

- SECTION EUROPEAN LAW AND PUBLIC POLICIES -

THE ROLE OF COMPETITION ADVOCACY IN STABILIZING THE COMPETITIVE SPACE IN REPUBLIC OF MOLDOVA

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Abstract

The harsh conditions of a developing market where fierce competition persists often resulting in law violations, capitalizes the development of competitive culture. In terms of market particularities where operate mainly small and micro enterprises, considerably enhances the need of competitive culture development.

This paper presents an analysis of the the particularities of competitive behavior in small countries through the specific features of a small domestic market such as limited competitive opportunities. They arise due to factors such as the dominant structures (monopolistic and oligopolistic) approval by state bodies, the existence of price control systems, barriers to entry and others. Thus, the development of a transparent and balanced competitive environment is possible through improving of the competitive culture, that compared to large markets, require additional efforts.

Competition Advocacy is the key of competitive culture in order to reduce the number of infringements of competition law that resulted in sanctions, which would help to increase the competitiveness of businesses. Through its work, Advocacy helps developing a normal competitive environment.

Keywords: *Competition advocacy; Competition norms; Competition criteria; Competition authorities.*

JEL Classification: K2, K4

The role of competition in the contemporary economy

The modern economy focuses on a functioning market economy, which implies competition between market actors to expand and maintain market. In this context, competition is the objective force of coordinating traders' activities and options. It generates entrepreneurship spirit, and market entry of new agents, while eliminating inefficient companies and stimulating the effective ones, thus playing a role of "rehabilitation" of the economy.

Normal competition, held in accordance with the rules adopted in the company, plays an active role in the economy and fulfills important functions, such as stimulating initiative, innovation, creative spirit and emulation between operators. Also favoring the normal price, even reduce them under pressure from competition. These have the effect of consumer satisfaction by offering low prices, high quality and wide possibilities of choice.

Competition Advocacy

Competition and competitive mechanisms are customized depending on the degree of development of market economy, the liberalization of the economy, but also the behavior of economic agents in relation to these rules.

Gaps on understanding the necessity of the existence and enforcement of competition rules which are in society and business cannot always be eliminated by law.

Imposing of rules, and penalizing for not respecting them, wakes often contradictory spirit, and as a result the competitive environment does not record the expected improvements.

Also to detect violations and impose sanctions is a process that requires increased efforts and large expenses, and moreover, the reaction of the economic environment leads

to distancing relations and low communication between legal representatives and market players.

T. Murrisa, Chairman of the US Federal Trade Commission in 2002 for the first time used the term "Advocacy" and defines it as one of the activities of Antitrust Authorities, Aimed at Strengthening the competitive environment through mechanisms that do not involve the use of coercion measures, and the use of active relationships with other government agencies and increased understanding by the general public of the benefits of competition (Murrisa Terry, 2002).

"Competition advocacy – a systematic management activity by the competition authorities, aimed at establishing mutual understanding between the government, society and business, including complex communication, advocacy and educational activities, and informing market participants about their rights and obligations to the society and the market" (Knyazeva Irina, 2013).

The ICN (International Competition Network) Advocacy Working Group (AWG) mentions that Advocacy reinforces the value of competition by educating citizens, businesses and policy-makers. In addition to supporting the efforts of competition agencies in tackling private anti-competitive behavior, advocacy is an important tool in addressing public restrictions to competition. Competition advocacy in this context refers to those activities conducted by the competition agency, that are related to the promotion of a competitive environment by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness in regard to the benefits of competition.

The competition advocacy purpose is to create conditions that will lead to a more competitive market structure, business conduct and economic performance. It must assume the role of a more competitive market structure and behavior of the business without direct intervention by the competition authority (OECD, ch 6).

The competitive environment in the context dimensional

The impact of market dimension on the competitive environment is considerable. This is due to the particularities of the market, specific of dimensional structure.

Limitation of competitive opportunities on a small domestic market occurs due the facilitate of the dominant establishment and disadvantages of fragmentation.

However, the advantages of consolidating businesses and the inclination of authorities to justify such consolidation business, including the existence of monopolistic and oligopolistic structures, tend to inhibit the development of a competition culture.

Moldova is a small developing country. Merging these two features have a considerable impact on competitive behavior in the market.

Developed countries show a more advanced competition education, and developing countries have a lower rating, in this field.

Once territorial RM presents small dimension, the domestic market owned by it is small.

Specific to a small market, RM market has the following conditions:

1. The existence of natural monopoly in public utilities such as electricity, fixed telephone, gas and water line. This is due to relatively high overheads, which does not allow more entities to provide a viable service. Monopoly conditions are also favored by the low level of natural resources, leading to high levels of imports. So are created conditions for dominance or monopolization of import channel, which develop resistance to the creation of parallel import channels.

2. The existence of barriers to entry. RM market is predominantly made up of SMEs. And in markets whose actors are SMEs, the offer presents a wide range of products, which are interchangeable. In a saturated market, and where the products offered are varied, new market entry requires considerable effort. Another natural barrier is the fragmentation. The need to purchase raw materials in bulk, in order to avoid excessive fragmentation of loads also limits the number of entrants. In some cases, artificial barriers are imposed by the government, to make viable certain market segments, where substantial expenditures are required. Segments, such as the provision of taxi services and pharmaceutical networks require licensing. The license in this case constituting an entry barrier effect, although the market would still have place for other actors.

3. On a small market collusion between suppliers tends to be more easily performed. In these markets is more developed social interaction, a small number of market players tend to have a closer relationship and family ties prevail. In such circumstances, parallel behavior is common and concerted practices are difficult to distinguish from independent actions by the authorities.

The competitive culture market aspects

Although competition advocacy is important regardless of market size, it requires more effort into smaller ones, given that family connections and social networks are more likely to lead to collusion than independent competitive action.

The study among economic agents from Moldova, observed a reaction more or less negative opposite competitive legislation. This shortcoming is due to the information and training in the field. The fear of fines creates a reaction less appropriate for economic development in this area. Also imposing fines are subject to economic destabilizing of the entity. And a lot of violations are made involuntarily, because of the shortcoming of knowledge in terms of competition law, and fewer lawyers trained in that area.

The competition Advocacy is the alternative tool that could help educate competitive behavior and stabilize the competitive environment of the market. At the same time contribute to the development of the legislative framework cooperation relation with the economic actors for the competitive market development.

Developing a competitive culture among economic agents can enhance economic competitiveness both in the domestic and especially foreign markets, where activate big companies that have already exceeded internal current knowledge and application of competition law.

Culture competition is able to support the maintenance of a transparent and predictable business environment, which is a key factor to a functioning market economy.

Competitive culture supports prevalence of competition law, while helping to increase awareness of the beneficial role of competition in the development of normal market mechanisms.

Compared to large countries, a small country social relationship and inter-family relations are of greater importance, therefore, application of methods of competition advocacy would bring better results in terms of implementation of policy competition than legal issues.

Making the citizens aware of the benefits of a fair competitive conduct is relevant in this regard. It is important also presenting information fairly, and understandable to the economic agents. In addition, the competition authorities must be considered to be fair and transparent.

Competition Advocacy

Assistance in competitive is the key factor in competitive culture. The global idea of assistance is to develop the competition culture in society.

An important role in this regard lies with consulting firms. Firstly because competition authority has its limits and constraints resulting from lack of material and human resources, on the other hand its role is to determine violations and punish them. Therefore, to meet the competition challenges in the single market, companies have to use the services of consulting companies on competition, to take care that all business decisions are perfectly legal and compatible with competition law provisions.

In order to avoid violations of competition law in their work, companies must focus on increasing the professional level of lawyers and deepening their employees in the competitive area. Moreover, to ensure a normal competitive environment, the market actors must be able to detect signs of infringement by competitors, which will be possible with increasing their competition culture. These requirements can be ensured through the competition advocacy.

Competition advocacy has several functions:

- ✓ Contribute to the understanding of competition law;
- ✓ Develops and promotes competitive culture;
- ✓ Disseminates information to market players;
- ✓ Through its work reduces the number of infringements and prevents the new ones.

The positive effects of the competition advocacy in the market can be highlighted on three sectors (Figure 1).

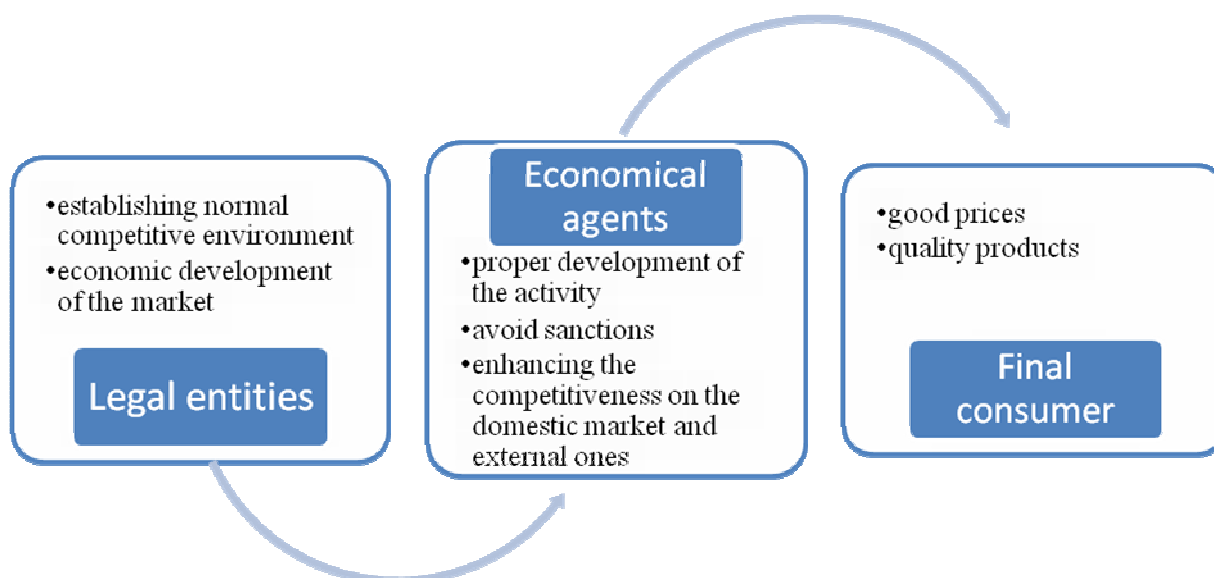


Fig. 1 Positive Effects of competition advocacy

From the other countries experience, competitive culture educates market actors to support the regulations that do not reduce competition.

Competitive culture is one of the directions of activity of the FTC (Federal Trade Commission), which use a range of tools, convince market players that it is beneficial to act in accordance with competition law. This leads to the establishment in the market of loyal competitive behavior, which affects the ultimate consumer benefit by quality and

price. By applying the antitrust laws, the FTC helps to keep the US market open and free. It also offers another perspective of policy decisions to government authorities, taking account of the competitive market. In these aspects, the FTC offers expertise and advocates policies that protect consumers and promote competition. Market players also can receive assistance pertaining to the development and practice of economic activity in relation to competition law.

Among the methods of promoting competition culture, used by ETC are:

Amicus Briefs, which provide information that, can help the court make its decision in a way that protects consumers or promotes competition when a court considers a case whose outcome may affect consumers or competition.

Advocacy filings may offer insight and expertise to decision makers by filing an advocacy letter when government bodies and other organizations consider cases or policy decisions that affect consumers or competition.

Other Applications, Petitions, and Requests, includes petitions from companies, industry groups, consumer organizations, and others asking the FTC to revise rule-makings, initiate investigations, or take other action.

Advisory Opinions helps clarify FTC rules and decisions, often in response to requests from businesses and industry groups.

Also, FTC practices reports that examine antitrust and consumer protection trends. The agency uses this research to inform policy and to evaluate the agency's performance.

Competitive culture is widely used by the European Commission. European Commission promotes competition culture through conferences and other discussion platforms where competitive authorities in different countries share experience.

The main objective is to promote convergence of competition policy instruments and practices across jurisdictions and to facilitate cooperation with competition authorities in other jurisdictions in enforcement activities.

Competition policy in Europe is an essential part of the internal market. Its purpose is to give all European goods and services of better quality at lower prices.

The European Commission cooperates closely with competition authorities of countries. Also, it participates actively in the competition-related activities of a number of multilateral organizations, such as international competition network (icn) and others in order to increase the competition culture.

The most effective method of promoting competition culture is to inform. Dissemination of information play a crucial role in improving the understanding of the necessity of respecting competition law.

Participation in international seminars, allows authorities taking practices of developed countries in this field.

A tool for promoting competition culture practiced by competition authorities of Moldova is organizing seminars and conferences. Increasing the competition culture among academic environment assures the competition culture of future market players.

Another practice to the development of the domestic market competition culture is to organize discussion platforms "Competition cafe" where discussions in an informal way, directly to economic environment allows the dissemination of information on the benefits of a fair competitive conduct on market, and the need for compliance with the law competition. On the other hand, discussion platforms allow authorities to identify competition problems and gaps in the market competitive behavior which facilitate the development of healthy and effective programs to stabilize the competitive environment.

Another tool in order to promote competition culture is self-regulation. Self-regulation is based on an agreement that is practiced in the form of noble manners Code in

relations between retail chains and suppliers of consumer goods. According to this document, networks, and network providers are building common rules of interaction between manufacturers and retail chains. This practice leads market players to adjust competition rules voluntarily, avoiding further sanctions violations.

Developing and implement the code of good manners is another way to promote the culture of competition among economic agents in the country, by involving them actively in the development of self-regulation and compliance with the rules.

The code of good practices and its observance could be used in preparing of the bill and strengthen the role of self-regulation through the instruments of the law.

Conclusions

Competition Advocacy, complementary to legislation creates competitive environment favorable to the development of free and open markets. Competition advocacy educational methods are fair and capture market actors' attention by explaining the effects of anti-competitive behavior, and the need for compliance with competition law. The opportunity to avoid sanctions from anticompetitive behavior arouses the interest of market participants to be actively involved in the collaborative development of self-regulatory principles.

The increase of competition culture develops market capabilities and actors skills to cope in foreign, developed markets that have a superior level of competition culture.

Advocacy activities enable the development of both the economic environment and the legislative framework, the feedback from the economic environment indicates authorities to weaknesses on market, requiring changes or monitoring.

Active communication of legal entities with the economic environment allows early identification of sectors with violations.

Engaging market actors in compliance with the rules and self-regulation enable their competitiveness and market development.

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