

## EU'S COMPETITION'S POLICY REFORM

Vlad Cârstea<sup>1</sup>

### Abstract

*A globalized space means a bigger challenge for European Union, especially in the field of fair competition. The Common Policy needs to be reformed in order to become a more efficient tool in a global world. The reform must focus on anti-competitive agreements, dominant market position abuse, reviewing of the Merger Regulation adopted in 1989 and the state aid control policy. The current economic crisis has influenced the reform especially in the state aid field.*

**Key words:** *Competition, Competition Policy, reform, European Union*

**JEL:** F1, F13, F15.

### 1. The Competition Policy – Key - element of internal market

Most economists believe that a market functions better when left alone, with no intervention from the state. In theory, this philosophy, known as “Laissez-faire”, dating from the 18<sup>th</sup> century, was believed to be the key for economic growth. But, practice showed that it is not possible for market to function properly without any state intervention. Moreover, the specialists consider that a real free state intervention market never existed throughout the history.

A competition policy is the way the state can regulate the markets functioning in order to protect the consumers from the economic agents' restrictive practices in their natural tendency of cornering a market.

The main objective of a competition policy is “to promote and maintain an effective competitive process in order to keep a more efficient resource allocation” (Vickers & Hay, 1987). An efficient competition policy allows the national states to maintain a level fairness among all the economic agents. Of course, in a borderless space, like the European Union, where all the custom fees are abolished and the production factors can travel free from one country to another, fairness among competing economic agents is even harder to achieve.

Sometimes we often think that the simple annulment of the national barriers in the international trade flows circulation is enough for having a functional economic integrated space. This is the wrong approach, because, that moment represents only the beginning of the economic integration process. Why? Because, the Single Market has the tendency to behave abnormally just like the national markets do when they are not regulated. As a result the EU's institutions need to supervise the functioning of the Internal Market. One of the instruments used by EU is the Competition Policy that will ensure a fair competitive climate for all the players.

---

<sup>1</sup> Vlad Carstea is Assistant Professor at the Romanian American University in Bucharest

EU's Competition Policy main objectives stated by the Treaties are:

- **Consumers' welfare's growth** as a result of economic growth;
- **Consumers' protection** against the big companies that have the tendency to corner the markets and set the prices;
- **Income redistribution** by limiting the companies' capital accumulation;
- **Protecting the small and medium enterprises**, because the more competitors stay on the market the less likely one of them influences the market prices;
- **Market integration.** A functional and coherent competition policy helps markets integrate into the world economy.

Throughout the history the evolution of the European Competition Policy, was far from smooth. Since the introduction of the 65<sup>th</sup> and the 66<sup>th</sup> article The European Community for Steel and Coal Treaty – ECSC, in 1951, concerning the practices in the steel and coal areas and the economic concentrations, the European Competition Policy has been subjected to a lot of changes meant to be up to date with the European economic integration. The articles were later modified and became articles 85 (81) and 86 (82) in the Rome Treaty in 1957, although the provisions were still inadequate for the growing market.

This policy was based on the article 3 (g)<sup>2</sup> from the Maastricht Treaty (also known as the EU Treaty) that stipulated that all the interventions should be done without “biasing the competition on the Common Market”, principle used by the articles 85(81) – 94(89) of the EU Treaty. The fields of action where:

- ✓ Cartels and control of collusion and any other anti-competitive practices;
- ✓ The abuse dominant market positions;
- ✓ The control of state aid.

These components still represent key sectors in today's European Competition Policy.

When the Policy was introduced none of the 6 founding states had a similar legislation concerning competition. Except Germany. Belgium and Luxembourg had no legislation whatsoever, while Holland had very permissive regulations. In Italy monopolies and anti-competitive practices were regulated by the civil code. In France, although the legislation was quite detailed compared with the other Member States, it was really unrestrictive, therefore, quite ineffective.

As a result the member states had to make important progress in developing and adopting a new harmonized legislation that will ensure a competitive environment for the new market. That was the moment when the Competition Policy was firstly introduced.

## 2. Chronological evolution of EU's regulations concerning competition.

*For the first period of its existence (1958-1972)* the European Communities focused on developing the policy in order to better respond to an ever-changing market. So

<sup>2</sup> The original provision was in article 3 (f) of the Rome Treaty

the need for an institutional structure was addressed. The first body created was the Directorate General IV (DG IV or DG Competition).

For the first part of the 60's the Commission was very interested by the anti-competitive practices and the promotion of the big European companies as global representatives of the European competitiveness. This is the reason why the European Court of Justice had a small role in the policy's implementation process. But for the second half of the 60's this situation was about to change when the Commission filed a Memorandum concerning collusions in the Common Market. Moreover, DG IV elaborated a set of rules concerning vertical and horizontal agreements.

*For the second period (1973-1981)* the policy had to readjust in order to better respond to the market changes – the economic crisis from 1973-1974. Obviously, the European Communities reacted its representatives discussed about the necessity of financial assistance for the declining economic sectors. So the most important topic was managing the industrial sectors and the Commission had to watch the usage of state aid and the restriction of Community imports. Mergers and acquisitions were also among the most important topics, due to the fact that they can lead to dominant market position abuse.

Although the policy had been extensively modified throughout this time, it was considered that the response was quite inadequate and the common institutions created to guarantee and to apply the provisions were in over their head, especially in the crisis' years.

*For the third period (1982-2000)*, the Competition Policy lost a lot of its supporters due to the fact that the institutions created for the compliance of the competition regulations hadn't reacted as they were supposed to. So, in the late 80's the policy was modified again, especially the mergers and acquisition provisions, while the state aid regulations were left untouched due to the fact that this field had a comprehensive set of measures.

*For the fourth period (2000 – present)* the reforming process continued even more intense. The most noticeable changes were made concerned the mergers' field (2001), state aid policies (2001) and anti-trust legislation (2003).

As a conclusion, it can be said that nowadays, EU's Competition Policy is a more effective tool for the Common Institutions involved in this field, than in the first years of its existence. All the components have been permanently revised and in order to get the most efficient result in the fastest time.

### **3. How does the globalization affect the Competition Policy?**

Today, we live in a world, where we can travel across from one country to another, we can choose a job in foreign country, not to mention the fact that we can buy all sorts of products made all over the world and we can benefit from cross border services. This means that we live in a globalized world.

The European Union is just an example of globalization, where different countries from all over Europe, with different historical and cultural backgrounds, and levels of economic development decided to remove all the national barriers so all

their citizens could benefit from free movement of goods, persons, services and capital. So, these regions became more developed, more coherent in international negotiations and let's not forget a market with a huge potential. Today if you are global actor, Trans National Corporation with no operations in Europe you are not important enough. As a result EU's institutions must re-adapt the Common legislation in order to better respond to the global economy.

The Trans National Corporations in their battle for conquering new markets tend to break the competition rules and this can affect markets and finally the consumers. They tend to organize in cartels or use all sorts of anti-competitive practices so they can maximize the profits.

In these cases the most efficient way of enforcing the Competition Policy provisions is cooperation. This means that the European Commission with all the competition institutions throughout the world, in order to promote the policy's international convergence.

The cooperation is done at two different levels:

- ✓ At a bilateral level – EU has bilateral agreements with different countries for that consists of “coordination of enforcement actions, sharing of information on cases of mutual interest, dialogue on competition policy issues and, in some cases, also capacity building support”<sup>3</sup>
- ✓ At a multilateral level – EU cooperates with different international organizations such as International Competition Network (ICN), the Organization for Economic Cooperation and Development (OECD), UNCTAD, the World Trade Organization (WTO).

#### **4. Reforming the Competition Policy.**

The policy's reform began when the Commission adopted the White Paper with the sole purpose of modernizing the enforcing system for the competition provisions and reconnecting the policy with the more globalized world. This took shape in a series of important reform initiatives launched by the Commission in the past few years. These initiatives are the result of complex challenges that rose within the European Union and within the World Economy.

*The main areas of the reform are:*

1. Replacing regulation no. 17 from 1962 with a new Council regulation regarding the enforcement of Articles 81 and 82 of EU Treaty, referring to anti-competitive agreements, collusions and dominant market position abuse (the anti-trust legislation);

2. The review of the Merger Regulation adopted in 1989

3. Updating the State Aid Control policies

##### 1. Updating the anti-trust legislation.

On December 16<sup>th</sup> 2002, the Council of Ministers adopted Regulation no. 1/2003 regarding the enforcement of Article 81 and 82 of the EU Treaty and it

---

<sup>3</sup> Facing the challenges of globalization - <http://ec.europa.eu>

replaces Regulation no. 17/1962. The new instrument that came into force on May 1<sup>st</sup> 2004 creates conditions for applying the competition laws in a more efficient manner.

The Regulation provides the necessary measures to de-centralize the notification system regarding the anti-competitive agreements and their authorization from the Commission. This system was replaced by another one that allowed the competition authorities and the national courts from the Member States to apply these exceptions themselves.

According to Article 3 of this Regulation the national authorities must apply the Community's legislation in all the cases affecting the trade between the Member States.

Due to the fact the notification system was abolished, the Commission can now use its resources in a more efficient way by concentrating on discovering and investigating the more severe cases of competition's laws violations, such as cartels and anti-competitive behaviors. This field is highly important for the Commission and is reflected by the latest results on enforcing the anti-trust legislation from the past few years.

According to the Commission a de-centralized system for the anti-trust legislation will affect the market in a positive way as a result of better protection against this type of practices. But this requires:

- Creating a criteria that will provide optimal designation at the most suited level;
- Offering a guarantee for a coherent enforcement of EU's legislation;
- Cooperation between the authorities like the change of confidential information and joint inspections

All these evolutions lead to the development of the European Competition Network in 2002, which will ensure a more open attitude towards cooperation and coordination for the European institutions.

## 2. The review of the Merger Regulation.

In the year 2000, the European Commission decided to update the Merger Regulation after 10 years of activity.

The Green Paper adopted by the Commission on December 2001 offered the main objectives of this reform and after a period of consultations, a year later the Commission presented to the Council of Ministers its final proposals for reforming the unfair agreements system. The legislative proposal was adopted in 2003 and was included:

- a. A new regulation concerning the agreements
- b. The Commission's notification on the evaluation of horizontal mergers;
- c. The new Good Practice Directory lines and other administrative measures that will increase the transparency and the fairness in the DG Competition's investigations.

### 3. Updating the state aid policies.

The state aid policies were another component subjected to reforming. The aim was more transparent state aid legislation, simplifying the control system for the least important cases and improving the efficiency. Even further the reform began in three main areas:

- a. The procedural framework;
- b. Simplifying the control mechanisms for state aid and the elimination of possible conflicts between taxes;
- c. A more efficient usage of the economic instruments controlling the state aid.

*a. The procedural framework.* The most important step in updating the state aid control policy was the adoption of the Regulation no. 659/1999 which reunited less than one law the state aid control procedures as well as offering more powers to the Commission. In the same time, the introduction of standard forms and electronic notifications the notification process was improved.

*b. Simplifying the control mechanisms for state aid and the elimination of possible conflicts between taxes.* This objective referred to block exceptions that covered some horizontal state aids, which normally can be easily authorized. As a result in 2001 the first three regulations for block exception came into force which meant they could have been granted without notifying the Commission.

A year later, a new regulation for state aid exceptions was adopted. The Commission will not be notified regarding state aids offered for creating new jobs, for re-employing disadvantaged workers, or for covering the costs for hiring special needs workers.

*c. A more efficient usage of the economic instrument controlling the state aid.* In the past few years, the Commission modified its work methods in order to improve the economic analysis for the state aid cases. The Commission thinks that the introduction of a set of economic tests allows it to simplify the evaluation of limited effects state aids. This means that the Commission can use its resources in more efficient manner for investigating the important cases of state aid.

The financial crisis lead to new developments regarding the state aid policy. Due to increased risks of the markets the banks are less willing to offer loans for companies. As a result of this loan shortage, the Commission adopted in December 2008 a temporarily framework<sup>4</sup> that will allow the Member States to adopt new measures in order to support their companies. This framework expired in December 2011.

On May 8<sup>th</sup> 2012, the latest reform on state aid began. According to the Commission<sup>5</sup> the main objectives are:

- ✓ Foster growth in a strengthened, dynamic and competitive internal market;
- ✓ Focus enforcement on cases with the biggest impact on the internal market;
- ✓ Streamlined rules and faster decisions.

---

<sup>4</sup> Tackling the economic crisis – The real economy - <http://ec.europa.eu>

<sup>5</sup> State Aid Modernisation (SAM) - <http://ec.europa.eu>

The European Commission didn't focus only on updating the Competition Policy; the Common institutions were also envisaged. As such, the role of anti-competitive agreements control and the enforcement of anti-trust legislation were transferred to the operational directions of DG Competition. The reason was that these commissioners knew the market very well and this will have better results.

The Commission developed its working methods to reinforce the domestic control when examining the cases and to improve the economic analysis.

## 5. Conclusions.

The European Union's Competition Policy has been subjected to numerous changes through the functioning of the Single Market in order to offer a more adequate, faster and more efficient response to the new global challenges.

The Commission needs to realise that EU has become a global market and such is accessed by Trans National Companies from all over the world. This means that the legislation must be updated accordingly. Furthermore, this doesn't mean that in this period we should excessively protect the European companies more than we used to, because they need to face the hard global competitiveness. Just like President Almunia said at the Conference on Competition Policy, Law and Economics, at Cernobbio, Italy: "What we must avoid are attempts to shield Europe's companies from competition, in particular during this harsh period for the economy. In this game, only a few of them will benefit, and the majority will lose. I will firmly react against these temptations. Merger control is not the place for protectionist measures..."<sup>6</sup>

The EU's Competition Policy needed to be reformed in order to comply with the challenges of a global world. Of course, this updating process needs to continue as the global economy evolves every day and offers new challenges. For example, for the current economic crisis, the Commission had to readjust its Competition Policy to better protect the European economies against financial failure. In the same time, the competition regulations were applied as before due to the fact that we all learned from history that relaxing these regulations will lead to a prolonged crisis and of course a bigger negative impact on economies.

## References:

Massimo Motta – „**Competition Policy – Theory and practice**”, Cambridge University Press, 2004

Petre Prisecaru (coordonator), „**Politici comune ale Uniunii Europene**”, Editura Economica, Bucuresti, 2004;

Low Philips, „**Les grands chartiers europeen de concurrence**”, Universite Libre de Bruxelles, Institut d'Etudes Europeennes, 7.10.2003;

Monti Mario, „**Contribution of competition policy to competitiveness of European economy**”, Institute for European Affairs, Dublin, May 2003;

---

<sup>6</sup> Merger review: Past evolution and future prospects

Monti Mario, *The New Shape of European Competition Economy*, Tokyo, 20.11.2003;

European Commission, **“Competition Policy Newsletter”** Number 1/2003, Brussels;

European Commission, **“State aid scoreboard”** Spring 2003, update, Brussels;

European Commission, **“XXXIIInd Report on European Union competition policy-2002”**, Luxembourg, 2003;

Commission of the European Communities, **Proposal for a Council Regulation on the control of concentrations between undertakings**, Brussels, 11.12.2002;

Iordache Iulia, **“Noile orientari ale politicii in domeniul ajutorului de stat in țările Uniunii Europene”**, *Conjunctura Economiei Mondiale*, Anuarul IEM, 2002;

Institutul European din România – „**Politica in domeniul concurenței**”, Bucharest 2003;

Dumitru Miron (coordonator) – „**Economia Uniunii Europene**”, Luceafarul, Bucharest 2002;

Jacques Pelkmans – „**Integrare europeană – Metode și analiză economică**”, Institutul European din România, Bucharest 2003;

Donald Hay and John Vickers, Editors, **The Economics of Market Dominance**, Basil Blackwell, Cambridge, MA (1987), p.2ș

<http://europa.eu> – **“Facing the challenges of globalisation”**, 2012

[http://ec.europa.eu/competition/international/overview/index\\_en.html](http://ec.europa.eu/competition/international/overview/index_en.html)

<http://europa.eu> – **“Tackling the economic crisis – The real economy”**, 2012

[http://ec.europa.eu/competition/recovery/real\\_economy.html](http://ec.europa.eu/competition/recovery/real_economy.html)

<http://europa.eu> – **“What is competition policy?”** – 2012

[http://ec.europa.eu/competition/consumers/what\\_en.html](http://ec.europa.eu/competition/consumers/what_en.html)

Jose Almunia – **“Merger review: Past evolution and future prospects”**, *The Conference on Competition Policy, Law and Economics*, at Cernobbio, Italy 02.11.2012

[http://ec.europa.eu/commission\\_2010-2014/almunia/index\\_en.htm](http://ec.europa.eu/commission_2010-2014/almunia/index_en.htm)