COMPETITION - FACTOR OF PROGRESS AND EVOLUTION OF ECONOMIC GROWTH

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"*The noblest search is the pursuit of excellence*" (Lyndon B. Johnson, 1908 - 1973, the thirty-sixth President of the United States of America, November 22, 1963 - January 20, 1969)

Abstract: This paper highlights the issue of competition and its protection in the market economy as a factor generating sustainable economic growth. Competition is a complex concept which determines all competitive policies on the quality of production and products for the market. The measures and policies on protection of competition in conjunction with the current theories of economic growth related to the context of the activities in the economy are essential in approaching this issue. Maintaining a healthy and functional competitive environment is an important element, taking into account the fact that anti-competitive practices evolve and their sanctioning is a complex activity. Investigating, detecting and sanctioning anticompetitive practices are processes that require time and essential human and financial resources and generate interesting controversies.

Keywords: competition, abuse of dominant position, economic growth.

Introduction

Competition as a factor generating progress and evolution needs protection and its importance is acknowledged both at international and European and national level.

Therefore the protection of competition is even more important since it has been found in time that abuses of dominant positions, focussing on anti-

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competition and understanding it, as well as unfair practices affect the environment and the level of economic development in the contemporary economies. The paper will analyse the competitive environment, its factors of influence, as well as the evolution of the theory of economic growth together with the factors of growth.

Competition is essential for the market economy and economic development as it provides the opportunity to choose between several alternatives to economic goods. A more efficient allocation of resources is achieved when there is a competitive environment, because the producer always considers the relationship between resources and expenditure.

As we all know, the producer does not influence the market all by himself, but by competition with other producers, which always leads to lower prices and, implicitly, to market growth by stimulating purchases.

Competition also changes the consumers' value system as it increases requirements, the need for information, the speed of reorientation towards other producers, as well as the continued efficiency of the producers' activity.

The latter will be able to compete on the market if they manage to provide better quality economic goods at lower prices, by means of the evolution of technical progress, the use of production factors providing an increased productivity.

In the fight to gain increased market share, bidders apply a set of sophisticated marketing strategy concepts and concepts, concepts for gaining dominant market shares in the targeted segments, a commitment to increased productivity and high quality without abandoning the strategy of high performance exigencies or an orientation towards the economic branches that include the use of high technology and the gradual diminishing of declining industries.

Economic agents often act illegally, due to the desire to hold a dominant position on the market, to attract as many customers as possible and to eliminate current and potential competitors, but their actions have a negative effect on the competitive environment.

The lack of firmness in taking measures to correct the competitive environment in an economy has negative effects on both the other competitors as well as on consumers and the economy as a whole. This is why European and national legislation provides sanctions for non-compliant, illegal practices. As for Romania, the legislation regulating this matter is the competition law¹, whose role is to protect, maintain and stimulate competition and the normal competitive environment. Scientific research has an important contribution in the field; it has the privilege of focusing on discovering new laws and specific norms and improving the existing ones; it is oriented towards finding the most effective strategies in decision making.

Competition policy is not an end in itself, but a means of achieving a higher goal by which consumers' interests are met.

The need to create a competitive environment should become ordinary as it leads us on the path to progress, development and modernization of production and distribution of economic goods.

Respect for the loyal behaviour of those struggling to win a favourable position on the market becomes a major necessity.

Creating specific case law on contractual relationships between economic agents contributing to the development of the competitive environment and respect for loyal behaviours also appears to be extremely useful.

One of the *sine qua non* conditions for the birth and consolidation of a market economy is the existence of a functioning competitive environment.

1. Competition and anti-competitive practices

According to the Romanian Explanatory Dictionary², competition means "rivalry in a field of activity" or "commercial rivalry, the struggle between industrialists, traders, monopolies, countries, etc. by economic means in order to seize the market, sell products, have customers and get as much profit as possible."

Therefore, the notion needs to be analysed from at least two perspectives: generically and economically.

Moreover, considering the first regulations regarding competition, many lawyers have focused their attention on the concept of competition as it has not

¹ Competition law, no. 21 as of April 10, 1996, republished, with subsequent amendments and completions (Republished in the Official Bulletin issue 153 as of February 29, 2016, updated on April 26, 2017 by including all amendments and completions provided by Emergency Ordinance no. 9 as of January 27, 2017).

² R, Institutul de lingvistică «Iorgu Iordan», Dicționar explicativ al limbii române, ed. a II-a, București, 1998, p. 208.

acquired a legal definition, which is why we can speak of another meaning specific to competition law.

In fact, the dispute between economists and lawyers is ongoing; the issue is the very nature of competition law itself¹.

In general, competition is "a confrontation between adverse trends converging to the same goal." 2

Socially, it signifies the inter-human conflict in which each individual tends to preserve and develop. In terms of inter-human relationships, competition involves multiple affinities with emulation, without the two concepts being similar³.

Economically, competition was initially regarded as a decisive factor that spontaneously assures the division of labour between businesses as well as the normal conditions of production, trade and consumption of goods. It is the "invisible hand" which, irrespective of any governmental intervention, adjusts demand and supply, under the exclusive impulse of individual interest, naturally disciplining by itself all its economic activity⁴.

Subsequently, it was admitted that in essence competition defines, on the one hand, a certain type of behaviour of companies and, on the other hand, a specific way of organizing market activity 5 .

Therefore, competition can be defined as the relationship between the economic agents generated by their desire to obtain the best market place and the most advantageous price⁶.

¹ M. Malaurie-Vignal, Droit de la concurrence et communautaire, 4e edition, Sirey, 2008, p. 26 și urm.; L. Nicolas-Vuillerme, Droit de la concurrence, Vuibert, 2008, p. 32 și urm.

² Ed. Goblot, La vocabulaire philosophique, Paris, 1901, p.133, citat de O. Căpăţână, Dreptul concurenței comerciale. Partea generală, ed. a II-a, Ed. Lumina Lex, Bucureşti, 1998, p. 267.

³"Emulation, as a moral disposition, is the desire to compete with yourself while beating another" – T. Vianu, Filosofia culturii, Bucureşti, 1944, p. 197-198, quoted by O. Căpăţână, op. cit., p. 267268.

⁴ H. Denis, Histoire de la pensée économique, ed. 9, Paris, 1990, p. 191-206, quoted by O. Căpățână, op. cit., p. 268.

⁵ D. Flouzat, Économie contemporaine, vol. I, Paris, 1981, p. 41, citat de O. Căpățână, op. cit., p. 269.

⁶ Colectivul de Economie - " Microeconomie – note de curs – ediția a II- a, revizuită", Editura Universității de Vest, Timișoara 2006, page 88

From an economic point of view, competition is always related to market transactions, demand and supply and the exchange process.

Thus, competition is closely linked to freedom of choice. It is known that "competition is the most important regulatory force of the market economy"¹.

Therefore "competition is the very active form of free initiative, which is generated by private property, which in turn is an essential feature of a market economy whose mechanism is competitive. It represents the open confrontation, the rivalry between the selling economic agents who bid to attract their clients.

At the same time, competition expresses the specific behaviour of all subjects interested in property; this behaviour is different, depending on the competitive environment and the peculiarities of different markets."²

From a legal perspective, competition is a variable concept³. It is regarded as the "rivalry between economic agents in search and maintenance of their clients"⁴ or "a struggle, often fierce, between economic operators who carry out the same activity or a similar activity, for acquiring, maintaining and expanding their clients"⁵ or, more precisely, "the confrontation between businesses with similar activities, performed in open market areas, so as to win and preserve their clients in order to make their own business profitable "⁶.

As a summary on competition we can highlight:

- (a) the market confrontation occurs between natural and legal persons engaged in more or less similar activities;
- b) it occurs in accessible areas (open to the market);
- c) the confrontation targets clients, the increase of which ensures the profitability of the business.

Considering the concepts above, we can say that at the level of a market economy the competition policy is a set of regulations, objectives and

¹ Moșteanu, Tatiana - "Concurența. Abordări teoretice și practice", Editura Economică, București 2000, page 13

² Moșteanu, Tatiana - "Concurența. Abordări teoretice și practice", Editura Economică, București, 2000,page 31

³ C. Perelman, R. Van der Elst, Les notions a contenu variable en droit, travaux de centre national des recherches de logique, 1984, p. 269.

⁴ J. Azema, Le droit français de la concurrence, edition 2e, Paris, 1986, p. 17.

⁵ I. Băcanu, Libera concurență în perioada de tranziție spre economia de piață, în revista Dreptul nr. 9-12/1990, p. 50

⁶ G. Boroi, Dreptul concurenței, București, 1996, p. 5.

institutions; their purpose is to ensure a normal competitive environment in which the economic agents can freely act based on their decisions and behaviours systematically oriented to gaining value advantages as an expression of the efficiency of their activity in the market mentioned.

According to the law, "ensuring fair competition, where honest practices and the general principle of good faith are observed, in the interests of those involved, including respect for the interests of consumers".¹

At the time, competition policy has been gaining relevance because the normal functioning of the market depends to a large extent on competition, whereas the fight against crime in this area has become a general concern and has seen "upward regulation"².

There are a number of authorities at European and national level regarding the observance and promotion of a competitive environment. We summarize the authorities and their competences in the field of competition:

• The European Commission is the EU competent institution for how the competition policy is implemented. It takes formal decisions by simple majority, like a collective body. These decisions are prepared by the General Directorate for Competition reporting to the Commissioner responsible for competition policy. The Commission may be informed regarding a competition issue either by notification or subsequent to a complaint filed by a company or a state, or may act on its own initiative (ex officio) to investigate certain specific situations or even an entire economic sector. The Commission may penalize any violation of the competition rules with penalties amounting up to 10% of the company's incomes.

■ The European Court of Justice (ECJ) is the last arbitrator and the one which can decide whether the Commission's action was within the limits of the legally established powers. It is in a position to act both in the case of requests made by national courts and in claims brought against the Commission before the Court of First Instance. The European Court of Justice, in certain circumstances, requires economic rather than formal (legal) arguments from the Commission, which is very remarkable for a court of law.

¹ Law on Combating Unfair Competition, no. 11 as of January 29, 1991 with subsequent amendments and completions, art. 1, para. (1), updated on April 26, 2017

² Pop, Octavian - "Infracțiunea de concurență neloială", Editura Mirton, Timișoara, 2002, pag. 14

• The role of the European Parliament is limited to assessing the Commission's actions through an annual report and also to comment on important developments in this area. The interventions of the Council of Ministers merely provide for the authorization of block exemptions and altering the legal basis of competition policy.

• Outside the Commission, **national authorities** (Competition Council in Romania) are also active in the field of competition policy.

The major¹ objectives of the EU's competition policy are the following:

- Integrating markets by streamlining trade across borders and allocating resources according to the most advantageous conditions;
- Protecting small and medium-sized enterprises, which contribute to maintaining a competitive environment;
- Consumer protection: maximum benefits for consumers;
- Favouring the achievement of economic and social cohesion;
- Developing optimal businesses which are able to compete globally.

All the rights and obligations of the European Union members stemming from the treaties and acts adopted by its competition authorities cover both antitrust policies and state aid control, include rules and procedures to combat anti-competitive behaviour of companies such as restrictive agreements between economic agents and the abuse of a dominant position and preventing governments from granting state aid which distort competition on the Internal Market.

As a major desideratum, competition rules are directly applicable across the Union, and Member States must closely cooperate with the Commission in their implementation, by adopting an economic policy in line with open market principles based on loyal competition.

As for the antitrust policy², it is an American term that designates all the regulations, the measures the government and its bodies can take, and the means by which they can be used to limit and control the formation of trusts, increase the capacity of different firms or groups of firms to exercise restrictive market practices, to impose a monopoly behaviour on routes considered abnormal or illegal.

¹ Bîrsan, Maria- "Integrarea economică europeană. Volumul II", Editura Fundației CDIMM, Maramureș, 1999, pag. 44

² Dobrotă, Niță - " Dicționar de economie" - Editura Economică, București, 1999, pag. 353

Anticompetitive practices consist of a wide range of business practices by which a firm or a group of companies undertake to restrict competition on the market in order to maintain or strengthen their position on the market and increase profits, without the effort to reduce the cost or increase the quality of a product.

We shall exemplify some of these, without an exhaustive description:

- abusive concerted practices or practices including those determined by the dominant position, close to the monopoly;
- potential economic concentrations generating strong positions and biased behaviour in market dominance;
- State aid granted to the privileged advantage of some economic operators;
- the behaviour of enterprises representing the state monopoly or other exclusive rights granted by public authorities.

The Common Policy on Competition is the first supranational policy in which community institutions have been the most active and consistent, following an upward trend and creating federalist articulations.

The provisions on this policy are described as firm obligations and have had the greatest impact on the countries that have recently joined the EU, including Romania.

Under the Treaty of Amsterdam on the establishment of the EU, competition policy is governed in particular by Articles 2, 3, 12, 31, 36, 73, 80, 81, 82, 85, 86, 87, 88, 92, regarding both the overall framework and the competitive mechanisms in the Single Market (of goods, services, capital and labour) with a particular focus on the goods market.

At national level in Romania, the regulation of competition through an organic law¹ has become necessary for the specific disciplining of the free market that equally regulates balance and determines the effects favourable to the normal development of the economy and the protection of consumers. The adoption of this normative act was a decisive step in creating a competitive economic environment in Romania and the enforcement of rules in this respect. Through this primary-level normative act and the secondary legislation issued in its application, Romania has fulfilled its obligations under the Association Agreement with the European Union on competition policy, ensuring a high degree of compatibility with the treatment and regulation of agreements,

¹ Competition law, no. 21 as of April 10, 1996, republished, with subsequent amendments and completions

concerted practices, abuse of dominant position and control of economic concentrations. Competition law has followed the line of European law; art. 5 sanctions anti-competitive agreements and art. 6 sanctions the abuse of dominant position, corresponding to art. 81 and art. 82 of the EC Treaty. Thus, according to Article 5, para. (1) "Any agreements between companies, decisions by associations of companies and concerted practices which have as their object or effect the prevention, restriction or distortion of competition on the Romanian market or part thereof shall be prohibited".

As it results from the legal provisions, it addresses acts and facts that restrict, prevent or distort competition, made by:

- enterprises or associations of enterprises natural or legal persons of citizenship, respectively Romanian nationality, or foreign nationality, hereinafter referred to as enterprises;
- the central or local public administration authorities and institutions, insofar as they, through their decisions or regulations, intervene in market operations, directly or indirectly influencing competition, except when such measures are taken under other laws or for defence of a major public interest.

The objective of the normative act is to ensure the specific behavioural conditions for stimulating and protecting competition, and the ultimate goal is to develop a balanced, efficient and competitive economy on the world market. This ensures social welfare and consumer protection. The Competition Council operates for the enforcement of the law, in order to administer investigations and penalties for violations, as well as to promote the policy of encouraging and protecting competition, creating the conditions for establishing the rules of free market play in Romania.

According to the Romanian competition law, the following three types of anticompetitive behaviours are broadly described:

1. Agreements between enterprises. From an economic point of view, agreements are classified into:

- a. horizontal agreements concerning economic agents at the same level of economic processes (e.g., agreements between producers, agreements between distributors);
- b. vertical agreements concerning economic agents located at different levels of the same economic process (e.g. agreements between manufacturers and distributors of the same product).

Agreements between businesses fall under the prohibitions provided by Article 5 of the Competition Law when it is likely to have a substantial negative impact on the forms of competition on the market, such as price competition, quality and quantity of products, innovation, the diversity and novelty of the offer. Agreements can have such effects by significantly reducing competition between the parties or between its parties and third parties.

2. Abuse of dominant position. The normative act stipulates that "It is forbidden the abusive use by one or more enterprises a dominant position held on the Romanian market or on a substantial part thereof".

3. Mergers and other forms of merger between enterprises. Chapter III of the Competition Law is the basis for purchase and merger control policy in Romania. Thus, "economic concentrations that can significantly impede the effective competition on the Romanian market or part of it, especially as a result of the creation or consolidation of a dominant position, is forbidden".

2. Current theories on economic growth

Economic growth has always been an important subject of analysis for theoreticians and decision makers at different stages of economic and social development. It is necessary to find the influence factors in their attempt to find explanations of the mechanisms by which various economic phenomena are manifested.

The evolution of economic theories has been in line with changes in different stages of human development and the need to act in terms of achieving better performances that ensure well-being and long-term economic growth.

Taking into account the current conditions, there is a new trend of economic thinking that no longer emphasizes the exogenous growth factors and focuses on the use of factors considered endogenous (the accumulation of knowledge and technological capital, the accumulation of more specialized human capital, consistent public infrastructure, etc.).

At macroeconomic level, economic growth can be characterized by a production function, whose generally accepted determinants are human resources, material resources, information and technologies.

In terms of *human resources* (labour and education), they take into account the employed population, the labour supply, the employment dynamics of available labour resources, with consequences for the economic growth.

As for the qualification level and motivation in activity, it should be mentioned that it has consequences in the level of productivity, which provides measure of the quality of this indicator.

Material resources or what is known as real capital include the natural resources attracted to the economic circuit and equipment production. Economic growth is influenced by the volume of capital in operation, by the funds allocated to investments. The level of technical and technological performance of production equipment, correlated with the human factor's qualification, condition the productivity of capital.

Information and technology come as a contribution to economic growth and are correlated with the technical innovation potential, expressed in terms of the share of investments in research and development in GDP (gross domestic product) and the efficiency of research, the criterion being maximizing the competitive advantage.

In mathematical form, a series of economic phenomena, econometric models of growth express through specific functions and parameters the relations which interfere with the factors influencing growth, by which its evolutions and trends are presented.

The variables to be used are, as a rule, total revenue and its dynamics, the rate of capital accumulation, capital and labour volume, investment volume, etc.

The origins of the vision of endogenous economic growth are the theories of research and development, the progressive dissemination of technological innovations (Romer, 1986, 1987, 1990). The theory of endogenous growth is understood as a self-sustained phenomenon by the accumulation of some important factors: physical capital, technological capital, human capital and public capital (Figure 1).

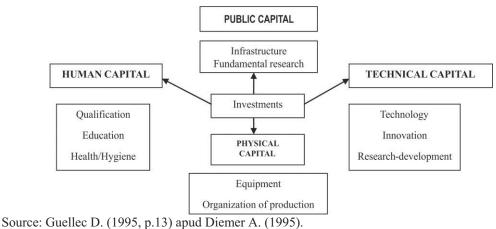


Figure no. 1 Main factors of endogenous growth

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3. Case study – Anti-competitive practices

The following is an investigation for an alleged Cartel on the fuel distribution market¹.

According to the Competition Council's² Annual Report 2015 in December 2015, the Competition Council finalized the investigation into the possible violation of national and Community competition law by fixing sales or resale prices and by sharing the markets for wholesale fuel distribution, Petrol and diesel, in Romania.

On this occasion, the competition authority undertook specific activities, investigating some companies: Comision Trade SRL Brăila, Bioromoil SRL Bucharest, Tinmar-IND SA Bucharest, Planoil Industries SRL Bucharest, Planoil SRL Bucharest și Kept Company SRL Bucharest. As a result of the investigative activity, the Competition Authority found violation of the competition rules by Tinmar-IND SA Bucharest, Planoil Industries SRL Bucharest and Planoil SRL Bucharest. According to the information presented, the coordination of the competition behaviour of the involved parties took various forms, such as: setting wholesale prices for gasoline and diesel oil, minimum prices, discounts and commercial additions, allocating customers and suppliers, and exchanging confidential information on future pricing and sales and purchases of fuels. As it results from the investigation data, it is clear that the relevant legislation has been violated whereas all the actions consisted mainly of discussions between the parties between September 2010 and October 2013 and the correspondence relating to these discussions.

The mode of action was the following, so as to ensure the stability of the customer base of each of the parties, and the parties agreed that none of the parties involved would sell goods to the active clients on the client list of the other party.

In order to implement the agreement and ensure that each party observes both the mutually agreed sales prices and the customer base of each of the parties, the representatives of the companies concerned have decided to implement a penalty system for the party violating the conditions of the understanding. Thus the members of the cartel clearly established the amount of the fine to be given to the company whose conduct deviates from the rules agreed and the way to keep accounting records of its value.

¹ After publishing, the decision will be found at: www.consiliulconcurentei.ro/ documente oficiale/concurență/decizii/industrie și energie.

² http://www.consiliulconcurentei.ro/uploads/docs/items/id11011/raport_anual_2015.pdf

As a result of the investigation, the parties have monitored each other's actions in order to identify possible deviations from the agreed terms, ensuring that the agreed prices, on the one hand, and the list of their own customers, on the other hand, are observed.

There has also been another way of showing the co-ordination of the parties, namely they established a common system for the purchase of fuel quantities for subsequent resale on the wholesale market. More specifically, this system consisted firstly in establishing oil suppliers and, secondly, in the planning the goods / payment routes, whereby gasoline and diesel fuel would be in the possession of each party.

Given that the companies expressly acknowledged that their actions were anti-competitive, in accordance with the legal provisions, the Competition Council granted 20% less than the basic level of the fine. Cumulative fines of around Eur 3.7 million have been given.

Conclusions and suggestions

In conclusion, we can appreciate the development of the competition environment in Romania, but at the legislative level constant updates are necessary, given the risk of potential regulatory effects in the following sectors: financial, public utilities, energy (hydro, nuclear, thermal, energy efficiency, natural gas, renewable energy production), transportation (road, air, rail), mining (coal, oil), agriculture, forestry and fishing.

At the same time, it is necessary to ensure the implementation of state aid rules in the legislative process at national level, in the context of its harmonization with the Community legislation.

As anti-competitive practices are constantly diversifying, it is necessary to intensify investigations based on risk analysis of the most vulnerable sectors.

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- *** Academia Română, Institutul de lingvistică «Iorgu Iordan», Dicționar explicativ al limbii române, ed. a II-a, București, 1998, p. 208.
- *** http://www.competition.ro/documente/ro/GLOSARUETABEL.pdf

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