

ECONOMIC COMPETITION ENVIRONMENT IN THE EUROPEAN UNION

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ABSTRACT: *For realizing the paper “Economic Competition Environment in European Union”, I considered the analysis of antitrust norms appliance, the economic concentration control and the control of state aids in the European Union. From the beginning of the global financial crisis, in the autumn of 2008, the European Commission has offered detailed orientations concerning criteria’s of establishing the compatibility of temporal aid measures in the context of crisis in favor of financial institutions, in the base of the article 108, paragraph 3, letter B from the Treaty concerning the functionality of European Union, under the form of state guarantees, of recapitalizations or measures for saving the actives, but also orientations concerning the restructuring measures necessary for banks that are in difficulty. By applying the norms concerning the state aids, the European Commission ensured a limitation at the minimum of competition degradation in the internal markets, despite the important sums of state aid, and restructuration of beneficiary banks, after case.*

KEY WORDS: *competition environment; antitrust norm; economic concentration; state aid; regional aid.*

JEL CLASSIFICATION: *D42; D43.*

1. INTRODUCTION

Competition represents a mobilizing factor of the market next to the demand, offer and price. In a free economy, this notion is looked as a global concept which determines an alignment of all competition laws to a common scope: the one to ensure a high degree of production quality and products that are designated to the final consumers.

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In the contemporaneous market economy, the competition and his protection problem is a pretty complex subject and of high actuality. Being a progress factor, the competition needs to be known, understand and mainly maintained in legal limits by the economic agents from the economic competition environment, were they develop their activity.

From those hypothesis it is necessary to be promoted a competition policy that needs to be adapted to the market rules, which offers next to an efficient utilization of specific instrument for combating especially anti-competition practices, protection of participants at the economic life and also bringing to the knowledge of them the risks that are expose to for not being victims of non-respecting the competition laws.

Today, a competition protection through knowledge and promoting the culture in this domain present a special interest at national economic level but also at European level that has documented and will document abuses of dominant position, anti-competition agreements, economic concentrations, non-loyal practices that are negatively impacting the normal competition environment.

By applying the norms for state aids, European Commission has ensured the limitation at a minimum level of competition degradation on the internal markets, despite the important sums of state aids, and the restructuration of beneficiary banks, after case.

2. ANTITRUST NORMS APPLIANCE

2.1. Exception regulation by category applicable to vertical agreements

On 20 of April 2010, the European Commission adopted a revised exception regulation by category and orientations concerning vertical agreements, i.e. the agreements between the sellers and the buyers which are operating at different levels of production chain and of distribution for providing and distributing products and services. (http://ec.europa.eu/competition/index_en.html)

The base principle of revised regulations stay's the one that the companies with limited power on the market are free to decide on the mode in which they distribute their products, with the condition that they will not sign accords which will contain restrictions for pricing and other serious restrictions. (Bâldan, 2011)

The rules have been revised to keep in mind the power that the buyer and the sellers can have on the market, so all the parts of the accord will have a market share of under 30%, and also for the category exception to be applied.

Also, the regulation and orientations that are accompanying it take into consideration the rapid development of internet as a force utilized in online sales and the trans-national commercial exchanges which are increasing the opportunity for buyers to choose, and also the price competition.

Due to the clear character and more predictable one for the new regulations, the distributors are benefitting of more visible stimulants for developing online activities with the scope of reaching and to be more accessible for UE customers, ensuring a full realization of internal digital market.

2.2. Exception regulation by category applicable to horizontal agreements

On 14 of December 2010, European Commission adopted new rules and orientations for evaluating the horizontal cooperation agreements, i.e. the agreements between companies which are operating at the same level of the supply chain, and the cooperation agreements for research and development, production, acquisition, commerce, standardization and information exchange.

This new regime has two applicable regulations of exception by category for the agreements regarding research and development agreements, but also for the agreements of specialization and common production, and the horizontal orientations attached.

The European Commission approach, visible in the new rules, is to give to companies the maximum degree of freedom of cooperation and to protect, in the same time, the competition in the case of cooperation that are violating the dispositions of article 101 from UE Functionality Treaty, for example the fact that they bring prejudice to consumers. (http://ec.europa.eu/competition/index_en.html)

The European Commission point of view on the cooperation between competitors has fundamentally modified comparing with the precedent regulations from 2000. Even so, the new rules for horizontal agreements of cooperation are more detailed, easier to use and more clear than the older one.

Two from the essential aspects of the reform includes the introduction of a new chapter for information exchange and a substantial review of the chapter concerning the standardization.

The second aspect clarifies, especially, the essential conditions for ensuring competitive process for establishing standards and contributes at the objective accomplishment of creating a system of standards more efficient for Europe, as is stated in the emblematic initiative “An integrated industrial policy for the globalizing era” from Europe 2020 strategy.

2.3. Exception regulations by applicable categories on specific sectors

In the insurance domain, on 24 of March 2010 has been adopted the new exception regulation by exception categories in the insurance sector.

On 27 of May, European Commission adopted new rules of competition for the agreements between vehicles producers and their authorized distributors, repair workshops and consumables distributors.

The new regulations align in a big extent the policy from the competition domain on the automobile market with the general regime applied to all sectors.

Appliance at private level of antitrust norms of UE represents an essential completion on efficient appliance of antitrust norms by the European Commission and national authorities from the competition domain.

In the White Book from 2008 concerning the compensation actions of breaking the antitrust norms, the European Commission proposed a series of measures, as the collective recourse and the prejudice quantification produced by violating the antitrust

norms, for offering to consumers and companies more possibilities for obtaining compensations. (http://ec.europa.eu/competition/index_en.html)

The European Commission proposals concerning the collective recourse started an ample public debate which exceeds the antitrust norms domain, focusing on the collective recourse role in the case in which a single violation of UE norms are prejudicing large groups of victims.

The commission decided to organize a public consulting which should contribute at identifying a set of common principles for every future legislative proposal referring to the objective resource. A communication that will present these principles was programmed to be adopted in 2011.

In 2010, European Commission adopted seven decisions for cartels, imposing fees in a total value of over 3 billion EUR to a number of 70 companies and continuing to focus on the actions of efficient applying of legislation, on combating the cartels.

In the context of economic crisis, the seven decisions referring to cartels adopted in 2010 have been followed by 32 applications for reducing the fees that stated “payment incapacity”, from which only two have been approved after a detailed analysis of their financial situation.

In 2010, European Commission solved, under the 101 article from TUFÉ, an important antitrust case from air transport sector, conferring mandatory character from juridical point of view the engagements assumed by British Airways, American Airlines and Iberia.

This decision will bring important benefits to European consumers, ensuring the maintenance of a sufficient competition in the trans-Atlantic flights, especially the ones that departs from London.

In the sector of financial services, the European Commission conferred mandatory character for the engagements assumed by Visa concerning the interbank multilateral commissions applied to trans-national operations with debit cards for immediate consumption, effectuated in SEE, and also the same type of effectuated operations on intern plan, in 9 countries of SSE, by aligning to the unilateral engagements taken on 1 of April 2009 by MasterCard and “the methodology of dealer indifference” at the payment methods.

Finally, but not in the last place, the reserve currency has the advantage to facilitate the comparison of prices in different countries. In the case in which exist more national currencies, the companies can ask different prices for the same product in different countries, by the elasticity of demand price. This monopole power exercised by some companies leads to loosing consumers.

Also, European Commission adopted his first antitrust decision on the health services market.

European Commission gave a contravention of 5 Mil. Euros to French Pharmacists Association, penalizing their conduct on the Clinique services market for laboratory analysis.

In the energetic sector, European Commission act in the base of sector investigation results from 2007, adopting 4 important antitrust decisions, by which the proposed engagements by companies, to try to stop the competition norms violations, have become mandatory. These decisions are referring to operators from France,

Sweden, Germany and Italy that blocked the access to energetic markets by different means, as long terms contracts, with restrictions for reselling or capacity limitations for transport or export one's available in the energetic networks.

First, it wanted to use the market mechanisms to create a competitive market that would be more effective and would result in an interconnected market due to trans-European energy networks. Despite the small steps taken over a quite long period, today's progress in creating an efficient and competitive common European energy market is significant even if the process is estimated to be far from finality. Energy and gas market liberalization is an example of the EU's efforts towards promoting the interests and welfare of citizens within this area. Ensuring lower and more transparent energy prices, more rights for consumers, protection against the precariousness of energy supply is precarious arguments redoubtable in dedicated approach liberalization of energy markets in all EU countries. (Niță & Drigă, 2009)

On the TIC market, the European Commission initiated procedures against IBM, for assumed abuses of dominant position on the mainframe computer market, but also against Google Inc., for assumed abuses of dominant position on the online search market, online commercials and intermediate online commercials.

European Commission lunched two preliminary investigations for business practices of Apple concerning the iPhone products and services. Both investigations have been closed after Apple proposed changing those practices.

3. ECONOMIC CONCENTRATION CONTROLE

In 2010, because of the economic crisis, the number of noticed concentration has been reduced. In total, to European Commission have been notified 274 transactions, were adopted 16 decisions under the reservation of some conditions and was not adopted any forbidden decision.

The big majority of notified concentrations have been approved without conditions, in the framework of normal procedures, but also in the simplified one, representing 55% from the total number of notifications.

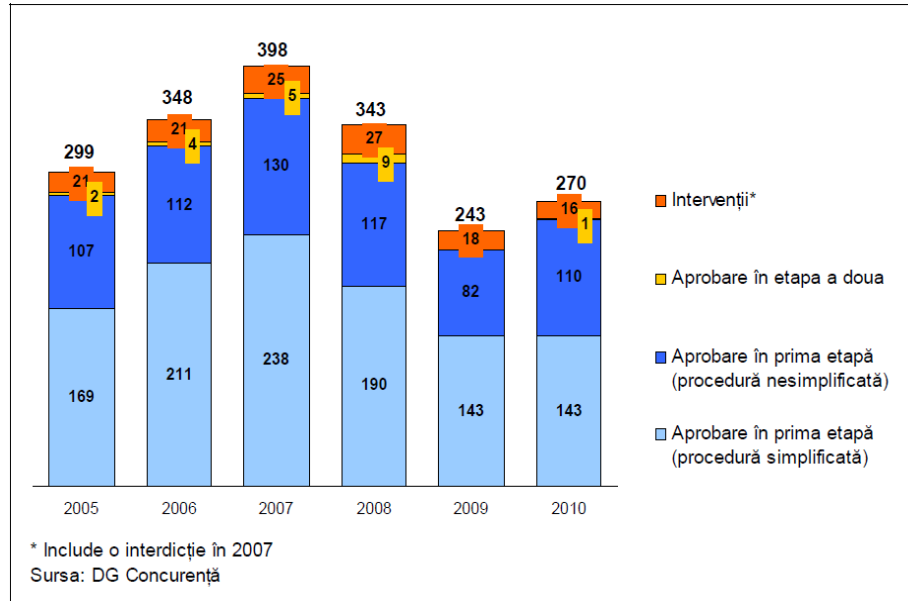
European Commission had adopted three decisions in 2010, after a deep analysis in the second stage of investigations referring to Oracle/Sun Microsystems, Monsanto/Syngenta and Unilever/Sara Lee Body concentration. (http://ec.europa.eu/competition/index_en.html)

In 17 November 2010, after a deep investigation, European Commission approved the acquisition by Syngenta company from Switzerland of an international division of sun flower of an American company Monsanto, with the condition of assigning the sun flower hybrids from Monsanto, commercialized or being in a probation stage in Spain and Hungary, and also the mother production lines, utilized for the creation of those hybrids or being in a development stage for creating hybrids for Spain and Hungary. (http://ec.europa.eu/competition/index_en.html)

Also, European Union approved, on the same date, the planned acquisition by the British-Dutch company Unilever of the body care division and tailor division of Sara Lee Corp from United States, under the reserve of complying with certain conditions.

The deep investigation revealed that through the respective concentration Unilever will obtain a very strong leader position on many markets of deodorant, by combining the brands from the two parts, especially Sanex with Dove and Rexona, which presently are competing.

For taking out those issues, the participant countries at the concentration have offered to assign Sanex to Sara Lee and the associated division from Europe.



Source: http://ec.europa.eu/competition/index_en.html

Figure 1. The number of final decisions concerning economic concentrations

4. STATE AID CONTROLE

Most of the approved aids in 2010 have been chained to horizontal objectives of common European interest, and also the culture and preserving the heritage, regional cohesion, environment protection, research, development and innovation and damage compensations produced by natural disasters, besides the aids accorded in the context of economic-financial crisis. (Bâldan, 2011)

The member states utilized a lot the offered possibilities by the general regulation for category exception (RGEC), according to which the aids that meet the established criteria's can be accorded without a prior notification from European Commission.

In 2010, European Commission was informed for the introduction of a number of 414 new measures from the member states.

Concerning the authorised aids value, the numbers are presented in the indicator tables related to state aid with a delay of over one year. The total value of aids, excluding the legal crisis measures, has reached the level of 0.62% from GDP in

2009 or 73.2 Billion Euros, being at a bit higher level comparing with 2008 (0.58% from GDP). (<http://www.consiliulconcurentei.ro/en/publications/magazines.html>)

As an average, 84% from the aids accorded to industries and services have been directed to horizontal objectives of common interest.

Year 2010 has been the first full year in which have been applied the simplified package. This package contains a Code of good practices and a Communication concerning a simplified procedure, both having as objective the efficiency, transparency and procedure forecast in the state aid domain improvement. (Bâldan, 2011)

First results of Good practices Code have been encouraging, especially concerning the contestation administration, a highly number of entities being informed about their demands status.

Application of state aids legislation by the national instances

According with a recent study, more and more cases are presented in front of national instances.

In 2010, the Commission has continued the efforts for adding value to the appliance system of the state aids law at private level in the member states, concentrating on the communication consolidation with national judges.

In October 2010, the Commission published a manual named “EU Legislation appliance concerning state aids by the national instances”, with the scope of supporting national judges in solving the cases that refers to state aids.

Ex post monitoring of aid measures

For ensuring an efficient application of state aids norms, European Commission launched periodic exercises for ex-post monitoring starting with 2006, for not-notified aid measures which have been given through RGEC or other schemes of approved aids.

In 2010, ex post monitoring included the measures raised by RGEC, and also other state aids under the capital risk form, accorded aids in the transport sector, large band communication, cultural aids and the one’s for naval construction sector.

The results for the exercises highlights the fact that exception by category schemes and regulations function in a satisfactory mode.

5. CONCLUSIONS

By applying the state aid norms, European Commission ensured the limitation at a minimum level for competence degradation inside the national markets, despite the important sums of state aids, and restructuration of beneficiary banks, after case.

In the period 1 October 2008-1 October 2010. the European Commission adopted over 200 decisions that are referring to state aid measures for the financial sector, accorded for repairing the serious economic perturbations of member states. Over 40 aid schemes have been authorised, modified or prolonged and individual decisions have been taken for over 40 financial institutions.

In 2009, the nominal value for accorded aids to member states for the financial sector was 1.107 Billion Euros (9.3% from EU GDP), and in 2008 the number was situated at about 1.239 Billion Euros.

During the crisis period, the availability of state guarantees have proved to be an efficient instrument for improving bank's access to financing and to re-establish the trust in the market.

The utilisation of re-capitalisation schemes was limited in 2010, year in which have been made some ad-hoc interventions. Even so, the reality demonstrated a reduction of state capital injection utilisation in 2010 comparing with 2009; also the beneficiary banks of measures for active's salvation or recapitalisation in 2009 and 2010 have been obliged to restructure.

The restructure of many European Banks represented one of the main challenges in 2010 and followed 3 basic principles:

- a) Re-establishing the long term viability without state aids, based on a solid restructured plan;
- b) Duties separation between the bank/shareholders and the state;
- c) Limiting the competition degradation, usually by structural measure (assignments) and behaviour (acquisition prohibition or limiting the aggressive commercial practices).

These measures are including the introduction of a modified legislation with the scope of eliminating the restrictions for commerce and protected sectors, which will eliminate the actual exclusion of certain sectors from the national law appliance sphere in the competition domain and to have a bigger discouragement impact for anti-competition practices.

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