

ENSURING A HEALTHY COMPETITIVE ENVIRONMENT IN THE FIELD OF LEGAL PROFESSIONS

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Abstract: *Legal professions play a fundamental role in maintaining order and justice in society. Lawyers, notaries, and legal advisors are essential for ensuring compliance with the law and protecting the rights of individuals and companies. However, the legal services market is not immune to anti-competitive practices that can distort competition and affect the quality of services offered. This material aims to explore in detail the main types of anti-competitive practices in the legal professions, their impact, applicable regulations, and relevant cases.*

Keywords: *competition, anti-competitive practices, antitrust regulations, legal professions.*

Introduction

In Romania, anti-competitive practices in the field of legal professions are regulated by various laws and legal provisions designed to ensure a fair competitive environment and protect consumer interests.

- *Competition Law No. 21/1996 and subsequent amendments*

Romania's Competition Law represents the primary legislation governing anti-competitive practices in general. It prohibits actions aimed at or resulting in the obstruction, restriction, or distortion of competition in the market.

- *The Romanian Lawyer's Code of Ethics*

Lawyers in Romania are subject to a code of ethics that regulates ethical and professional practices. This code may include provisions prohibiting certain anti-competitive practices or promoting fair and transparent competition among lawyers.

- *Bar Association Regulations* (<https://www.unbr.ro/legislatie/legislatie-romana/>)

Bar associations in Romania can issue regulations and standards governing lawyers' practices and promoting fair competition. These may include, for example, rules on advertising, fees, and territorial restrictions.

- *Specific Regulations for Legal Professions*

Certain aspects of anti-competitive practices may be specifically regulated for legal professions such as public notaries, bailiffs, or legal advisors. These regulations can be issued by competent authorities for each profession.

- *The National Authority for Consumer Protection (ANPC)* (<https://anpc.ro/legislatie-general/>)

The ANPC has the authority to monitor and sanction unfair commercial practices that may affect consumers. It can intervene in cases where anti-competitive practices in the legal professions negatively impact consumers.

- *The Competition Council* (<https://www.consiliulconcurrentei.ro/>)

The Competition Council is the body responsible for enforcing competition law in Romania. It can investigate anti-competitive practices and take measures to prevent and sanction such behaviors.

In summary, Romania has a legal and regulatory framework aimed at ensuring a healthy competitive environment in the field of legal professions. These regulations are essential for promoting fair competition, protecting consumer interests, and maintaining the integrity and prestige of the legal profession.

1. TYPES OF ANTI-COMPETITIVE PRACTICES IN LEGAL PROFESSIONS

Competition is viewed in specialized literature (Boroi, 1996:5) as "the confrontation between professionals with similar or related activities, conducted in open market fields, aimed at gaining and retaining clientele to optimize their enterprise's profitability."

Anti-competitive practices refer to behaviors or policies that impede, restrict, or distort competition in the market. In the context of legal professions, these practices may include:

- Access Restrictions: Strict conditions for admission to the profession that limit the number of practitioners.
- Price Fixing: Setting minimum or maximum fees for legal services.
- Territorial Restrictions: Limiting lawyers' rights to practice in certain geographic areas.
- Advertising Restrictions: Strict regulations on how lawyers can promote their services.
- Non-Competition Agreements: Agreements between firms or practitioners not to compete in certain market segments.

Access Restrictions

Access restrictions (Aina, 2013) to legal professions are commonly encountered and can take various forms, such as:

Bar Exam

In many countries, admission to the bar is conditioned on passing a difficult examination. In Romania, for example, the bar admission exam is known for its high difficulty level. This can ensure a high standard of professional competence but may also restrict market access.

Mandatory Training

Requirements for internships or continuous training courses can be very rigorous and costly. In Romania, the internship period for lawyers lasts two years, during which interns must participate in professional training courses.

Impact of Access Restrictions

Access restrictions can have the following effects:

- Reducing Competition: A limited number of practitioners leads to less competition.
- Increasing Prices: With fewer service providers, the prices for legal services may rise.
- Decreasing Innovation: Fewer competitors mean less pressure to innovate and improve services.

Price Fixing

Price fixing is a practice where minimum or maximum fees are established for certain legal services. This can be implemented through regulations by professional associations or agreements between firms.

Mandatory Minimum Fees

In some jurisdictions, bar associations set mandatory minimum fees for legal services. For instance, in Italy, the bar association established minimum fees for various legal services. This was considered an anti-competitive practice by the European Commission, which mandated the removal of these fees.

Impact of Price Fixing

- Limiting Competition: Eliminating price-based competition may disadvantage consumers who could benefit from lower fees.

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- **Maintaining High Prices:** Mandatory minimum fees can result in persistently high prices, affecting the accessibility of legal services.
- **Reducing Transparency:** Price fixing can reduce market transparency, making it harder for consumers to compare the costs of legal services.

Territorial Restrictions

Territorial restrictions involve limiting the ability of lawyers to practice in specific regions. These restrictions can reduce competition and access to legal services in certain areas.

Local Regulations

In some countries, local regulations allow only lawyers who are members of a specific local bar association to practice in that area. For example, in France, lawyers must be registered with a particular bar association to practice within that region.

Impact of Territorial Restrictions

- **Reducing Access to Legal Services:** In rural or less populated areas, such restrictions can drastically limit access to legal services.
- **Strengthening Local Monopolies:** Local law firms may become monopolistic, eliminating competition and increasing prices.
- **Regional Disparities:** Territorial restrictions can lead to disparities in the quality and availability of legal services across different regions.

Advertising Restrictions

Advertising restrictions can include the prohibition of certain types of advertising or the imposition of strict rules regarding the content and manner of promoting legal services.

Advertising Rules

In many countries, bar associations impose strict rules regarding lawyer advertising. For example, in Germany, lawyers are not allowed to advertise on television or radio and must adhere to certain ethical standards when promoting their services.

Impact of Advertising Restrictions

- **Reduced Visibility:** Smaller or newly established lawyers may struggle to get noticed.
- **Maintaining the Position of Large Firms:** Well-known large firms can maintain and strengthen their dominant position in the market.
- **Limiting Information for Consumers:** Consumers may have difficulty finding and comparing available legal services.

Non-Competition Agreements

Non-competition agreements are agreements between firms or practitioners not to compete with each other in certain market segments. These agreements may include restrictions on geographic areas, types of services offered, or pricing practices.

Examples of Non-Competition Agreements

- **Market Sharing:** Two law firms may agree not to offer their services in the same city or region to avoid direct competition.
- **Pricing Agreements:** Firms may agree to charge the same rates for certain legal services to keep prices high.

Impact of Non-Competition Agreements

- **Reduced Competition:** Non-competition agreements eliminate competition between the firms involved, negatively affecting consumers.
- **Maintaining High Prices:** Pricing agreements can lead to the maintenance of high prices for legal services.
- **Limiting Innovation:** The lack of competition reduces the pressure for innovation and improvement of the services offered.

2. RELEVANT CASES AND JURISPRUDENCE

In Romania and at the European level, there have been several relevant cases concerning anti-competitive practices in the legal profession. These cases reflect how competition authorities monitor the behavior of professional associations and their regulations to prevent practices that could harm consumers and the market.

Case of the Bucharest Bar (Romania)

The Romanian Competition Council previously investigated decisions made by the Bucharest Bar regarding the establishment of minimum fees for lawyers' services. Such regulations were considered contrary to competition rules because they prevent lawyers from competing by offering lower prices, thereby restricting competition in the legal services market.

Case of the French Bar

In France, the competition authority investigated a regulation that imposed restrictions on lawyer advertising. Regulations that disproportionately limit marketing may be considered anti-competitive because they reduce the public's access to information about available services and affect competition between lawyers.

Notary Associations (Romania)

In 2011, the Romanian Competition Council investigated an alleged agreement among notary associations to set fixed or minimum prices for certain notarial services. It was found that these practices affected competition by eliminating the possibility of competing through lower prices.

Cases Related to Admission to Legal Professions

Authorities have examined regulations that limit access to legal professions (such as a restricted number of spots in bar or notary exams). Such limitations can be considered anti-competitive if they are not justified by the need to ensure high-quality standards.

Case of Professional Orders in Italy

In Italy, the competition authority sanctioned the professional orders of lawyers for imposing limits on lawyers' ability to expand their activities into other regions. This was considered a restriction on competition between professionals.

Case of Wouters v. Algemene Raad van de Nederlandse Orde van Advocaten

In this case, the Court of Justice of the European Union analyzed Dutch regulations that prevented lawyers from entering into partnerships with accountants. The Court ruled that these rules could be justified if they were proportional and necessary to ensure fair and independent legal services.

Italian Lawyers' Tariff Case

The European Commission intervened against the minimum tariffs set by the Italian Bar, arguing that these tariffs contravened competition principles. Italy was forced to eliminate these minimum tariffs, allowing for freer competition.

3. REGULATIONS AND POLICIES TO COMBAT ANTI-COMPETITIVE PRACTICES

Antitrust Legislation

Antitrust legislation aims to prevent and penalize practices that restrict competition. The EU's competition policy seeks to ensure fair and equal competition between businesses in the European internal market. The legal framework for protecting against anti-competitive practices in the EU is based on principles such as the prohibition of anti-competitive agreements, the prohibition of abuse of dominant market position, and the control of economic concentrations (Vidican, 2023: 72-77). As a result, the European Commission acts both to prevent and to punish violations of EU competition rules (Vidican, 2019: 17).

Regarding the EU, the main competition regulations are included in the Treaty on the Functioning of the European Union (TFEU) and in Regulation (EU) No. 1/2003 on the

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application of competition rules under Articles 101 (which prohibits agreements between companies that affect trade between Member States and aim to prevent, restrict, or distort competition) and 102 (which prohibits the abuse of a dominant market position that affects trade between Member States) of the TFEU.

Role of Competition Authorities

Competition authorities play a crucial role in monitoring and investigating anti-competitive practices. In Romania, legal protection against anti-competitive practices is ensured by the Competition Council (Dumitru, 2011:97), which is the independent authority specialized in the enforcement of antitrust legislation. The Competition Council has the power to investigate anti-competitive practices, take corrective actions, and impose sanctions.

The main legal acts governing competition protection in Romania are the Competition Law No. 21/1996 and the Unfair Competition Law No. 11/1991.

The efforts of the Competition Council will continue to focus on areas such as: eliminating tariff regulation and restrictions on advertising, which are considered disproportionate in relation to their goal of ensuring quality and consumer protection, especially when associated with other restrictions like *numerus clausus*; removing, where unjustified, territorial limitations on professional competence, ending exclusive rights, and allowing non-professionals (e.g., non-notaries) to provide less complex services in the legal field; allowing non-lawyers to own or manage law firms (Chirițoiu et al., 2013).

Conclusions

Anti-competitive practices in the legal profession can negatively impact access to justice and the quality of services offered. It is essential to promote a healthy competitive environment through appropriate regulations and the active involvement of competition authorities. Only in this way can it be ensured that legal professions fulfill their crucial role in society, protecting the rights and interests of citizens.

Regulating and prohibiting anti-competitive practices in the legal profession are essential for several important reasons, as outlined below:

Protecting Fair Competition

Anti-competitive practices can distort the market and create an environment where certain firms or practitioners have unfair advantages over others. Regulations that prohibit such practices ensure that all legal service providers compete based on quality and efficiency, not on unfair advantages.

Promoting Accessibility and Diversity in Legal Services

Anti-competitive practices, such as restrictions on access or price-fixing, can reduce the accessibility of legal services and hinder the diversity of services offered. Regulations prohibiting these practices can help ensure a wider variety of legal services are available to consumers and facilitate their access to quality services.

Protecting Consumer Interests

Prohibiting anti-competitive practices in the legal profession is crucial for protecting the interests and rights of consumers. Such practices can lead to higher prices, lower service quality, and fewer choices for consumers. Regulations that ban anti-competitive practices help protect consumers and ensure they receive accessible and high-quality legal services.

Maintaining Professional Integrity

Regulations that prohibit anti-competitive practices help maintain the integrity and prestige of the legal profession. Such practices can erode public trust in the legal system and damage the reputation of professionals in the field. By imposing high standards of fair competition and ethics, these regulations contribute to maintaining the integrity of the profession and fostering public trust in legal services.

Promoting Innovation and Efficiency

Regulating and prohibiting anti-competitive practices can promote innovation and efficiency in the legal profession. Removing entry barriers and fostering competition can stimulate innovation and encourage practitioners to offer more efficient and innovative services. This can ultimately lead to significant benefits for consumers and improve the overall quality of legal services.

Promoting Competition

To promote competition in the legal profession, it is essential to:

- Relax access restrictions: Simplify admission procedures and reduce excessive training requirements.
- Eliminate price-fixing: Allow lawyers to set their own fees based on market competition.
- Review territorial restrictions: Permit lawyers to practice in a broader geographical area to increase service accessibility.
- Liberalize advertising: Enable lawyers to promote their services in a transparent and responsible manner.

The Role of Education and Ongoing Training

Continuous and high-quality professional training is essential for ensuring a high level of competence in the legal field without imposing unjustified barriers to entry into the profession.

- Ongoing education: Continuing education programs should be accessible and relevant, encouraging constant professional development.
- Support for trainees: Trainees should have access to adequate support and training opportunities to facilitate entry into the profession.

Monitoring and Sanctioning Anti-Competitive Practices

Competition authorities must remain vigilant and take firm actions against anti-competitive practices, ensuring a fair and competitive market.

- Proactive investigation: Authorities should proactively investigate potential anti-competitive practices and apply appropriate sanctions.
- International cooperation: Cooperation between competition authorities in different countries can help combat cross-border anti-competitive practices.

In conclusion, regulating and prohibiting anti-competitive practices in the legal profession are essential for protecting fair competition, promoting accessibility and diversity in legal services, protecting consumer interests, maintaining professional integrity, and fostering innovation and efficiency. These regulations contribute to ensuring a healthy competitive environment and facilitating the fair and efficient operation of the legal services market.

It is essential for legal professionals to be aware of the applicable legislation and avoid any behavior that could be considered anti-competitive to maintain the integrity and competitiveness of the legal services market.

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