tool that contributes to the optimal distribution of resources, fostering technical progress and achieving the necessary flexibility to adapt to the ever-changing environment[1]. The Treaty establishing the European Community provided that the essential activity was the creation of a system to ensure an undistorted competitive environment in the internal market. In this sense, according to art. 101 and 102 of the Treaty on the Functioning of the European Union, are declared incompatible with the internal market and prohibit agreements between undertakings or their decisions and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition. as well as the misuse by one or more

[1] T. Moșteanu, *Concurența – abordări teoretice și practice*, Ed. Economică, București, 2000, p. 276;

undertakings of a dominant position in the internal market or in a significant part of it, in so far as it may affect trade between Member States. The common condition for these European rules to be applicable is that those activities affect trade between Member States.

Offering a better price is the easiest way for a company to reach a high market share. In a competitive market, prices fall, and this is beneficial not only for consumers: when there are more people who can afford to buy products, companies are encouraged to produce, which helps to stimulate the economy as a whole. At the same time, competition policy encourages companies to provide quality goods and services, attracting as many consumers as possible and increasing their market share. Quality can take many forms: products with a longer or better working life, improved after-sales services or technical assistance, or providing more favorable and better services to consumers. In a competitive market, companies will try to produce a diverse range of products. Thus, there will be a more varied offer, and consumers will be able to choose the product that offers the best value for money.

In order to make this wide range available to consumers and to manufacture better quality products, businesses need to be innovative, from product design to manufacturing techniques or services, and so on. Sometimes the infringement of competition rules takes place only in a certain country, and it is often up to the national competition authority to resolve the issue. However, with the development of the internal market and globalization, the effects of illegal behavior, such as the creation of a cartel, are usually felt in many countries across the EU and beyond. The European Commission is often in a favorable position to pursue such cases at trans-European level. The Commission has the power not only to investigate but also to take binding decisions and impose substantial fines. Together with the national competition authorities of the Member States, the Commission ensures compliance with EU competition rules. All EU Member States have such authorities that have the power to implement EU competition law and that essentially have the same powers as the European Commission.

Through the European Competition Network (ERC), national authorities and the European Commission exchange information on the implementation of EU rules. The network facilitates the identification of the authority that has to deal with specific issues and the other authorities that could provide assistance. It also helps to ensure the effective and consistent application of EU competition rules. Through the REC, the competition authorities inform each other of the decisions they intend to take and take into account the comments of their counterparts. Thus, they can share their experiences and identify best practices.

Competition authorities across Europe ensure that businesses and governments comply with EU rules on fair competition, while fostering innovation, harmonization of rules at European level and the development of small businesses. National competition authorities also have the power to decide whether or not a particular agreement is in line with EU law. In turn, businesses and consumers can claim compensation if they have suffered as a result of unlawful conduct which has restricted competition.

EU law prohibits businesses from:

- agree on price fixing or market sharing;[2]
- abuse on a dominant position in a given market in order to eliminate smaller competitors;[3]
- to merge, as long as this operation would allow them to control the market.

Large companies operating in the EU business environment cannot merge without prior approval from the European Commission, even if they are based outside the EU.[4]

[2] art. 101 din TFUE

[3] art. 102 din TFUE

[4] Regulamentul (CE) privind concentrările economice

Community rules also govern aid granted to businesses by Member States (state aid), which is verified by the Commission.[5]

1.1. Anti-competitive agreements

Article 101 TFEU prohibits anti-competitive agreements, namely all agreements that restrict competition, regardless of the intention of the parties. Antitrust rules on anti-competitive agreements are contained in several regulations, which address certain types of behavior or specific sectors. They also define the powers of the Commission to investigate undertakings, including the right to seek evidence within them. At the same time, the Commission adopted various non-regulatory documents, such as communications and guidelines. They explain the Commission's policy in more detail and address either the interpretation of substantive antitrust rules or procedural issues such as access to the file.

"Anti-competitive agreements" mean agreements concluded between undertakings with the aim of restricting competition - the most serious being secret cartel agreements, in which undertakings reach an agreement to avoid competition or set the selling prices of the products they sell. markets. Undertakings in cartels that control prices or share their markets try to protect themselves from competitive pressure that forces them to launch new products, improve quality and maintain low prices. Therefore, consumers may have to pay more for lower quality. Under EU competition rules, cartels are illegal and the European Commission imposes severe fines on the companies involved. As they are illegal, cartels are generally highly confidential, with evidence difficult to find, precisely because of their secret nature.
In order to facilitate the identification of cartels and their elimination, the Commission applies a "leniency policy". In essence, the leniency policy grants undertakings involved in a cartel, which recognize and provide evidence of anti-competitive behavior, full immunity from fines or a reduction in the fines that the Commission has imposed.

The parties involved in the cartel also have the opportunity to acknowledge the acts committed and to take responsibility for them through the settlement procedure. This policy reduces the length of the case, thus saving the Commission's resources. Undertakings that agree to follow this procedure also receive a reduction in fines. However, resolving cartel issues is not a negotiation between the parties to the cartel and the European Commission. The Commission will have already gathered evidence during an investigation and will build a strong argument against the parties before the discussions on the settlement of the case begin.

Agreements are considered anti-competitive if the participants agree:
- set prices;
- to limit production;
- to share their markets or consumers;
- set resale prices (between a manufacturer and its distributors).

Some agreements are not prohibited[6], as long as it proves to benefit consumers and the economy as a whole, if:
- have more positive than negative effects;
- are not concluded between competitors;
- companies with only a small cumulative market share are involved;
- are necessary for the improvement of products or services, for the development of new products or for the identification of new and improved ways of making products available to consumers.

For example, the Commission may allow undertakings to cooperate with a view to setting single market-wide technical standards. Agreements that promote research and development and technology transfer are often compatible with EU competition law, as some new products require too expensive research to be borne by a self-employed company.

[5] art. 107 din TFUE
[6] Cases subject to the Block Exemption Regulations;

Agreements on the production, purchase or sale of joint goods or those on standardization may also be considered legal. In addition, smaller companies may be allowed to cooperate if this allows them to better compete with larger companies.

1.2. Abuse of dominant position

An undertaking may distort competition when it holds a very important position in a given market. A dominant position is not anti-competitive in itself, but the behavior of the company can be considered abusive if it exploits its position to eliminate competition, this being prohibited by art. 102 of the TFEU. In order to be able to establish that an undertaking is in a dominant position, it is first necessary to delimit the relevant market and then to assess its position on the market.[7] For example, when a major player tries to eliminate its competitors from the market, we are talking about an abuse of a dominant position if its actions have the effect of eliminating competition. This will lead to higher prices and reduced supply for consumers. When concluding business with small businesses, large businesses should not use their bargaining power to impose conditions on suppliers or customers that would harm the relationship between them and their competitors.

Here are some examples of abuse of a dominant position:

- charging too high prices;
- selling at artificially low prices, in order to affect or even exclude competitors from the market;
- forcing consumers to buy a product that is artificially linked to a better-known one, which has the effect of excluding similar products, thus distorting competition;
- refusal to accept certain customers or offering special discounts to customers who buy all or almost all of the products they need from the dominant undertaking;
- making the sale of one product conditional on the sale of another product.

The Commission may investigate possible anti-competitive behavior. Among other things, this means that if the Commission decides to carry out an investigation, its officials are empowered to:

- to enter the premises of the enterprise, on its land or in its means of transport;
- to examine the documents of the enterprise or any other documents related to it;
- take over or obtain, in any form, copies or extracts from such registers or documents;
- seal the premises of the undertaking and any records or documents of the undertaking during the investigation period, in so far as this is necessary;
- ask any representative or employee of the undertaking for further explanation of the facts or documents relating to the object and purpose of the investigation and record the replies.

1.3. State aid

In the literature, in a concise definition, state aid is seen as "that interventionist means by which the state supports enterprises, regions or economic sectors, in order to achieve economic policy objectives"[8]. In the opinion of some authors[9], in order for the aid to be declared incompatible, the following conditions must be met cumulatively:

- to be specific in nature and not general;
- to grant an advantage to an enterprise;
- to be granted by the state or from public resources;
- the advantage of distorting or threatening to distort competition and affect trade between Member States.

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[7] G. Coman, *Concurența în dreptul intern și european*, Editura Hamangiu, București, 2011, p. 250;
[8] E. Mihai, *Dreptul concurenței*, Editura C.H. Beck, București, 2004, p. 204;
[9] O. Manolache, *Drept comunitar*, Editura All Beck, București, 2006, p. 397;

Member States' governments sometimes support local industry companies or sectors with public funds, clearly giving them an unfair advantage. As a result, competition is distorted and trade is affected[10]. The Commission's role is to prevent such situations by authorizing State aid only if it is genuinely in the public interest, ie if it benefits society or the economy as a whole[11].In recent years, the Commission has facilitated the use by Member States of aid aimed at eliminating market failures and meeting objectives of common European interest. The Commission focuses on applying these measures in the cases with the greatest impact on the internal market, by simplifying the rules and making decisions faster.

1.4. Economic concentrations

EU competition law also regulates economic concentrations. To this end, the Merger Regulation, which entered into force in 1990, established a control system that gives the European Commission the power to ban mergers and acquisitions that could significantly reduce competition. By combining activities, companies can develop new products more efficiently or reduce production or distribution costs. Increasing efficiency guarantees a more competitive market, and consumers benefit from such higher quality products at fairer prices.

However, some economic concentrations may reduce competition, for example by creating or consolidating a dominant player. This could affect consumers, by raising prices, reducing the range of products or services available or slowing down innovation. Before merging or joining, large undertakings engaged in cross-border activities must seek authorization from the Commission, providing all the information necessary for it to take a decision. Competition authorities shall ensure that, where two or more undertakings join forces temporarily or permanently, the balance of the markets will not be compromised in a manner which could affect competition or create a dominant position which could be abused.

The Commission shall examine all concentrations involving undertakings whose turnover exceeds certain thresholds. Below these thresholds, concentrations may be assessed by national competition authorities. These rules apply to all economic concentrations, regardless of where the companies have their registered office, headquarters or production facilities, because even if they are established outside the EU but are present on the European market, the operation may affect EU market. The Commission may also examine the economic concentrations which have been brought to its attention by the competent national authority. The Commission may also, under certain conditions, refer a case to the national competition authorities.

1.5. Liberalization

In some countries, certain essential services, such as energy, telecommunications, transport, water and mail, are still controlled by public authorities and not by private companies. EU countries may entrust a specific public service to a company, granting it tasks, specific rights and financial compensation, in accordance with state aid rules. When such services are liberalized, ie open to competition between several companies, the Commission will ensure that they remain available to all countries, including in regions where they are not profitable. Moreover, it is essential to ensure that the liberalization process does not offer an unfair advantage to the undertaking that held the monopoly before liberalization. Market liberalization has several advantages. Consumers can choose from a wide range of products and service providers. For example, network operators in the railway, energy and natural gas industries are currently required to provide competitors with equitable access to their networks. It is essential to monitor whether all providers offer fair access to networks, so that consumers can choose the provider that offers the best conditions; consumers to benefit from

[10] Art. 107 din TFUE prohibits such practices.
[11] art. 108 din TFUE

lower prices and new services which are usually more efficient and more accessible to consumers than before; national economies to become more competitive.

CONCLUSIONS

The Commission is investigating whether companies infringe or could infringe the competition rules. This means that action can be taken to protect the competitive market either before or after the infringement. As a result of the investigation, the Commission may decide, depending on the situation, to prohibit certain conduct, to impose corrective actions or to impose a fine. EU competition law applies in all Member States. National competition authorities can apply EU rules as well as their own relevant legislation. The Commission can only act if anti-competitive behavior has an effect on trade between EU member states. The Commission has important powers in the implementation of competition law conferred by EU Member States under the Treaties. Its decisions are binding on companies and national authorities that infringe the rules, but can be challenged in the EU Court of Justice for reasons of law. Enterprises and Member States regularly appeal against Commission decisions and sometimes win. EU competition policy is intended to ensure fair and equal competition between companies in the European internal market. Consequently, the Commission is acting both to prevent and to punish non-compliance with EU competition rules.

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