DEONTOLOGICAL GUIDE MARKS IN THE COMMERCIAL COMPETITION
- Challenges and Perspectives Concerning Competition under Economic Crisis Conditions -

Assoc. Prof. ROXANA PĂUN¹, PhD
¹“SpiruHaret” University, Faculty of Law, Political and Administrative Sciences, 24 Berceni Str., District 4 Bucharest, Romania
Email: drept_paun.roxana@spiruharet.ro

Assoc.Prof. AURA PREDA, PhD
Lecturer GELU OCTAVIAN UGLEAN, PhD
Assist. Prof. DANIEL BUZATU, Ph.D. Candidate

Abstract
The competitiveness of products on the European State Members’ market was and still is an issue for all the players involved in the good functioning of the single EU market.
Any alteration of the competitiveness is rapidly sanctioned by the habilitated bodies applying the regulations in the matter, taking on the role of the guardian for the European consumer.
The global nature of the current economic and financial crisis, has forced the new Member States to adopt a prudent behaviour since small countries' economies are engaged in a process of economic catch-up.
This feature creates a “virtuous circle” ... rather than “vicious”, especially in times of general economic growth, but makes them more vulnerable to exogenous shocks.
The crisis also represents the strongest shock that become apparent.
Potential threats are magnified by the fact that their status as European Union Member States do not allow them to adopt protectionist measures.
This would be considered a breach of European competition rules in the single market being penalized as such.

Keywords: deontological guide mark, commercial competition, alteration of the competitiveness, regulations, antitrust policy, the markets liberalization.

JEL classification: K00, P00

Introduction
Accordingly, even since 2005, reputable specialists of law and diplomatic relations [Mazilu, 2005] have considered it a mistake “to abandon the traditional markets (especially the ones from the East of the continent) and redirect the exports almost exclusively towards

---

the markets of the European Union state members ... that has created great deal of difficulties for the producers from the associated states (year 2005), as the Western European markets were overwhelmed by own produces”. Many sought after and valued products from the Russian markets have not been and still are not wanted on the European markets. In the trading and business relations with the European Union state members it is highly necessary to promote competitive products. Such product must meet at least two requirements: to be at a high qualitative level and to have an attractive price, preferably below the prices of similar products of the competition.

Considering this requisite, certain problems occur, such as: the lack of the state-of-the-art technologies and not only, generates difficulties in producing goods in what the ratio of quality/competitive price is concerned. The member states which joined the European Union in 2004 and 2007 are “much more open to the European trade” and “far from being as sophisticated” as the older member states “concerning the use of the non-tariff commercial barriers”[Mazilu, 2005].

“Member states used to and continue to resort to non-tariff trade barriers to protect their own economy, successfully and rigorously applying the rule: defend and promote own economic interests. The abandonment of any national economy protection measures was and continues to be an option with serious aftermaths not only in the plan of commercial relations but also for the general economic evolution of these countries” [Mazilu, 2005].

Sadly, what seemed to be a rather unoptimistic scenario back in 2005, has proven so in the years to come, inclusively for Romania, by decreasing the intra community exports and also of extra community finished products and the increase, in return, of the raw materials exports especially to the European Union.

1. The European Politics in the Field of Competition

The causes of the present economic crisis during times of peace undergone by the entire world since the Great Depression from the early 30’s have drawn the attention of the economic and financial analysts and of all specialists from all fields affected by the present crisis. The degree of complexity of the new financial / banking products has almost caught by surprise the European authorities (as they did throughout the world). The concentration of financial assets in a limited number of financial institutions eroded their precaution spirit, as if forever convinced by the eternal success of their behaviour and especially by the states’ involvement in salvaging these institutions „too big and too important to be left to collapse”! Nevertheless, the inevitable happened... (Points of view expressed at the conference „Overcoming the economic and financial crisis. Exploiting the opportunity to reform the world economy”, section „The global character of the economic and financial crisis. To a new international financial architecture”, organized by IER and The Representation of the European Commission in Romania in 18-19 November 2009)

The global character of the present economic and financial crisis forced the new member states to adopt a cautious conduct, because, no matter how different from the economical dimension point of view, they have the common feature of being small and open economies, engaged in a process to recover the economic disparities. This feature creates a rather “virtuous than vicious circle”, especially during periods of generalized economy growths, but makes them more vulnerable to exogenous shocks, the present crisis representing the most foreseeable powerful shock of this.
The economies of the new state members are highly dependent on the intra community export markets and tend to have narrow financial markets which make them very vulnerable to a deterioration of the economic background within the European Union and/or to the perceiving fluctuations of the international financial investors. These potential threats are enhanced by the fact that their status of European Union member states does not allow them to adopt protectionist measures [Mazilu, 2005].

This would be considered an infringement of the European norms in the field of competition on the single market, being sanctioned accordingly.

The establishment of conduct standards through the norms of competitive law is anchored in the principles of “free capitalism market” as it is being called by the European specialists in the matter [Wallace, Pollack & Young, 2011]. Thus, the European competitive politics contains the antitrust policy, the control of mergers and state aids, the general orientation being towards the markets liberalization. Indubitably, this liberalization of markets was and unfortunately for Romania, still is to the advantage of the mature markets of the member states that have a capitalist economy that goes back for centuries.

Romania and all the states from the old communist bloc still have difficulties in competing and performing on the single European market. In fact, Stephen Wilks, from the Exeter University, in his article ”Politics in the field of competition. Towards an economic constitution?” [Wallace, Pollack & Young, 2011] considers that: ”In the free market capitalism, competition is the central dynamics of the entrepreneurial activity, as well as the means for energizing the economic system for furnishing social allocations. Those aspects of the economic life that obstruct competition – monopoly, oligopoly, cartels, restrictive practices, markets division, subsidies and protection of certain sectors or firms by the state – also impede the production and appropriation of wealth efficiently. Just as the Central European Bank (CEB) secures a healthy currency and a low level of inflation, [says the author], in the same manner the European norms regarding competition warrant a free market and economic efficiency, supplying an "economic constitution" for Europe.

Irrespective of the different opinions about the policy in the field of competition and its role in a fragile, uncertain European economy, the financial crisis triggered in 2007-2008 has precipitated the acute contraction of the real economy; it transformed the public finances under the conditions of cutting-off proceeds and increasing governmental expenses, dramatically in some cases; it has also modified the potential balance between state and market. [Wallace, Pollack & Young, 2011]

All these market dysfunctionalities are reflected in the opinions of the European consumers and companies about the single market. The larger part of the EU companies report that, beyond the elimination of custom clearance documents and border controls, the single European market had no impact on their activity (as per the Eurobarometer 2006). Although the new state member companies show a slightly positive attitude towards the single market, many have indicated that various aspects of the single market presented no interest to them (Eurobarometer 2006). The large public was even less impressed by the single market, the benefits expectations starting to decrease since 1990, and public enmities emerging as reactions to the apparent struggle of “Bruxelles” to eliminate the differences of local taste (the food products’ standards representing quite a sensitive problem). The commission thus concluded (2007) that the single market ”must offer better results and real benefits for the consumers and to small and medium enterprises”. [Wallace, Pollack & Young, 2011]
As the crises became more acute and generalized, in the years to follow, 2009, 2010, direct effects appeared on real economy. Thus, the strikes from the United Kingdom for the jobs from a refinery construction project occupied by Italian and Portuguese workers have generated modifications of the Directive concerning services (The Commission proposes in 2004 the liberalization of services in the services related Directive. A services supplier would operate in the EU according to their administrative norms from their country of origin, which would allow a some kind of social dumping considered inequitable because the workers who worked equally, would be paid different salaries and the foreign workers would face the prices from the host-country while being paid origin country salaries - preoccupation materialized in the mythical “Polish plumber”, p. 107).

The amended Directive enforced starting with 2009, did not create a real single market for services but has slightly liberalized the conditions as compared to the previous regulations.

Other attempts to distort the competition background were also made by the British, Greek and Spanish politicians who have suggested that the banks receiving public funds should grant loans firstly to internal companies and households; the former French president, Nicolas Sarkozy, suggested that the state aids for French car builders should be granted on the condition that the production stayed in France ...and examples may go on.

Nevertheless, the challenges of the single market were rather rhetorical than real, although notable exceptions include the intervention of the German government in selling the Opel cars (The Economist, 22 Oct. 2009).


According to the European Union Agreement an Association was made between Romania, on one hand, and the European Communities and Member State, on the other hand [Păun, 2005].

The cases labelled as incompatible with the good functioning of the agreement, to the degree to which they may affect the trade between Romania and the Community, are:

- Any agreements between enterprises, decisions of enterprises associations, and practices agreed between companies having as object or effect the prevention, restriction or distortion of competition;
- The abuse from one or more enterprises to have a dominant position in the territory of Romania or of the Community in all, or in a substantial part of it;
- Any public aid that distorts or threatens to distort competition by favouring certain enterprises or the production of some goods.

To this end, the harmonisation of legislation was intended in the following areas: the customs law, the banking law, the companies’ law, accounts and taxes of companies; intellectual property; protection of labour force and jobs; financial security, financial services, competition rules; health and human life protection, animal and plants protection; consumers’ protection; indirect taxation; technical standards and norms; laws and regulations in the nuclear field, transport and environment.

As per article 71, the Community must assist Romania in applying the measures listed under this chapter, “the harmonization of legislation”, which may involve the following aspects: experts exchange; supplying the latest information especially on the relevant legislation; organization of seminars; formation activities; help in translating the
community acquis, for the relevant sectors. There are also provisioned measures by which Romania and EC establish economical cooperation relations meant to contribute to the development of Romania and increase of its potential, cooperation that enforces the existing economic relations, on the largest base possible, to both parties’ benefit.

Moreover, it is foreseen that Romania established a policy package with the support of the Community, policies realized on the principle of sustainable development. The policies thus established will be focused on the following fields: industry, including the mining sector, investments, agriculture, energy, transport, regional development and tourism. The measures for stimulating the cooperation between countries of Central Europe and Eastern Europe are important in order to harmonise the development in the area [Păun, 2014].

In the same manner are interpreted the industrial cooperation, promotion and protection of investments, the agro-industrial standards and appreciation of their compliance, cooperation in science and technology, education and professional training, agriculture and the agro-industrial sector, energy, cooperation in the nuclear sector, the environment, etc.

The agreement does not overlook either the measures concerning cooperation in the field of waters management, transports, telecommunications, postal services and transmissions, banking services, insurances and other financial services as well as cooperation in the field of expertise, monetary politics, money laundering, regional development, cooperation in the social area, tourism, small and medium enterprises, information and communications, the consumer’s protection, customs, statistics, economic issues, drugs, public administration – practically all branches and fields of activity.

Through all these, Romania eases the process of economical and integration reform, cooperating for better understanding the fundamental aspects of the respective economies and for creating and applying the economic policy in the market economy.

It is also given importance to the cultural and financial cooperation. Cultural cooperation may cover a series of activities such as:

♦ Non-commercial exchange of art works and artists;

♦ Literary translations;

♦ Preservation and restoration of monuments and settlements (architectonic and cultural heritage);

♦ Training persons in charge with cultural aspects;

♦ Organizing cultural events of European orientation;

♦ Spreading the special cultural accomplishments, including training of Romanian specialists in this field. [Căpățână, 1998]

For the development of the audio – visual sector Romania may be part of the MEDIA program, in conformity with the Decisions of the EC Council from 21st of December 1990, as well as of the related EUREKA programs.
To the same end, it is envisioned among others, the exchange of programs, facilities for training journalists and other specialists in the mass-media field. In order for the objectives of this agreement to be attained a financial support oriented from the community to Romania is considered, support in the form of loans from the European Investment Bank (EIB) according to the provisions of art. 18 from the bank’s by-laws, for accelerating Romania’s economical transformation and help it face the economic and social consequences of the structural readjustment. The financial assistance mentioned above was covered from the PHARE operation and by loans granted by The European Investment Bank until their expiry date.

Within the programs of financial assistance are included also the ones regarding temporary financial assistance:

♦ For supporting the measures intended to introduce and maintain the convertibility of the Romanian currency;

♦ For supporting the medium-term stability and the structural adjustment efforts, including assistance connected to payment balances.

♦ Irrespective of the financial assistance rendered, it will be evaluated depending on the occurring needs and Romania’s development level, taking into consideration the established priorities and Romania’s economy absorption capacity, the possibility to reimburse credits and propel to the market economy system in what Romania’s restructuring in concerned.

Romania has fulfilled all these obligations undertaken before the accession, it continued the implementation of the community acquis in the field of competition and tries to cope with all the challenges occurring at community level, in the conditions in which all state members struggle for trade markets in a single European market where consumption is the first to drop under crisis/recession.

3. Implications in the Field of Competition

Due to the decrease of demand, the capacity of extending businesses also dropped. Thus, the context was unfavourable for the economic competition. We then observed that governments have adopted policies to mitigate the effects of crisis. These measures – be they ransoms in the banking field or fiscal incentives, etc., legally imposed, have no longer influenced the natural competition.

What are the implications of these factors on the institutions from the field of competition?

The first refers to the selection of cases. Many people have been affected by the crisis and disposed of lesser means and resources than before. Should they also be victims of competition vitiating practices, they would suffer even more, considering the constrains they are subjected to. In what the selection of cases is concerned, it is important that the authorities in the field tackle aspects that have impact on the daily lives of crisis affected citizens.

Secondly, recession has put many firms out of business and they claimed to be victims of anticompetitive practices and turned to the authorities asking them to urgently get involved in the settling of the matter. In consequence, rapid intervention means are called
for, considering the priorities of the environment. In addition, with the demand dropping, companies tend to make a ring for dividing the burden of crisis, which adds to the risk of cartels formation. In this context I signal a dangerous aspect, respectively the fact that cartel price-fixing is not a good solution and that the results are extremely rarely favourable even for the allied firms, due to loss of clients already affected by the crisis.

Abusing of the dominating position and the vertical restrictions, there are zones where we use the rule of reason, an economic approach through which we analyze companies in the market context. Previously, if we had a case of exclusive distribution, we expected to emerge new companies which would create competition on the respective segment. Only in full crisis, seldom appear such fresh initiatives, which are a threat for the market competition, aspect we did not face before.

**Finally**, concerning mergers control, a major thing changed during last years: the authorities in the field no longer drastically sanction mergers affecting competition, preferring to allow them but imposing conditions related to diversifying the activity. Diversification is beneficial only if there are buyers for the respective produce or service. But with banks cautious to grant financial facilities it becomes quite difficult to identify clients. The competition institutions must adjust their methods either by granting longer time for diversifying or by orientation towards behavioural remedies.

These are only a few aspects where changes must be made. The objective is the same; the means are the same, only the manner in which they are put to practice may vary for the creation of a healthy economic environment.

The state’s intervention through several means – public acquisitions, legislative changes, etc., may cut down competition more than strictly necessary for attaining certain socio-political objectives.

Before the crisis it was thought that the culprit was the state. Now they say the state is the answer. The latter may be the answer provided that its interventions are compatible with healthy competition. Otherwise, the state may create a problem in the long run. It is the authorities’ duty who oversees the abiding by the legislation of competition to help governments find the appropriate solutions. In order to do so, these institutions must be able to disseminate the idea according to which reduction or elimination of competition is not the best solution and that there are more appropriate proactive approaches to maintain competition and, at the same time, to help governments deal with problems in these difficult times.

In his multiple qualities, Frédéric Jenny (president of the Competition Committee within OECD for several years, president of the OECD Committee for the Competition Law and Policy and non-executive member of the Board of the Office of Fair Trading ), analyzed the impact of this crisis on the competition policies. Thus, within the OECD this aspect was seriously studied over several meetings in the form of six round tables, occasions on which it was concluded that, at the beginning of the crisis the competition surveilling institutions have reacted in a strange way.

Three main guidelines were approached. **The first** was marked by panic: there is a crisis, we should put competition aside. One of the promoters of this idea was the president of France, Mr. Sarkozy, who declared that in this difficult context the European Commission has better things to do than control compatibility of state aids with the laws of competition. The statement was made when the French state intended to grant financial
support to the automobile industry and the European Commission warned that this practice was not in compliance with the community legislation.

After panic, the second direction approached in the crisis context was denial: what crisis? Some authorities thought that this crisis had nothing to do with the field of competition. Mrs. Neelie Kroes, when holding the office of European commissary for competition, said that it was nothing abnormal, “business as usual”, while we all felt what was happening in the banking and real estate sectors.

Between these two extreme approaches there is the third one, adjustment. This involved the acknowledgement of the fact that we deal with a crisis and things are no longer as they were before. It is important to see the changes occurred and how could they be approached by the competition authorities. One of the evolutions observed for the last ten years was shifting the accent in the field of competition in Europe towards an economy based analysis, through a formal interpretation of laws. This made that transactions or competition behaviours to be rather viewed in the context in which they took place than as self-serving acts.

The crisis has changed the business environment in a way extremely relevant for the competition surveilling institutions. In many countries, before the crisis, a decrease of demand and of international trade was observed, together with a diminishing of the funds available for investments in new businesses to offer diversity.

**Conclusion**

In all fields of European policies, the economic and financial crisis from last years risks to bring back both the EU fundamental policies of liberalization (the single market, the policy in the field of competition, the free circulation of workers, as well as the economic and monetary union), and the connected policies from the social field, of the environment and energy fields.

The future budgetary agreements referring to PAC (Mutual Agricultural Policy) and the allocation of structural funds also represent areas affected by the crisis. The final effect of the crisis in all these fields depends on both the duration and placement of actual recession and on the politics and the political answers of the European institutions, the governments of the member states that may accept or refuse the temptation of the “beggar-the-neighbours” [Wallace, Pollack & Young, 2011] type of policies.

**References**


