ANALYSIS OF GOOD PRACTICES IN THE COMPETITIVE ENVIRONMENT IN ROMANIA

Lucia IRINESCU
Alexandru Ioan Cuza University
Iasi, Romania
lirinescu@yahoo.com

Abstract: *Competition rules operate in a complex economic, legal and political context, both internally and internationally. European Union calls for the development of multilateral competition rules to eliminate frictions in international trade relations and avoid conflicts of sovereignty.*
Keywords: *Competition, competition policy, good practice*

Acknowledgement: *This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013.*

INTRODUCTION

Competition has been defined by the European Commission report on competition in 1971, as the best stimulus for economic activity, ensuring participants in the economic life the widest possible discretion. Competition is one of the European policies and is governed by the rules included in Section VII, entitled "Common rules on competition, taxation and approximation of laws". The rules contained in the TFEU are intended to ensure free, undistorted practicable competition, to prevent the emergence of practices that affect trade between Member States or the general interest of economic operators and consumers.

The provisions of art.101 TFEU prohibits and declares incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings 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 within the internal market. Art.102 TFEU states that it is incompatible with the internal market and prohibited in so far as trade between Member States of the European Union is likely to have affected the behavior of one or more businesses to use in a dominant position abuse market or in a substantial part of it. Monitoring of compliance art.101 and 102 TFEU is carried out by the European Commission. The control procedure is carried out under Regulation (EC) no.1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in art.101 and 102. The European legislation is transposed into our law by Competition Law no.21/1996. The rules which are implementing these

provisions are established by regulations and instructions issued by the Competition Council, which is secondary legislation.

ANALYSIS OF THE MAIN ANTI-COMPETITIVE PRACTICES

- The agreements between organizations, decisions made by associations of organizations and concerted practices may be grouped into the concept of the Entente. In our law, the legal regime is established by art.5 of the Competition Law.21/1996 [similar art.101 para.(1) TFEU]. Entente means any agreement occurred between two or more organizations, expressed in written form regardless of title or nature of the act or clause containing it - or implied, express or implied, whether public or occult, having as their object or effect the coordination of competition behavior (eg. price fixing, allocation of markets or sources of supply).
- The abuse of dominance is governed by art.6 para.(1) of Law no.21/1996 which prohibits any abuse by one or more organization of a dominant position on the Romanian market or in a substantial part of it. The concept of dominance was defined by the European Court of Justice as a position of economic strength enjoyed by an organizations which enables it to affect competition in a relevant market that has the capacity to behave independently of competitors and its buyers and ultimately, to the final consumers of the product. European Court of Justice has defined the concept of abuse in the case of Hoffmann-La Roche as an objective concept relating to the behavior of an economic operator who is in a dominant position, which allows it to influence the market structure on the degree of competition is reduced due to economic agents concerned and, using methods other than those which condition normal competition, prevents the maintenance of the degree of competition on the market or prevents the growth of competition (A&S, 2008:214).
- Merger. The merger means where a number of operators have a high percentage of economic activity in a market, expressed as total sales, assets or labor used. A merger refers only to transactions in which the change of control in the organizations concerned is lengthy. Mergers can be achieved through the merger between previously independent organizations or through the control acquisition (C, 2011:93).

BEST PRACTICES IN COMPETITIVE ENVIRONMENT

When we talk about competition it is important to identify a series of principles to provide not only an effective legal framework, but also an implementation procedure at the level of the competent authorities and the control form. Thus, in this study we aim to identify the best practices in the international European and Romanian competitive environment. With globalization, the effects of illegal behavior, such as the exploitation cartels are felt in many EU member states, and beyond. European Commission Directorate competition is a balancing factor in solving transeuropean issues, by its powers of investigation, imposing coercive measures and sanctions.

Applying best practices in the field of competition is to promote the adoption of transparent procedures to limit as much as possible the impact of regulations likely to have the effect of restricting competition cooperation between authorities.

a. *Transparency*. Each state has an obligation to ensure transparency of competition rules. Therefore, national competition authorities must ensure and make all efforts for competition law to be accessible to all national and international operators. Also, the European Commission must publish on its website the results of investigations following complaints by various operators. In this sense there needs to be post both admissions decisions and the rejection. When the rejection decisions are being made, we must protect the legitimate interests of the person are filing the complaint, his identity not be disclosed.

b. *Privacy*. The competition authority must ensure confidentiality of classified information concerning the details of commercial activity carried out by the operators involved in an investigation. In this sense, the competition authority should establish clear and strict rules on criteria used to define confidential information in accordance to national law. The rules of confidentiality must be respected by officials from the competition authority, which are not permitted to use such information for purposes other than that covered in the investigation procedure, as this information must not be disclosed to third parties.

c. *Due process*. In competition law, the right to a fair trial requires enforcement of the rights of all parties equally. In this sense, each party involved in an investigation is entitled to be sent a statement of the reasons for the investigation, has the right to be heard, to comment on all the new issues raised during the investigation. Parties are entitled to submit written responses to the statement of the competition authority as may request a face-to-face hearing. The hearing allows the parties to develop orally the arguments that were presented in writing and to supplement, where appropriate, the written evidence or to inform the Commission of other matters that may be relevant. The hearing also allows Parties to submit their arguments on issues that may be important in the event of imposition of fines. The fact, that the hearing is not public, guarantees that all participants can express themselves freely. Any information disclosed during the hearing is used only for the purposes of judicial and / or administrative.

d. *Non-discrimination*. Competition authorities, courts, and others involved in the investigation of violations of competition must apply competition policy, good practice and procedure so as not to violate the principle of equality between economic operators and national international involved in a competitive relationship.

e. *Taking decisions*. When applying sanctions the competition authority must give detailed reasons for its decisions. In this respect, the publication of decisions will allow other traders to be able to establish a certain competitive conduct which does not affect the interests of other market participants. The competition authority should emphasize the facts under investigation, applicable law, and give detailed reasons for the application of sanctions imposed. These decisions are subject to judicial review. In turn judges must ensure due process and analyze the decision taken by the competition authority impartially.

EXAMPLES AND PROPOSALS FOR IMPLEMENTATION STRATEGIES

Cooperation. Competition authorities have a key role in the implementation of good practices in the field of competition. In this regard, they must carry out an activity as transparent both with the European Commission (DG Competition), the other competition authorities in other EU Member States and economic operators of domestic and European. However, the competition authority must bear a permanent dialogue with the courts to give their education and training of judges ruling competition litigation. Regulation No.1/2003 gave the court a wider role in the competition, which requires that judges have the necessary training.

Inform businesses and consumers on competition law, the rights enjoyed and opportunities to access other markets. In this plain, it requires that the competition to develop an accessible website that anyone interested to find the information they need; to organize seminars with business and legal.

Transparency. Requires that decisions rejecting complaints handled by the competition authorities and the European Commission to be made public without disclosing the identity of the ones involved and compliance with professional secrecy. Thus, it can avoid repetition of anti-competitive behavior.

CONCLUSIONS

Applying the best practices in the field of competition not only provide a framework conducive to a fair trial, but also promotes effective competition policies, a healthy competitive environment that benefits both operators and end-users, provide free access to the resources of the national and international competition, without prejudice to the legitimate interest of each state. The differences in best practices dictated by economic and legislative environment in each state, lead ultimately to the creation of international harmonization reflected in the common principles that guide good practice that should be followed in each country.

References

[1] Cotuţiu, A.;Sabău, G. V. (2008), Drept român şi comunitar al concurenţei, Bucharest: C. H. Beck Publishing House.

[2] Coman, G. (2011), Concurenţa în dreptul intern şi european, Bucharest: Hamangiu Publishing House.

[3] Commission on best practices for the conduct of proceedings initiated under Articles 101 and 102 TFEU (2011/C 308/06), available on-line at: http://eur-lex.europa.eu/legalcontent/RO/TXT/PDF/?uri=CELEX:52011 XC1020(02)&from=EN.

[4] Communication from the Commission Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal cooperation agreements (2011/C11/01), available on-line at: http://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52011 XC0114(04)&from=EN.

[5] Best Practices for the Submission of Economic Evidence and data Collection in Cases Concerning the Application of Articles 101 and 102 and in Merger cases available on-line at: http://ec.europa.eu/competition/antitrust/ legislation/best_practices_submission_en.pdf.