

## LEGAL PROTECTION AGAINST ANTICOMPETITIVE PRACTICES

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### ABSTRACT

*Legal protection against anticompetitive practices is based on antitrust laws and regulations, as well as specialized institutions that oversee and enforce these rules. In general, the primary entity responsible for competition protection in most countries is a competition authority or a similar body.*

**KEYWORDS:** *anticompetitive practices, fair competition, antitrust laws, competition authorities.*

### INTRODUCTION

Competition is regarded in the specialized literature as „the confrontation between professionals with similar or related activities, exercised in open market domains, for the purpose of gaining and retaining clientele, in order to make their own enterprise profitable”<sup>1</sup>.

The legal protection against anticompetitive practices is an important aspect both in Romania and in the European Union (EU). In both Romania and the EU, there is a legal framework that regulates and protects fair competition and discourages anticompetitive practices.

In Romania, legal protection against anticompetitive practices is regulated by Competition Law no. 21/1996<sup>2</sup>, with subsequent modifications and amendments. This law was adopted to prevent, restrict, and sanction anticompetitive practices that affect the market. The Competition Council of Romania is the authority responsible for enforcing and monitoring competition law and combating anticompetitive practices. The Competition Council has the power to investigate and sanction companies engaged in anticompetitive practices, such as illegal price-fixing agreements, market sharing, and abuse of dominant position.

Regarding the EU, the main regulations concerning competition are included in the Treaty on the Functioning of the European Union (TFEU)<sup>3</sup> and in Regulation (EU) No. 1/2003 on the implementation of the rules on competition laid down in Articles 101 and 102 of the TFEU<sup>4</sup>. The legal protection system against anticompetitive practices in the EU is based on principles such as the prohibition of anticompetitive agreements, the prohibition of abuse of

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<sup>1</sup> G. Boroi, *Dreptul concurenței*, București, 1996, p. 5; O. Căpățână, *Dreptul concurenței comerciale (concurența onestă)*, Ed. Lumina Lex, București, 1992, p. 86; I. Băcanu, „*Libera concurență în perioada de tranziție spre economia de piață*”, în *Dreptul*, nr.9-12. P. 50;

<sup>2</sup> Legea nr. 21/1996, *Legea concurenței*, publicată în M. Of. Nr. 88 din 30 aprilie 1996 (republicată în M. Of. Nr. 153 din 29 februarie 2016);

<sup>3</sup> Published in J. Of. nr. C 115/1 din 9.5.2008;

<sup>4</sup> Published in J. Of. nr. L1/1 din 4.1.2003;

dominant position, and the control of economic concentrations. The European Commission, through the Directorate-General for Competition, is the executive body of the EU responsible for enforcing these regulations and has the power to investigate and impose sanctions in cases of anticompetitive practices affecting the internal market of the EU. It can impose substantial fines and order corrective measures to restore fair competition in the market. Additionally, within the EU, there is a system for controlling state aid, ensuring that financial assistance provided by a member state does not distort competition in the internal market of the EU.

Both in Romania and in the EU, anticompetitive practices can be subject to substantial fines. Furthermore, competition authorities have investigatory powers, including inspection and evidence collection, to uncover and prevent anticompetitive practices. Those affected by such practices can file complaints and seek damages in court.

Through antitrust rules<sup>5</sup>, the European Commission and national competition authorities in EU member states seek to ensure a healthy and fair competitive environment for companies and consumers.

## **1. KEY ASPECTS RELATED TO LEGAL PROTECTION AGAINST ANTICOMPETITIVE PRACTICES**

*Importance of competition:* Legal protection against anticompetitive practices aims to ensure fair competition in the market. Competition<sup>6</sup> fosters innovation, efficiency, and consumer welfare, and protects against the negative effects of monopolies or collusive behavior.

*Prohibition of anticompetitive practices:* Laws and regulations establish clear prohibitions against anticompetitive practices such as cartels, abuse of dominant position, price fixing, bid rigging, and market allocation agreements. These practices distort competition and harm consumers and other market participants.

*Enforcement authorities:* Competition authorities, typically independent bodies, are responsible for enforcing antitrust laws. They have investigative powers, conduct inquiries, and can impose sanctions on companies engaged in anticompetitive behavior.

*Market analysis:* Competition authorities analyze market conditions and dynamics to identify potential anticompetitive practices. They assess market structures, entry barriers, market concentration, and competitive behavior to detect and address antitrust violations.

*Sanctions and remedies:* Competition authorities have the authority to impose sanctions on companies found guilty of anticompetitive practices. These sanctions may include fines, behavioral remedies (e.g., changing business practices), structural remedies (e.g., divestitures), or injunctive relief (e.g., cease and desist orders).

*Collaboration and international cooperation:* Collaboration between competition authorities at national and international levels enhances the effectiveness of antitrust enforcement. Sharing information, coordinating investigations, and harmonizing approaches contribute to combating global anticompetitive practices.

*Judicial review:* Decisions and actions of competition authorities are subject to judicial review to ensure fairness and legality. Affected parties can challenge decisions before the courts to seek redress or clarification.

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<sup>5</sup> G. Coman, *Concurența în dreptul intern și european*, Editura Hamangiu, București, 2011, p. 174;

<sup>6</sup> R.D. Vidican, *The importance of analyzing the main anti-competitive practices in view of creating an undistorted competitive environment*, în AGORA International Journal of Juridical Sciences, No. 1 (2022), p. 70;

*Public awareness and education:* Raising awareness about anticompetitive practices and their detrimental effects is important. Educating businesses, consumers, and the public about the benefits of competition and the importance of reporting antitrust violations promotes a culture of compliance.

*Continuous adaptation:* Legal frameworks and enforcement mechanisms need to evolve to address emerging challenges in the digital economy and global markets. Regular updates and revisions to competition laws help keep pace with changing market dynamics.

## 2. ROLE OF THE COMPETITION COUNCIL IN PROTECTING AGAINST ANTICOMPETITIVE PRACTICES

Considering the need to establish a competitive environment, the Constitution provides that the economy of Romania is a market economy based on free initiative and competition.<sup>7</sup> Additionally, the state is obligated to ensure freedom of trade, protection of fair competition, and the creation of a favorable framework for the utilization of all factors of production.<sup>8</sup>

In Romania, legal protection against anticompetitive practices is provided by the Competition Council<sup>9</sup>, which is an independent and specialized competition authority responsible for enforcing antitrust laws. The Competition Council has the power to investigate anticompetitive practices, take corrective measures, and impose sanctions.

The key laws governing competition protection in Romania are Law no. 21/1996 on competition<sup>10</sup> and Law no. 11/1991 on unfair competition<sup>11</sup>.

The Competition Council has extensive responsibilities<sup>12</sup> in terms of market supervision and antitrust enforcement. Some of these responsibilities include:

- *Investigation of anticompetitive practices:* The Competition Council can initiate investigations to determine whether certain actions or agreements are in violation of competition laws. These investigations can be launched based on complaints received from interested parties or whistleblowers.

- *Merger and acquisition analysis:* The Competition Council examines mergers and acquisitions of companies to ensure that they do not significantly restrict competition in the relevant market.

- *Imposition of sanctions:* In case the Competition Council finds violations of antitrust laws, it can impose sanctions and substantial fines. These fines can be calculated based on the company's turnover and can reach up to 10% of the turnover achieved in the previous financial year.

- *Whistleblower protection:* The competition law provides protection for whistleblowers who provide relevant information regarding antitrust violations. Whistleblowers can request

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<sup>7</sup> I. Didea, *Dreptul european al concurenței*, Editura Universul Juridic, București, 2009, p. 5;

<sup>8</sup> Art. 135 din Constituția României, republicată în M. Of. Nr. 767/31.10.2003;

<sup>9</sup> M. M. Dumitru, *Dreptul concurenței*, Ed. Institutul European Iași, Iași, 2011, p. 97;

<sup>10</sup> Legea nr. 21/1996, *Legea concurenței*, publicată în M. Of. Nr. 88 din 30 aprilie 1996 (republicată în M. Of. Nr. 153 din 29 februarie 2016);

<sup>11</sup> Legea nr. 11/1991 privind combaterea concurenței neloiale, publicată în M. Of. Nr. 24 din 30 ianuarie 1991;

<sup>12</sup> Pentru mai multe detalii, a se vedea Gheorghe Gheorghiu, Manuela Niță, *Dreptul concurenței interne și europene: curs universitar*, Editura Universul Juridic, București, 2011, p. 90 – 94; Titus Prescure, *Curs de dreptul concurenței comerciale*, Editura Rosetti, București, 2004, p. 237.

confidentiality and may benefit from immunity or reduced penalties under certain circumstances.

- *Litigation and remedies*: Decisions of the Competition Council can be challenged in court, and victims of anticompetitive practices can seek compensation for the damages suffered.

By implementing these roles, the Competition Council contributes to ensuring a healthy competitive environment and protecting the interests of consumers, promoting innovation, economic efficiency, and fair opportunities for all companies.<sup>13</sup>

### **3. MEASURES FOR EFFECTIVE PROTECTION AGAINST ANTI-COMPETITIVE PRACTICES**

In general, a strong legal framework, independent and vigilant institutions, effective monitoring and reporting, rigorous evaluation of mergers and acquisitions, and international cooperation can contribute to ensuring fair competition and protection against anticompetitive practices.

There are several measures of protection against anti-competitive practices, among which we will mention the most important ones.

*Antitrust legislation*: Adopting and implementing strong and up-to-date antitrust legislation is essential to prevent and combat anticompetitive practices. It should prohibit cartels, abuse of dominant position, price fixing, exclusive distribution, and other practices that restrict competition and provide antitrust authorities with adequate tools and powers to investigate and sanction violations.

*Independent and empowered competition authorities*: Establishing independent and empowered competition authorities is crucial for monitoring and enforcing antitrust law. These authorities should have sufficient resources, technical expertise, and autonomy to investigate anticompetitive practices, impose sanctions, and promote healthy competition in the market.

*International cooperation*: Collaboration between national and international competition authorities is essential to address anticompetitive practices that may have cross-border impact. Information sharing, coordination of investigations, and cooperation in antitrust enforcement can enhance the effectiveness of combating anticompetitive practices.

*Market monitoring and market analysis*: Market analysis and ongoing monitoring of market developments and trends can help antitrust authorities identify potential abuses of dominant position, cartels, or other anticompetitive practices. This information can serve as a basis for investigations and preventive actions.

*Whistleblower protection*: Adequate protection for whistleblowers can encourage the reporting of anticompetitive practices. This may include maintaining the confidentiality of the whistleblower's identity, granting immunity or reduced penalties for whistleblowers, and implementing measures to protect against retaliation.

*Appropriate fines and sanctions*: Imposing significant fines and sanctions for antitrust violations can deter companies from engaging in anticompetitive practices. The fines should be sufficiently high to discourage violations and have a meaningful impact on companies engaging in such practices.

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<sup>13</sup> R.D. Vidican, R.A. Hepeş, *The impact of anti-competitive cartel agreements on consumers and the economy in general*, în AGORA International Journal of Juridical Sciences, No. 2 (2022), p. 74;

*Education and awareness:* Educating and raising awareness among companies, consumers, and the public about anticompetitive practices and their negative impact can contribute to prevention. Providing information about the benefits of competition and the consequences of antitrust violations can encourage compliance with the rules and foster fair competition.

It is important for these measures to be implemented consistently and coherently to ensure effective protection against anticompetitive practices.

## CONCLUSIONS

Legal protection against anticompetitive practices is essential for ensuring fair and healthy competition in the economy. By implementing antitrust laws and through competition authorities, the aim is to prevent and sanction practices that distort competition and harm the market and consumers.

Antitrust laws establish clear prohibitions on cartels, abuse of dominant position, and other anticompetitive practices, and competition authorities have powers of investigation, sanctioning, and remediation. They ensure market monitoring, analyze market concentration and competitive behavior, and impose appropriate sanctions in case of violations.

Legal protection against anticompetitive practices also involves protecting whistleblowers, who may benefit from confidentiality, immunity, or reduced penalties in exchange for relevant information provided. Victims of anticompetitive practices can seek compensation through the courts and can request the cessation of anticompetitive practices and the restoration of competition.

Collaboration and cooperation between national and international competition authorities are crucial for combating anticompetitive practices on a global level.

Raising awareness and educating about anticompetitive practices is important so that all stakeholders understand the impact of these practices on the economy and are encouraged to report violations.

In conclusion, legal protection against anticompetitive practices is a fundamental pillar for promoting fair competition, innovation, and economic well-being.

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