

CONSIDERATIONS ON THE ROLE OF EU'S COMPETITION POLICY IN ACHIEVING THE OBJECTIVES OF THE STRATEGY - EUROPE 2020¹

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ABSTRACT: *The contribution of an effective competition policy in achieving the goal of sustainable development and increase the competitiveness of the Union is not negligible. Competition contributes to the functioning of markets, the sine qua non condition of economic development.*

This work examines the short and medium term prospects of the EU's competition policy in relation to the new European strategy for sustainable growth and competitiveness: Strategy - Europe 2020. It also refers to the implications that global financial crisis has had on the implementation of EU's competition policy.

KEYWORDS: *competition, strategies to increase competitiveness, sustainable development, financial crisis.*

JEL CLASSIFICATION: K 34

Designed at the middle of the 20th century by the vision of the political leaders of an Europe emerging from the Second World War, after half a century of history that could be considered a "successful story", the European project found itself in a first deep crisis in the moment when the Constitutional Treaty was rejected by France and Holland². Now, another crisis, economic, this time, strikes again the Union's stability. In this context a strong need appears, the necessity to adapt the competitive policies to the economic

¹ Please also see the speech of the new General Director of the General Directorate for Competition of the European Commission, A. Italianer "Challenges for European Competition Policy", International Forum Competition Law of the Studienvereinigung Kartellrecht, March 9, 2010, available on: http://ec.europa.eu/competition/speeches/text/sp2010_01_en.pdf

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² Please also see I. Jiga, Uniunea Europeană în căutarea viitorului, in „Revista română de Drept Comunitar” no. 2/2006, p. 11. The author notes that the outcome of referendums in May 29 (France), respectively, June 1, 2005 (Netherlands) marked the completion of the voluntaristic-viewing community building based on political will and enthusiasm, imagined by Jean Monnet and Robert Schuman in the early 50s of the XX century. European Council meeting in June 2005 brought to the fore the collision of two basic philosophies on the future European Union: one that supports liberalization and emphasizes the crucial role of market, the other which sees the Union as political integration project based on solidarity.

environment which produces its effects, the competition rules represents one response to the present problems of the market³ in today's economic situation.

According to the information well-known to the public, the phenomenon of the financial crisis⁴ affecting globally the world's economy as manifested in various forms (especially the mortgage loans in the U.S.) showed up strongly after the Lehman Brothers bank collapsed having "almost unbelievable consequences"⁵. The trust between participants in financial markets fell sharply, and risk premiums have increased to very high levels. Interbank market activity was adversely affected, banks with excess liquidity being reluctant to lend to other banks their capital surplus. In this context, the French Presidency of the European Union took the initiative of negotiation and adoption of urgent measures to stop the global consequences of the crisis.

Triggering the global financial crisis was the subject of diplomatic negotiations at the regional level, aimed at both identifying appropriate measures to limit its negative effects, but also the causes which have led it. Thus, the French Presidency of the European Union held several consultations with some EU's Member States and also with the European Commission President, Jose Manuel Barroso, and finally, on November 7, 2008, he convened the leaders of the 27 Member States of the Union in order to adopt a program of adequate measures to combat the effects of the financial crisis, measures assumed by the European Union and which would be promoted worldwide⁶.

The current economic situation also reflects itself to the regulations adopted in the European Union competition law, recent legislative reforms trying to answer the challenge of the current economic context.

The first effects worth mentioning, that the current financial crisis had over EU's policy on state aids⁷, noting the fact that these aids had a major role in stabilizing global financial markets after the outbreak. Thus, measures were adopted to facilitate the granting of emergency measures designed to ensure financial stability. In the financial sector concepts such as recapitalization, granting of guarantees, impaired assets etc. have become part of the conceptual framework specific for this sector.

³ L. Lazăr, „Reformarea dreptului comunitar al concurenței – o încercare de a asigura convergența între instrumentele de politică concurențială ale Comisiei Europene”, in „Revista Română de Dreptul Afacerilor” no. 5/2009, p. 22.

⁴ For more details regarding the appropriate means to remove the negative effects of the financial crisis and the role of the government in this context, also see I. Lazăr, „Unele aspecte privind instrumentele financiare prin care Uniunea Europeană sprijină relansarea economică a statelor membre”, study presented at the international conference „Challenges of Contemporary Knowledge-based Economy (ICMEA)”, ed. a III-a, November 13-14, 2009, Alba Iulia, Romania. This study was published in the Review „Annales Universitatis Apulensis, Series Oeconomica” no. 11/2009 vol. I., „European Union's Financial Instruments for Economic Recovery of the Member States“.

⁵ H. du Limbert, Patriotismul economic a lui Sarkozy, in Le Figaro from October 24, 2008 (translated in Romanian language in the newspaper Adevărul from October 27, 2008)

⁶ G. de Capèle, Momentul adevărului, in Le Figaro October 13, 2008 (translated in Romanian language in the newspaper Adevărul from October 20, 2008)

⁷ For more details about the control procedure of state aids, also see C. M. Costin, „Procedura de control a ajutoarelor de stat în lumina dreptului european al concurenței”, in „Revista de Drept Procedural” no. 1/2009, Ed. Sfera Juridică, Cluj-Napoca, p. 100-102.

In order to prevent the credit crisis measures have been taken by allowing the Member States to grant subsidized loans, state guarantees on loans, financial aids with a low value that could be given to the real economy players.

At European level the restructuring plans of financial institutions that have received financial aid were discussed in order to reduce distortions of competition by granting widespread of such aid, to ensure long-term functioning of the mentioned institutions without the state aid.

State aids had played an important role in stabilizing the markets and will play an important role in the moment of ending the current financial crisis. Subsequent to the financial recovery, the special measures granted to the financial institutions will have to be removed, which gives a major role to the field of union rules on state aids.

Ascertaining the need to find measures to ensure sustainable and balanced growth for the Union, the European institutions have resorted to drafting a new development strategy, strategy - Europe 2020. This strategy, developed by the European Commission in late February this year, represents the EU's vision to achieve a social market economy in the 21st Century. The strategy aims to achieve three main objectives: i) smart growth (by promoting knowledge and innovation); ii) sustainable growth (by ensuring the efficient use of natural resources and economy competitiveness); iii) economic growth that promotes social inclusion (ensuring a high degree of employment work that contributes to increasing economic and social cohesion).

The Lisbon objectives⁸ stood at the basis of the new strategy. The ambitious aim of this strategy was to make the European economy "the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth and the creation of more and better jobs and greater social cohesion" by 2010. In the center of the reformed Lisbon Strategy stood the recognition of the fact that markets are those that generate consumer welfare and ensure job growth and not governments.

Among the main objectives of the strategy have been included: i) increasing Europe at activity from the investment perspective, by removing remaining barriers to the single market and adopting friendly rules for the business environment; ii) favoring research and development thus enhancing creativity and innovation and ensuring the economic growth by increasing allocation of financial resources for these purposes and by extending the use of information technology among the population and business environment; iii) increasing employment; iv) expanding internal market; v) implementing reforms which benefits competition and innovation; vi) ensuring that growth goes hand in hand with the idea of sustainable development.

In connection with the first objective we mentioned that the improving of the legal framework (at national and community level), and reducing administrative obstacles that stand in the way of competition were the appropriate means to ensure the targeted nature

⁸ For more details regarding the objectives of this strategy and its implications over the competition field please see, L. Lazăr, loc.cit., p. 23-27. However, for an analysis of economic evolutions in Romania and the European Union in crisis conditions, also see: A.-F. Boța-Moisin, C. Măgura, A. Hagi, M.-F. Boța-Moisin, Economic evolutions in Romania and the European Union in crisis conditions, in revista „Annales Universitatis Apulensis” no. 13/2010, published by the Faculty of Law and Social Sciences of the University „1 Decembrie 1918” Alba Iulia and the Asociația „Jus Alba”.

of EU rules and removal of side effects that unduly restrict competition. The goal was to implement activities that promote the cross-border competition.

Promoting research and development activities it was based on the idea that innovation helps enterprises to compete on the new markets and / or to overcome competition from other enterprises. They may take different forms, from inventions based on research and development, to ways to adapt production procedures, to the creation of new marketing concepts, from the use of new organizational approaches, to the creation of new markets etc.

Effective competition contributes greatly to the economic growth; therefore the competition policy must be one of the means necessary to achieve the goals of the new strategy. Thus an adequate level of market competition contributes to the efficient functioning of the enterprises operating on the market and contributes to innovation. Regarding competition's policy instruments of the European Commission we observe an acute need to adapt them to changing market conditions, a process at which we can assist today.

One of the consequences of adapting the rules of competition to the challenges of current market conditions was that of achieving, still in draft form, of detailed rules for evaluating restrictive competition agreements concluded by enterprises operating on a certain market.

The standards in draft stage provide more evidence for enterprises, so they are able to decide with full knowledge of the case about any anticompetitive effects of market strategies which they apply. It seeks the establishment of new thresholds for market share of the enterprises which will conclude agreements with potential anticompetitive effects. It was proposed to establish in the case of vertical agreements (concluded between the manufacturer of a specific good and the retailers) to a threshold of 30% market share, share considered for both the manufacturer and the retailer.

Another aspect of competition policy adaptation to current market conditions is the adoption of rules regarding online sales. Under the conditions of increasing the electronic commerce's volume raised the question: to what extent can be restricted the on-line sales volume of the retailers by the suppliers? Even the possibility of exclusion from the distribution networks of the supplier companies that distribute products exclusively online was in question. The aim pursued by officials responsible for competition policy is facilitating cross-border trade conducted through the internet, while the preservation of the products distribution models that have proven effective over time. The Commission is thus forced to adapt to new developments of the world economy, by developing rules to ensure untwisted competition on the common market and at the same time to facilitate e-trade.

As noted above, another objective of the new strategy aimed at facilitating the knowledge-based market economy, the main objective of the Lisbon Strategy⁹, predecessor of the current strategy.

Innovation is the result of research and development activities conducted by the enterprises. In these circumstances it is necessary to review the competition rules which

⁹ For more details regarding the objectives of this strategy and the role of the competition policy, also see L.Lazăr, loc.cit., p. 22-28.

have in view the horizontal agreements (concluded between rival enterprises) covering the conduct of joint research development, purchase of raw materials, production and marketing jointly the goods, product standardization and exchange of information.

Regarding these latter issues it is mentioned the growing importance of products standardization in order to facilitate innovation, this is needed to be done in a transparent and non-discriminatory manner, the competition rules should aim to prevent anticompetitive behavior which consists in a standardization process characterized with low transparency. It is thus expected to adopt rules concerning the obligation to disclose patents granted or pending analysis to assess compliance agreements with Article 101 of the Treaty on EU functioning (ex-article 81 from the Treaty EC).

Also the need for guidelines to establish fair licensing conditions, reasonable and non-discriminatory and determining the indicators to be considered when determining the existence of such a character – was declared.

Regarding the exchange of information between competitors, it is necessary to determine indicators that show the anticompetitive behavior of the disclosure of information. Moreover, any positive effects should be revealed and which gives rise to certain information sharing between competitors, such as for example jointly finding more efficient ways to answer the consumer needs, the standards developed must contain examples of behavior to help in assessing the anti-or pro-competitive business practices. This will help increase the legal certitude and create a legal and economic environment favorable to the enterprises.

Regarding the objective of sustainable growth, competition policy plays an important role in achieving this goal, considering the fact it can contribute to efficient resource allocation and use, can have positive effects on investment in energy infrastructure. Targeted state aid can also help to improve the negative effects that occur due to climate changes, by providing support for projects that promote energy efficiency in situations where the negative effects of aid on the level of competition are less important than the benefits brought to the environment through aid grant.

Ensuring economic growth which promotes social inclusion can't be achieved without the existence of well-functioning markets, for the benefit of consumers and enterprises operating on the market. In this context the importance should be given to making efficient the rules aimed at streamlining the opportunity to obtain effective compensation for damages caused by not respecting the competition rules.

The procedural issues are also crucial. The objectives of the new strategy cannot be achieved without ensuring the effective application of competition rules. To achieve the latter objective is very important to see how are distributed the competences between national authorities and EU's institutions. In this context it is mentioned the need to ensure greater convergence between national authorities regarding the procedure followed before the authorities, penalties and unilateral behavior analysis. A need was felt, that of extending the cooperation between national competition authorities and procurement, mergers between enterprises from the field of agreements between enterprises and abuse of dominant position, in areas where this cooperation takes place today.

In addition to the contribution that the competition law has in the attainment of those objectives within the new strategy, it must face the challenges of ensuring fair and equitable

penalties. Thus we mention the fact that was being planned to develop a document regarding the best practices in antitrust matters; its aim was to increase transparency and predictability of procedures, and the effective implementation. The conclusion regarding the application of the actual competition procedure is that it respects the principles of a fair trial as they were defined in the European Convention of Human Rights.

Regarding the system of penalties applicable to infringements of competition rules, we note that it takes into account the value of goods and services covered by the conduct, and the level of fines imposed reflects the economic importance and duration, the fines having a strong preventive effect. The effects of the financial crisis were also reflected in this field.

Although no appeal to reduce the fines was made, however, in the case of the companies being in serious financial difficulties, the competition authorities have taken account of their inability to pay the fines. The reason why no appeal to reduce the fines was made is related to the serious nature of the consequences of competitive behavior in the global economic crisis. Moreover, fines are imposed for conducts undertaken in the past and to the profits made during that period.

CONCLUSIONS

Adapting the competition policy to the current economic environment is a challenge for the European Union's authorities and also for those acting at national level. In order to make it more efficient they are trying to find the most appropriate means of ensuring the competitiveness growth of the European enterprises worldwide.

This work gave us the opportunity to see to what extent the facility of granting emergency financial assistance (subsidized loans, state guarantees, support for recapitalization etc.) helped to stabilize the market.

In the field of competition policy instruments with general features it is remarkable Europe Strategy 2020, the new European medium-term strategy of the European Union.

Measures such as adoption of more detailed rules for assessing restrictive competition agreements concluded between enterprises, the adoption of specific regulations in on-line sales, to facilitate research development agreements, the possibility of obtaining efficient reimbursement for damages caused by breach of competition rules, the increase of transparency and predictability of procedures have also helped to adapt competition policy to the present needs.

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