

The importance of the fair competition in the market economy

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Abstract

For proper functioning of the competitive market, Romania has regulated the Competition Act prohibit agreements, the abuse of dominance and control of economic amalgamation. Therefore, competition law establishes a set of rules applicable to the enterprises and the guarantee of compliance with competition policy, a guarantee in achieving a free and vibrant internal market.

Keywords: *economy, unfair competition, Competition Council*

Introduction

Starting from the common concept of the competition notion which has a rivalry and competition meaning in an industry where the participants are at least two individuals or legal

entities that have the same advantage or results, we can say that the competition manifests itself in every field. The term competition comes from Latin concurrere, meaning to confront.

According to the Explanatory Romanian Dictionary, the competition means the essential feature of the market economy, reflecting in the rivalry, disputes between economic agents from production and sales of similar or substitutable goods and services in the most advantageous form for them.

In the legal sense, we understand the confrontation between economic competition of the same or similar activities, exercised in open areas to win market and customer conservation in order to allow the cost conservation in order to allow the cost effectiveness of the company³⁰⁰.

From the economic point of view, we can say that there is competition if the customer can choose the most favourable to his preferences³⁰¹.

Thus, some authors define competition as a feature of commodity production that reaches its full expression, free, at the state of industrialized economy, the machinist production factory. The competition, in economic terms, means an antagonism between the participants in the act of sale, a balance of power between them, the opposition is clearly visible especially in the market of production factors³⁰².

For some authors, competition is, regarded as baseline, in which there is a free showdown, complete and accurate information between all economic operators both in the supply and demand of goods and services, production of goods and equity³⁰³.

Economic development and competition exert a positive and a negative influence. Thus the competition offers advantages that include:

- The stimulation of the whole/general process, leading to innovations which were implemented, favours the economic increasing of the efficiency, the economy of resources and a better satisfaction of needs;

³⁰⁰ O. Căpățână, *Dreptul concurenței comerciale (concurența onestă)*, Lumina Lex Publishing House, Bucharest, 1992, p. 86, I. Băcanu, *Libera concurență în perioada de tranziție spre economia de piață*, în *Dreptul*, no. 9-12, P. 50.

³⁰¹ T. Moșteanu, *Concurența – abordări teoretice și practice*, Economică Publishing House, Bucharest, 2000, p. 31.

³⁰² I. Tomiță, A. Bandoi, *Prețuri și concurență*, PrintXpert Publishing House, Craiova, 2008, p. 30.

³⁰³ Y. Bernard, J. C. Colli, *Vocabular economic și financiar*, traducerea E. Theodorof, I. Theodorof, A. Crăințu (coord.), Humanitas Publishing House, Bucharest, 1994, p. 117.

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- Makes differences between operators, supporting the most creative and astute entrepreneurs and eliminating the weaker;
- It differentiates and diversifies the supply and reduces the production cost and the price of the asset;
- It offers the customer the possibility to find the best supplier with goods and cheaper.

When competition in the market is not regulated, it leads to the following negative effects:

- Waste of economic resources;
- Reduction of quality goods;
- Conflicts in society;
- Discouraging consumers;
- The division of society into rich people and poor people;
- The emergence of negative environmental externalities;
- Destruction of major components.

Depending on the confrontation between the subject of the legal relationship of competition and confrontation market conditions, competition is of two kinds:

- a) Pure and perfect competition, is a theoretical model and abstract ideal. It is characterized by a large number both among tenderers and that of the applicants.
- b) imperfect competition, which is characterized by the fact that atomistic market and reduce the sales drop due to the concentration of capital³⁰⁴.

In terms of the means used, the competition is divided into:

- a) fair competition, considered lawful and involves using the rules imposed by professional ethics;

³⁰⁴ M. M. Dumitru, Dreptul concurenței, Institutul European Iași Publishing House, Iași, 2011, p. 43.

- b) unfair competition considered illicit, which involves the use of unfair means to win the competition.

To better understand the importance and purposes of the competition we will exemplify, in the following paragraphs, some concrete cases of unfair competition:

By the civil sentence no. 1093 / 27.11.2009, issued by Bacau Tribunal was dismissed as unfounded, the action brought by the applicant SC D. SA in contradiction with the defendant SC L. SRL - Suceava, its action immediately cease to use the term TV B. withdrawal from the market of all registration and all the materials bearing the name of TV B. without the will of the applicant, damages of 10,000 euros / day of delay enforcement of the judgment in this case and publication in a local newspaper the decision of the court.

In order to rise that judgment, the court first held that: both the applicant and the defendant provides the broadcast TV business, holding each of them decision allowing for visual and audiovisual licenses (in addition, the applicant has registered mark TV B., the best news Television of the County at O.S.I.M. so the mark is protected for 10 years from the date of 29.06.2006).

The dispute between the parties that bear the unfair competition is allegedly committed by the defendant under Law no. 11/1991. The applicant has not asked for annulment of the administrative documents of the audio-visual authorization or audio-visual license issued by CNA for the defendant, although, in its reasoning, relies the auditory, visual and conceptual marks identity and practices trademarks of the European Community Court of Justice, as an Administrative Litigation court. The court did not analyse the reasons in fact and in law, because it was invested as an administrative court for annulment of administrative acts cited above. According to Article 2 of Law no. 11/1991, relied on by the applicant by action, unfair competition is defined as any act or fact contrary to fair practices in industrial activity and marketing of products, works and services by making benefits ".

Appealed against that judgment, in legal terms, the applicant SC D. SA - B. in term dated on 27.05.2010, the court, having regard to the provisions of art. 282, 2821 Criminal Procedure. Civ., reclassified the appeal call in promoted in cause. As grounds for the appeal, the applicant criticized the decision of the first instance, given that the defendant used his post mark 1TV B on television and commercials, incriminated by art work. 83 para. (1) a), b) of Law no. 84/1998 art. 5 paragraph. (1) a) of Law no. 84/1998.

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Examining the call promoted for those reasons, the court stated as founded on the following considerations: actions promoted by the applicant was caused by the defendant's use of the broadcasting in County B of the brand 1TV. B which, the applicant is likely to create confusion in the consuming public due to the similarity and visual brand identity TV B., owned by the applicant for their TV station, constituted an act of unfair competition. The court found that elements of identity of the marks used by parties to the case, TV B are significant and overwhelming in terms of the relevance of the content of the mark by reference to the elements of differentiation that would avoid potential confusion, according to the defendant, using 1TV B logo for their TV station. The immediate consequence of a small difference between the two brands is to create false representations to the consignee for a single product that causes harm obvious trader who launched the first product on the market with brand shown, bearing in mind the minimum level of specialization of the public to whom addresses, public consisting of county residents' B with a heterogeneous structure, based on the training, education and her background.

In this context, the fact that the applicant is irrelevant and uses this mark earlier than the defendant - from 1999 - the damages caused by the defendant's activity regarding the turnover of the beneficiaries of his product. The fact that the trademark registration certificate no. 80,865 issued by O.S.I.M. provides that the trade mark - the applicant in this case - does not have exclusive rights above the words TV B. does not amount to recognition as defendant used these words in combination liable to confuse the product and its origin in relation to the TV station applicant. Therefore, the elements of similarity between the marks used to identity the two criteria for characterizing such trading activity carried out by the defendant unfair competition.

Since the act of unfair competition is criminalized both in terms of the criminal provisions of art. 83 para. (1) lit. a), b), art. 86 of Law no. 84/1998 as amended to apply until the time of action and the civil, administrative or criminal law, Law no. 11/1991 with subsequent amendments and completions, the court held that the activity carried the defendant violated its obligation to its activity in good faith, respecting the interests of consumers and unfair competition requirements.

Accordingly, the Court of Appeal b., Commercial Division of administrative and fiscal contentious through decision no. 59 2 September 2010, upheld the applicant's appeal SC D. SA - B., changed in whole the called sentence, meaning that partially upheld the action, immediately ordered the cessation of the use of the claim by the defendant TV B., withdrawal from the market

of all materials bearing the inscriptions and the name TV B. without the will of the applicant and publication in a local newspaper the court judgment, rejected the claim for payment of damages as unfounded.

Against that decision the defendant SC L SRL Suceava appealed as the grounds of illegality in support of its appeal, namely art. 304 Section 9 and 3041 C civil Procedure, which requested its admission and rejection on the merits of the action. By criticisms, the appellant argued that the respondent had not obtained in exclusively the use of the words TV B, the evidences presented certifying that the applicant has registered at OSIM the logo of the post and not exclusivity on those two words. The logo of the defendant is totally different.

The exposure arguments put forward by the appellant in support criticisms of the decision regarding the merits, resulting in evidence that were called into question the substantive issues that go beyond the analysis of the pleas of illegality provided for by art. 304 (pt. 1-9) C. Civil Procedure. The Aces standpoint, the simple presentation of party discontent against the judgment under appeal cannot be subject of judicial review by the court of appeal. Accordingly, for the reasons set out above, aimed at promoting and supporting the conditions for the appeal and the appellants in relation to which alleged groundlessness and not the illegality of the previous solution, according to Article 312 of Criminal Civil procedure., will ascertain the nullity of the appeal.

Noting the trial of the appellant's guilt in triggering the present proceedings, the High Court will grant the application for granting respondent costs, in accordance with art. 274 C Civil Procedure³⁰⁵.

According to art. 3 of Law 21/1996 on competition, autonomous administrative authority, invested for this purpose under the conditions, procedures and limitations established by this law is the Competition Council.

Competition Council is the National administrative competition authority to enforce the competition law, and where they will be breached will apply sanctions provided by law, thus exerting coercive force of the state³⁰⁶.

³⁰⁵ I.C.C.J., S. Com., Decision no. 1777 from May 10th, 2011, unpublished.

³⁰⁶ M. Dumitru, op. cit., p. 97.

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Order to be able duties established by law, the Competition Council and its adoption develops its rules of organization, operation and procedure and sets up its own system, both centrally and also local.

In the area of state aid, the Competition Council has the role of national contact authority between the European Commission, on the one hand and public institutions, suppliers and recipients of state aid on the other. The Competition Council has also the role to represent Romania in relations with organizations and international institutions and relations with the EU institutions, according to the relevant provisions of EU law, and cooperate with other competition authorities.

The Competition Council adopts regulations and guidelines, issues orders, decisions and formulate opinions, make recommendations and prepare reports pursuant to the provisions laid down in Regulation No. 1/2003 and of Council Regulation (EC) no. 139/2004 of 22 January 2004 on the control of concentrations between undertakings³⁰⁷.

Art. 27 of Law no. 21/1996 Competition Council does not confer the right to determine the discretionary nature of banned or illegal state aid and even less right to have their recovery when they were granted by laws.

The Law no. 143/1999 concerning State aid, as amended and supplemented, financial support must meet four conditions: it must be granted by the State or through State resources, the measure to be selective, to ensure an economic advantage and distort or threaten to distort competition and affect trade between Romania and Member States of the European Union.

Items identity of the brands used by economic operators are significant and overwhelming in terms of relevancy in content brand by referring to the differentiation that could create confusion. The elements of similarity to the identity of the brands used criteria to characterize activities constitute unfair competition.

³⁰⁷ Op. cit., p. 102.

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