

THE OBJECTIVE AND THE INSTRUMENTS OF EUROPEAN POLITICS IN THE COMPETITION DOMAIN

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Abstract:

One of the base conditions for the existence of an economic functional market, beside the freedom movement of the goods, persons, services, and of the capital, is represented by a competitive undistorted environment. In this way, the dealers, either at national or community level, must interact as much as possible in a free mode, without negative influence from the strong agents found in privileged positions, the associations of economic agents or the state. In an economic functional market, the respecting of the norms about the competition assures the economical progress, the defense of the consumer interest and the competitiveness of the products and services among the respective economy confronted by the products from other markets.

One of the elements specific to the ordinary market is the affirmation of market economy. That is why, both training Treaty of European Community (TCE) (1), and derived law proposed to remove effectively all the threatening at the competitiveness address, both of the part of the private actors, especially against competition agreements and the abuse of the dominant position, as well as public actors, especially public help and public markets.

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INTRODUCTION

One of the base conditions for the existence of an economic functional market, beside the freedom of movement of the goods, persons, services, and of the capital, is represented by a competition undistorted environment. In this way, the dealers, either at national or community level, must interact as possible in free mode, without negative influence from the strong agents found in privileged positions, the associations of economic agents or the state. In an economic functional market, the respecting of the norms about the competition assures the economical progress, the defense of the consumer interest and the competitiveness of the products and services among the respective economy confronted by the products from other markets.

The competitor environment can be negatively affected by anti-competition activities which represent the object or the result of agreements or practices concretized between economic agents, the abuse of dominant position of some strong agents. Also, the competition can be distorted by subventions adjusted for the state to some economic agents, which creates an advantageous position confronted by the others competing on the respective market.

THE COMPETITION AND RIVALRY POLITICS

The “*competition*” term designates the “relations between all that take action on the same market for the realization of their own interests in economic freedom conditions”. In the same time the competition reflects “the rivalry, dispute, between the respective economic entity which follow the same purpose and that is why their interests become contradictory”.

The competition is a fundamental condition of the market economy being considered the most important cause of the economic and technical progress.

In an enough comprehensive sense, the competition is a rivalry, a fight with economic means (the reduction of the costs, launching new products, buying actions) and extra economic (industrial espionage, sabotage actions) between producing or dealer, monopolies, countries for producing and detachment of some goods, buying some markets and obtaining big profits.

The competition politics has as purpose putting in practice and presenting a system that allows a competition undistorted inside an economic area. As part of economic liberal theory, the

competition politics follows to realize markets with a perfect competition and to prevent the forming of the monopoly and oligopoly which impose to themselves their prices in consumer detriment. There were state monopolies in European Union in transports, postal services and telecommunications.

It must be underlined the fact that in reality, the perfect competition does not exist being an ideal situation to which it tends to, and the concrete form to manifest the competition is the imperfect one, in which the participants that differentiate between them after a series of criterion, dispose of a different economical force, of more limited or more ample information and with a different importance.

The perfect competition presumes an organization form of the economy with very strict rules which have as a purpose setting up a certain equality kind of the conditions for all the economic agents.

The competition politics follows the ensuring of the necessary frame for manifesting a loyal competition in other words of a competition that has place in the conditions of respecting by the economic agents of the norms and ways considered correct and recognized as such thought the regulation in vigor from each state.

If the competition is not loyal (has place with means and actions contrary to the usage and legal regulation) than it gets to a distort and a defalcation of the competition from his purpose thought the favor of one or many economic agents and not in the favor of others.

In European Union, one of the success keys of the economic integration was constitute by the existence, even from the beginning of the community building of a common politics in the competition domain. After 40 years of function, this politics continues to be a necessary condition for the existence of the Internal Unique Market that assures free circulation of the goods services, capitals and persons.

In last, the main beneficiary of a free competition politics is the citizen in his triple quality:

- consumer (free competition gets to a diversification of the offer and to a reducing of the selling price);
- participator on the working force market (free competition obliges to a continuous process innovation for the realized product, and for the production process as well);
- stockholder (free competition gets to the efficiency rise and of the realize of rised profits).

Free competition between firms favors the innovation, reduces the production costs, raises the economic efficiency and as a consequence, raises the competition level of the European economy. Stimulated by the competition environment, the firms offers competitive products and services regarding the quality and price.

The politics competition in UE, as well as in the other big word economic powers, bases on the conception that the markets of a pure and perfect competition are the most suitable, assuring the wellbeing of the population. In consequence, the competition politics vises the restriction, supervising, even forbidding the behaviors of the enterprises which bring the touching of the perfect competition.

Still many economists admit that can exist in certain conditions so named "market failure" which justify than the inobservance of the free competition rules between enterprises, or the direct intervention of the state for correcting these effects. These failures can, for example keep of the existence of the market external effects considered (the researching development activity realized of a big enterprise can crate an environment or can generate a series of useful knowledge for other enterprises too without these to support their cost) or the outputs rising scale. In this case the enterprises efficiency increases depending on their size and can not be wished, in some conditions, for the society aggregate, for the markets not to be "atomistic", constitute from a big number of small enterprises, like in the reference model of the pure and perfect competition.

The monopolies or enterprises having monopoly behavior (for example, those which understand to each other about the price or they divide their market) are the first visited through the competition politics.

The term of "competition politics" is general enough, referring in big lines to certain laws and actions taken by the government, or in this case, of the European Community in its own aggregate (which acts through the instrumentality of European Committee), meant to remove or at least to discourage the commercial restrictive practices as the cartels, monopolies or other obstacles with no tariff which could have as effect, in the terms of Treaty "preventing, restriction or distorting of the competition".

The politics in competition domain forbids practices as:

- giving public help which creates distorts in the competition relations between economic agents;
- establishing the prices through previous agreements between producing and purveyor;
- creating cartels which to share their market, to not compete with each other;
- the abuse of dominant position on the market;
- realizing fusions which distorts free competition;

The competition politics in UE have the following essential characteristics:

- the big principles of the competition politics are fixed by treaties;
- in the Rome Treaty it shows that in the competition domain (the community must establish a regime which to assure that in the common Market the competition is not denatured):
- there are a lot of regulations which specifies putting in application of the competition politics principles;
- European Committee is charged with the correct application of the law and of the community dispositions;
- Law Courts arbitrates the litigations and fixes the jurisprudence.

The objective of the European competition politics consists in warranting the unit of the common Market. The market monopolization can have a place through accord or fusion. Besides, it supervises the actions of the Member States Governments which could distort „the playing rules” by the application of discriminating measures for some enterprises, favoring public enterprises or by giving assistance to the enterprises from the private sector.

In some cases, the incidents in the competition domain are solved through the competition politics modification of the states or of the companies involved. In other cases, Committee pleads for the application of a penalty, that can rise above the sum of 75 million Euro.

Succinctly, the objectives vised by the politics in the competition domain are wellbeing rising and consumers protection, incomes redistribution, protecting little and middle enterprises, markets integrations, but having regional social or sectorial considerations.

JURIDICAL BASES OF THE POLITICS IN THE COMPETITION DOMAIN

Even if community politics in the competition domain is more and more determined of economical reasons, the compulsions it is submissive of are in essence juridical.

The legal base of the politics in the competition domain is offered, by the foresight included in UE Treaty, respective:

- *Article 81*, about restrictive practices;
- *Article 82*, about the dominant position on the market;
- *Article 86*, about public enterprises;
- *Article 87-89*, about state help.

In the second row, references found in the secondary legislation, adopted of UE Council and of European Committee, under the form of Regulations and Norms. In this way, we find references in the secondary legislation, adopted of UE Council and European Committee, under the form of Regulations and Norms. Like this, in this category are included:

- *Council Regulation 17/1962* about the application of the foresight Art.85 and 86 from Rome Treaty;
- *Council Regulation 4064/1989*, about the economic concentration control;

- *Regulation nr.3385/1994* about the form, content and other details about notification mode to UE Committee;
- *Articles 28 and 86 from Amsterdam Treaty (2)* about the monopolies and exclusive rights, in connection with Art.30, 34 and 59 from Rome Treaty;
- The Regulations and Norms about the expectation in the block, given in the case of some accords about precise determined situations, as: technologic transfer, research and development, motor vehicle distribution, etc.

In the third row, one instruction rising number, which are not in formal mode obligatory, offer essential information destined to show how the obligatory rules could be interpreted or in which mode it will take action the Committee in this domain. Thought those, the Committee wants to raise predictability rank of its own acts. To these law sources adds the decisions of European Justice Courts and of First Instance Tribunal.

Not in the last row, we mention the international accords as well were there is express referring at specific situations about competition.

THE MAIN ACTORS INVOLVED IN POLITICS IN THE COMPETITION DOMAIN

The responsible institution at community level of politics implementation in competition domain is European Committee, which *European Commission (3)* for competition is, from 22 November 2004, Neelie Kroes.

European's Committee roll is the promotion of competing politics in the authorizations base, examining the denunciation putted by one of the Member States, by a producing or by particulars. This administrates the Common Market for ensuring the European consumer protection. It keeps vast authorizations in the application of the competition legislation and, beginning with 1989, was authorized to examine and to block big proportion fusions. Supervising the Committee acts is made by European *Justice Court (4)* and *The First Instance Court* (Kroes,N., 2008)

The Committee disposes of *General Directory for Competition* DG COMP (previously known as DG IV), which concerns of competition politics promotion.

The base mission of *General Directory for Competition* (DG COMP) is to establish and implement a competition coherent politics inside European Union. Of DG COMP competence is the control execution of the community legislation implementing in competition domain. As well, DG COMP concerns of the international politics of UE in the competition domain in quality of partner of industry developed states (ex. SUA, Japan, Canada etc.) or in quality of consultant of the states during development (ex. Central Europe States and East Europe States).

The decisions are prepared by *General Directory for Competition* which reports to the commissary responsible with the politics in competition domain, Neelie Kroes, the approval is made by simple majority.

As a procedure, any agreement which Rome Treaty don't agree follows to be led to European Committee knowledge. According the Articles 81 and 82 foresights, the companies can hope to a „negative settle” of the incident, which means that, after examine of the case, the Committee will not undertake acts contrary to involved companies, giving immunities. The Committee disposes of vast investigations possibilities. It can make the control of enterprises documents without preventive announcement. Before taking the final decision, the Committee can apply a penalty of 10% from the annual income.

The last arbitrator in the domain of these so different rules and who can decide if the Committee action was in the limits of the powers established in legal mode is *European Justice Court* (CEJ). CEJ is entitled to take act in the case of some solicitations made by national instances, as well as in the case of some actions initiated against Committee in the front of the First Instance Tribunal (TPI). Remarkable for the juridical instance, CEJ requests to the Committee, in some circumstances, rather arguments of economic order, than formal order (juridical).

The companies can contest the decision of the Committee at European Justice Court, which frequently reduces the penalty sum. The European legislation in the competition domain offers priority to the national legislation and is direct applicable in the Member States. (Cosmovici, M.P., Munteanu, R., 2001)

European Congress estimates the Committee activity as well as the evolution of this domain by publishing an annual report.

Ministers Council (5) authorizes the excepting in block and makes modifications in the legal base of the politics.

In the same frame acts the national authorities too invested with competences in this domain (in Romania the authority in domain Concurrence Council).

THE MAJOR EUROPEAN POLITICS OBJECTIVES IN THE COMPETITION DOMAIN

The applicable rules in European Union vise generally the following aspects:

1. *The agreement against competition* - "The forbidding of any kind of agreements/accords between enterprises, association decisions and concerted practice s, which are susceptible to affect the market between member states and which have as object or as effect the prevention, restricting or the falsification of the competition inside the common market".(Rome Treaty)

The treaty offers examples of this kind of agreements that are "nulls of law":

- Fixing direct or indirect the buying or selling prices of other deals conditions;
- Limiting or controlling the production, technique developments or investments;
- Sharing the markets or provision sources;
- The application of commercial partners, of some unequal conditions or equivalent labor conscriptions, making them support disadvantage in competition fight;
- Subordination of contracts settlements of accepting by the partners of some supplementary labor conscriptions which through their nature or according the commercial usages have no connection with the object of the respective contracts.

The forbidding of these practices depends of some conditions:

- Firstly, intra-communitary exchanges must be review according to the juri sprudence of the European Community's Justice Court even if the partners are in the same state;
- Secondly, the agreements must been have as object or like effect the restriction or swindle competition inside the communitary market, what excludes the agreeme nts between UE enterprises which vise third countries;
- The last imposed condition has in consideration that the touch brought to the competition to be important: in this way the minor importance agreements get in the derogation sphere, for example, for SME s, an agreement does not affect significant the market's conditions when the market quote own by the respective enterprises does not pass to 5%, and the annual business number does not pass to 300 mil Euro;

The Treaty foresee a derogation series for the agreements that: contributes "to the products melioration or to the deliver of the products" and at "the technique or economic progress promotion" and which in the same time allow to the user to get an equitable part of the profit that results". This kind of situations is tolerated just if the producing maintains their capacity of offering competition goods or services. The exception is of individual nature and practices when the Committee authorizes an agreement previous verified.

Another kind of derogations has collective caractere and applies to an entire series of agreements, being necessary one regulation conceived by the Council and which specifies certain demands.

2. *The dominant position abuses*: This article does not regulates the concerning, but l limits to the forbidding of exploiting abusive a dominant position, being more corrective that preventive. In this case not the occupied place in one activity sector is putted in discussion, but just the fact of obtaining one excessive advantage out of this position is criticized: "it's incompatible with the

common market and forbidden, in the measure in which the commerce between member states is affected, the fact that, for one or more enterprises, exploiting abusive a dominant position in the common market or on a substantial part of this.

To determine if one enterprise is or is not in a dominant position, unimportant if it belongs to the Community or to a third country, it judges first the market quote owned (which should be bigger than 50%, and the enterprise must have the capacity of maintaining it). When the enterprise takes possession 70-80% the qualification is made automatic, and if it is not the case, than intervene other complementary elements as: the reputation, the product's brand, commercial net work efficiency, the technologic advance, economic power of the complete, the existence of a hidden competition, the access of resources and technologies.

The next level is the establishment of the abuse, if this exists, considering only the effects of the firm's behavior and excluding any accusation fraud intention.

There are presented in many situations:

- Imposing in unperformed conditions (too large or too small prices for the elimination of some rival producing);
- Limiting the production or technique development in the consumer's detriment;
- The application of a discriminatory treatment for commercial partners.

There is no derogation stipulated in agreements case, and the penalty is pronounced by the Committee which, by decision, orders to the enterprise to finish the constant situation and can apply a penalty.

3. *The concentration* – wasn't provided in Rome Treaty, but the Committee always considered that this can get to one abusive exploitation of the dominant position. The regulations from December 1989 and from September 1990 covered this gap, imposing a obligatory notification of fusions and acquisition projects at European Committee. In this way, it institutes one preventing control of the Committee, which can forbidden the concentration operations which present a European dimension, if it risks to get to a dominant susceptible position and to obstruction significant the competition.

In this way it allows to the competition politics to intervene, at a precocious stage of a concentration process, approving or forbidding the alliances had in consideration. The preventive control apply the following types of operations: fusing, taking over control, common entities creating starting from a minimal threshold. This minimal threshold was modified through the regulations of the Council from 30 June 1997. The respective enterprises, from which at least one belongs to a UE member state, must accomplish certain criterions:

- The world turnover (CA) number cumulated which should be bigger than 5 milliards ECU (6) from the beginning was brought to 2.5 milliards;
- CA realized inside communitary space which previous had to be bigger than 250 millions ecu for at least two of the unities was brought 100 millions;
- Each enterprise does not have to realize more than 2/3 from total CA from the Community inside one and the same member state.

In this case, the agreement protocol must be ratified in obligatory mode by the Committee, this having the possibility to suspend it too. Practical the Committee estimated if there is or the re is not a dominant position which constitutes a significant obstacle for the competition and decides the approval or the forbidden of the agreement.

CONCLUSIONS:

The comunitary politics of the competition complete reflects the individual liberalism's principles which were at the Rome Treaty's base, both private domain, and public domain.

Public domain must conform to the free market ideology of the Community. In the most of the cases, the intervention of the state in economy produced when the free competition market was not capable to satisfy the interests and needs of some economic branch or region. (Cairns, W., 2001)

Amsterdam Treaty consolidated the place of the competition inside the base elements of the community economic constitution, adding another dimension to the enterprises economic performances.

With all these, the competition does not have to be understood in absolute sense, but as a way that must be interpreted thought comparison with the other fundamental interest of the Community (Cairns, W., 2001).

As follow from the European Constitution project contain, the Committee role in European legislation application of the competition will diminish. Concomitant, the member states and the community justice role in domain will increase.

ENDNOTES:

(1) The treaty of institution of the European Community (The Rome Treaty) established the Economical European Community (EEC), was signed to Rome on 25 March 1957 and come into effect starting with 1 January 1958. The treaty of institution of the European Community of atomically energy (EURATOM) was signed on the same date, both of them being known as the Rome Treats. The consolidated variant published in the Official Journal C 325, 24 December 2002 is available on the website <http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/12002E.html>

(2) Amsterdam Treaty, signed in 2 October 1997, entered in vigor at 1 May 1999, amended and renumbered European Union's and European Committee's Treaties. The consolidated versions of the UE and EC treaties were attached at it. Amsterdam Treaty modified European Union's Treaty articles, identified thought letters from A to S, numerical.

(3) The European Commission represents the interest of Europe as a whole. It is independent against the national governments. The European Commission propose new European lows, which are presented to the European Parliament and to the Board observe the breaches, treaties and European Laws

(4) The European Justice Court assures that the European law is interpreted and unitary applied in all countries of the EU

(5) The Council of European Union (Minister Council) shares with the European Parliament the responsibility of the approval laws and application of the decisional politics. The main responsibility is to decide the UE actions in domains as external business, security politics, some justice actions.

(6) ECU – (European currency unit) it was an artificial currency which it was used by the member states of the UE, as intern account unity. ECU is was introduced on 13 March 1979 by the Economical European Community, the predecessor of the EU, as accounting unity of the currencies from the area named Monetary System (EMS). ECI was the predecessor of the European unique currency, EURO, which it was introduced on 1 January 1999.

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