COMMUNITY COMPETITION LAW APPLIED IN ROMANIA

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Abstract:

Competition is the main mechanism of market economy, which generates efficiency and contributes to a better allocation of resources in the economy. It gives consumers more options on the quality, price or variety of products and services.

In this context, the community competition rules, applicable in our country through harmonized legislation with the EU, must be known and simultaneously respected.

The community competition rules were included in the establishing Treaty of the European Economic Community signed in Rome in 1957. In time, principles stated in the Treaty have been detailed by rules, regulations – framework, guidelines, communications that forms the secondary legislation community in meters competition. Community regulations and decisions present a particularly relevant for the field of competition. They are applicable in Member States, without the need to transpose into national rule by a law or another legislative act.

Keywords: *primary legislation, secondary legislation*, E.C.N., *anticompetitive practices, economics concentration, dominant position*

Primary legislation: establishing Treaty of EEC (art. 81,82,86,87,88,89), Competition Law no. 21/1996;

Secondary legislation: rules, regulations – framework, guidelines, communications of European Commission; regulations and instructions issued by Competition Council;

E.C.N. - European Competition Network;

Competition law prohibits:

- *Anticompetitive practices:* anticompetitive understandings; abuse of dominant position
- *Economics Concentration* which create or reinforce a dominant position;
- *Any actions* of the governments central or public bodies, which are intented or may have as effect restriction, inhibit or distortion of the competition, especially through: decisions which limit free trade or firm's autonomy; establishment of discriminatory conditions for business firms.

Dominant position of a firm in a market is given by the important segment held on that market and it is much bigger than the next rival;

Abuse of dominant position is given by the anticompetitive business practices by which a dominant firm may engage itself to maintain or strengthen market position;

Anticompetitive practices refers to a wide range of business practices in which a company or group of companies can engage to restrict competition inter – firms to maintain or strengthen their position relative to the market and profits, without necessarily providing goods and services at lower cost or quality;

Dominant position is not prohibited by law, but misuse of a position by a company or group of companies.

After Romania joining EU (1 January 2007), Romanian market became part of the European single market, and the companies of our country are in direct competition with firms from other Member States. Therefore, can increase business opportunities, but also will attract and increased responsibility for the Romanian companies which are bounded to respect the competitive legislation applicable throughout the European Union.

To remember that the law no. 21/1996 (with subsequent modifications) and secondary legislation adopted by the Competition Council before accession, remained in force after the accession. This was due to the fact that both primary legislation and secondary legislation have taken the latest developments in the field of Community, even before the Treaty of Accession of Romania to the European Union (25 April 2005). In this sense one can speak of a complete harmonization of community acquis, being one of the commitments made by Romania towards EU requirements. New EU competition rules have been applied in Romania from December 2003, even before the European Union member countries.

Consequently, the Competition Council, the administrative authority national competition, is intended to be "guardian" of the normal functioning of market mechanisms, are still obliged to assert the credibility and visibility, and especially in business and consumers acting strictly within the limits established by law. Its decisions must be the result of their analysis and research, without any political interference on the operation and its decisions. After accession, the Competition Council, acts in the E.C.N. - Economic Network Competition, together with the European Commission and National Competition Authorities of all Member States of the European Union.

European Commission and the competition authority of the Member States cooperate in E.C.N., for the uniform application of competition rules of the establishing Treaty the European Commission.

National Competition Authorities are obliged to inform the European Commission before, or immediately after taking formal measures in an investigation, when it intends to act under art. 81 and 82 from the Treaty of Rome, establishing the European Commission.

If the European Commission, acting under the EC Treaty, initiated proceedings on a case of anti-competitive agreement or abuse of dominant position, competent national authority in the field to investigate the case terminates automatically.

European Commission and National Competition Authorities may exchange information obtained in investigations, can assist each other in effectuate of unannounced inspections, and may make a procedural acts in the name of the other.

In terms of **penalties applicable anti-competitive arrangements,** provided by Competition Law no. 21/1996, is similar to that provided by Regulation (EC) no. 1/2003. For example,

- Imposing a fine of up to 10% of total turnover made by the offender in the previous issue sanctioning decisions, for:
  - violation of art. 5 aligned (1) or art. 6 of the Competition Law no. 21/1996;
  - non-fulfillment of obligations imposed by Council Competition.

  Or
  - violation of art. 81 aligned (1) or art. 82 of the Treaty EC;
  - non-fulfillment of obligations imposed by European Commission.
- Imposing a fine of up to 1% of total turnover made by the offender in the previous issue sanctioning decisions, for:
  - failure of cooperation during procedures (refusal of information);

Is important to make the indication that the core of the application system of competition rules which are provided in the establishing Treaty of EC, is the Council Regulation (EC) no. 1/2003, which is reffering to:

- delegation to the competition authority and courts of Member States power to fully apply directly art. 81,82 from the Treaty, if the anti-competitive practice may affect trade between Member States;
- the obligation of national competition authority to cooperate closely to implement Community legislation regarding competition. To this end was established the (E.C.N.) European Competition Network.
- strengthening the investigative powers of European Commission, expand the range of acceptable corrective measures, and imposition of new sanctions more drastic.

As can be noted, in the articles 81 and 82 are provided rules which addresses companies, and in the article 86 of the Treaty are rules set so that addresses Member States, but also certain categories of firms. Therefore, public companies and those with special or exclusive rights conferred by state, throught the art. 86 of the CE Treaty prohibits Member States to adopt or maintain any measure contrary to the Treaty rules, including rules of competition.

Consequently, assigned companies operating a service of general economic interest or which are of revenue-producing monopoly are subject to the rules of the Treaty, particularly those relating to competition, extent that application of these rules does not obstruct the performance, in law or in fact, the special missions entrusted to such companies. Where considered necessary, the European Commision may intervene in decisions and directives to the Member States, ensure compliance with that rule. An example of this is the case of privatizing the company producing cars in Craiova, by acquiring a majority capital by “Ford” U.S., where the European

Commission intervened to regulate so called aid provided by the buyer firm Romanian Government.

The European Commission uses the power conferred by art. 86 of the Treaty to determine the opening of markets to competition, previously dominated by monopolies (for example telecommunication market, electricity market), aiming particularly:

- separation of business on the introduction of competition is not possible or not economically efficient for those that can be done in the competition regime;
- ensuring transparency of the financial flows between Member States and public firms.

Another element that firms must take into account is the **concentration of economic activity.**

Home Community rules merger is Council Regulation EC no. 139/2004, merger control between companies. Therefore, merger is done by:

- merging of two or more previously independent companies or parts of firms;
- acquiring directly or indirectly, by one or more persons already controlling at least one company or by one or more companies, either by purchase of securities or assets, by contract or by other means, on one or more companies or parts of them.

Merger may be considered economic concentration by community size if they meet certain criteria and are allowed before the European Commission.

Economic concentration has a Community dimension if:

- total turnover combined, made worldwide by all companies involved, exceeds 5.000 million EUR;

and

- total turnover made individually in the community for at least two of the companies involved exceeds 250 million EUR, except where each of the firms concerned achieves more than two thirds of its total business turnover in the Community in the same Member State.

May be noted that an economic concentration, which not meet the thresholds above stipulated, has a Community dimension if:

- total turnover combined, made worldwide by all companies involved, exceeds 2.500 million EUR;
- in each of at least three Member States, total turnover combined, made of all the companies involved, exceeds 100 million EUR;
- in each of at least three Member States, which included the previous position, total turnover of at least two of the companies involved exceeds 25 million EUR;

and

- total turnover achieved jointly by each of at least two of the companies involved exceeds 100 million EUR, except where each of the firms concerned achieves more than two thirds of total turnover at Community level in the same Member State.

In Romania, an economic concentration, that are below minimum thresholds community remains subject to the notification to the Competition Council, meets the conditions stipulated by the law of competition no. 21/1996 republished with subsequent modifications.

About **anti-competitive understanding,** should be noted that art. 81, paragraph (1) from EC Treaty prohibit: any agreement between the companies, any understanding of the business association, any *concerted practices*, which can make achieving trade between Member States and have as their object or effect the prevention, restriction or distortion of competition within the common market. Such agreements or decisions shall be considered null and void. Prohibition refers to the practice (behavior) described in art. 81, paragraph (1) from Treaty, regardless of whether or public or private, written or verbal.

Concerted practices of companies that may constitute violations of rules, refer to:

- concerted fixing prices, discounts or any evidence of price;
- allocation of markets between competitors, allocation of customers, the categories of products (services) or territories;
- agreements on the investment or production quotas: negotiations in common, selling or buying in common;
- joint boycott;
- auctions with fake bids;

Consequently, under the *rules*, agreements, decisions and concerted practices which affect competition in the domestic market and which may affect trade between Member States are prohibited.

Because in any field, the rule is *exempted*, and it consists in the prohibition in the treaty does not apply practices (behaviors) that meet the following conditions:

- contribute to improving the production of goods or to promoting technical or economic progress, providing consumers an advantage corresponding to that made by parties;
- not require the companies concerned restrictions which are not indispensable to achieve these objectives;
- do not give companies the possibility of eliminating competition in a substantial part of the products in question.

Exemption operates automatically, since fulfillment of the conditions, without the need to obtain prior authorization. Exemptions may be individual or category of agreements or concerted practices.

Responsibility of proving an anticompetitive practice is that the party invoking the authority or violation of rules. Companies involved in anti-competitive practice may appear by invoking the fulfillment of the conditions to qualify for exemption. In this situation, the burden of proof lies with the company who rely on such defense.

References:

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