

# COMPETITION IN ECONOMIC AND LEGAL THEORY

Drd. Floreanu Cosmin  
University of Craiova  
Faculty of Economics and Business  
Administration  
Craiova, Romania

**Abstract:** Competition is a main feature of the free market, the content of which enriched the community evolvement. Various known forms of the type according to the market which is manifested. The increasing complexity of economic and social life requiring multiple measures regulations of various types of market competition.

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## 1. Economic and legal content competition

Actions of economic agents in the business process in a market economy based on competition. This is the engine of economic development, the system moves the links between economic operators transmits economic life requirements arising from the needs of consumers and bidders in the form of objective economic laws .

Effectiveness of economic agents depends on the integration of market relations, the competition that takes place in order to obtain better conditions for production, sales, conducting monetary operations or other activities in order to obtain as many benefits.

The competition is a feature of the market economy has accompanied economic development since generalization exchange economy and capitalist relations of production. And now it reflects the natural evolution of economic life is found in various forms.

Investigating the evolution of economic thought on the content and the role of competition, competition law regulations require that steps be taken to strengthen the market economy and the multiplication of market relations. Economic literature considers that competition regulation is the body early U.S. antitrust laws, continuing with the national laws of European countries, reaching supranational regulatory rules contained in the Treaty of incorporation of the European Coal and Steel Community, the Treaty of Rome the European Economic Community, Maastricht Treaty on European Union and the Lisbon Treaty on the Functioning of the European Union.

Economics has several definitions of the concept of competition :

- a situation in a market in which firms or sellers independently struggle to win buyers customers in order to achieve an economic objective, for example, profits, sales and/or market sharing ;

- a confrontation between economic competition is the same or similar activities, carried out in areas open and conserving the market to win customers, to cost effectiveness to own businesses ;

- a competition is a confrontation between operators in order to obtain better conditions for production, sales, and making monetary transactions or other economic activities, in order to obtain as many benefits ;

- a competition is the determining factor in the success or failure of firms. It determines the appropriateness of those activities of a company that can contribute to its performance , such as innovations, a unified culture or a judicious implementation.

Currents of thought of economics that marked the economic policies of industrialized countries since the eighteenth century have interpreted differently the development of competition on the free market:

- economic liberalism surprised dynamic perspective on competition, outlined by Adam Smith in his treatise economic, *An inquiry into the nature and causes of the wealth of nations*, which shows that the market, the function that performs the confronts producers and consumers is presented as a mechanism for regulating economic life, is the invisible hand that regulates the optimal and equitable performance-based resource allocation;

- neoclassicism promoted model of perfect competition or pure, conceived the fulfillment of assumptions, three, expressing the purity of competition: atomistic supply and demand, product homogeneity, free entry and exit to/from the market and two expressing its perfection: transparency perfect markets and perfect mobility of factors of production;

- John Bates Clark, the early twentieth century, representative of American economic thought has fought idyllic vision of perfect competition and pure and launched the concept of workable competition, designed as a tool for identifying conditions capable of providing economic policies that ensure company achieve competitive advantages provided;

- The Chicago School of pure and perfect competition model fought, taking into account actual market model, existing, often characterized by a small number of economic and regulatory policies of competition;

- School evolutionary economics competition launched two solutions: first, that consists in adopting interventionist industrial policies that could lead to the conquest of parts of the market, and second, finding ways to enable dissemination and global homogenization antitrust rules of origin U.S.

- School of Brussels designate economics and competition policy which can be found in the Treaty of Rome establishing the European Economic Community developed other for treated of constitution and functioning of the European Union, considering the competition as a fundamental principle and condition of the functioning economy market based on private property .

Today, however, the picture on the competitive market as a mechanism for regulating economic life has changed profoundly, thanks to the intervention of large corporations and the state, who turned invisible hand market mechanism as the one called invisible fist that reflect the new realities of the contemporary world.

The reason for creating the single market of the European Union aimed at providing conditions conducive to free competition and competition rules is currently a prerequisite for the effective functioning of the market. Integration in the European

countries involved in addition to sharing the principles and values and the ability to cope with competitive forces within the Union. Therefore, countries had to build a system to adopt legislative and institutional requirements and specific Community rules adapted internally. Community competition rules consider the existence of a market economy as a necessary but not sufficient to promote competitiveness, requiring government intervention that is not condemned, but how often used. Therefore, governments have a responsibility in this area, both by establishing legislative rules and by promoting a culture of competition, which now has become not only a necessity but also an obligation for everyone involved. Mechanism of the market economy can not be explained and implemented without understanding the culture of competition, allowing thorough knowledge of the rules of competition. In this role it has priority national authority, that the Competition Council.

## **2. Functions and types of competition**

The development and economic liberalization makes manifest the intensity of competition is different from one stage to another and from one domain to another, depending on the ratio of supply and demand, and the extent to which the company has the ability stimulate creativity operators.

The purpose of competition is to obtain as many advantages as higher profits and more secure. The competition is conducted between businesses to attract the customers and their access, on favorable terms, the factors of production. Conducting competition involves a struggle , a competition between operators from coming out winners and losers. Businesses losers will mobilize to keep up with the competitive and non-competitive ones will be eliminated making way for others.

Competition in the economic actors acting out of interest: buyers looking to find sellers lowest price, best quality, the most favorable conditions for the delivery of consumer goods and production factors. Vendors compete for money to customers for the first customer purchase order to attract more buyers and higher economic force. Must be emphasized that the object of competition but it is only the product price, distribution, promotion through advertising and other marketing elements. Therefore, experts consider that the success of an economic agent in the battle of competition depends on the quality of the product, the market launch of new products, competitive pricing practic, firm location in relation to markets and supply, firm size and importance, methods of sales and distribution, advertisement and promotion.

Competition between economic operators in the fight competition occurs through specific ways. They may be economic: reduce selling prices, lower production costs, increase the quality of goods and services, launching new products, organizing the sales and after sales services, advertising and publicity etc., and non-economic nature: theft information, spreading false information about competitors or aggressive actions .

By effects that trigger economic actors, but also for the whole society, competition is one of the most important laws regulating economic life of technical and economic progress of society. Therefore, the conditions in which the openly loyal and is coordinated and supervised by the public authorities, competition fulfills important functions:

- Competition stimulates and maintains the overall progress of society. That competition between operators maintain open avenues for profits convenient for all participants and those favoring skills and eliminating those who can not adapt to the competitive environment. Goals pursued by traders, driven by a free and balanced competitive environment means progress, dual result: efficiency for producers and consumers maximize utility. Competition between operators in the market, interest pursued obtaining maximum benefits, mobilizes to work continuously to modernize production by introducing scientific and technical progress.

- Competition acts as the driving mechanism of the market economy. Representing open confrontation, rivalry between operators using market instruments, competition trigger the whole system of linkages between economic actors who, acting in accordance with market requirements, will have the ability to comply with objective imperatives of production, distribution, circulation and consumption of economic goods. Competition becomes the factor that stimulates economic life economic laws trimmed requirements.

- Already operating in a competitive environment, every manufacturer can guide and organize their production leading to reduced production cost and selling price. Businesses can become competitive and hold advantageous positions for consumers in their affordable, which requires actions to reduce production costs. Reduced selling prices and maintain them at a real will make higher profit result and increase sales volume. Therefore important way to increase sales is to reduce the price, it 's growth, a lower price, more accessible, increasing demand . Mass reasonable prices attract more customers, leading to a higher volume of dissolution will lead to a better return than that which would have been obtained by increasing prices.

- Competition is conducted and improving quality of goods produced and services rendered. An important element of competition between operators is the quality of having a special role in conquering the market and attract consumers. The competition provides a strong economic incentive to renew production to create and produce quality goods that maximize consumer satisfaction.

- Introduction of new products into production, the quality of scientific research results, we favor the skilful and ingenious and eliminates the weak who fail to adapt to market requirements. Differentiation occurs as businesses. Those who win the competitive struggle develops, increase the size of capital accumulation, accumulate riches, and the less skilled are removed from the market, becoming ofetanți labor. As a result, competition serves as a mechanism of income distribution. Businesses that have the highest efficiency have higher profits, and those who do not perform will suffer losses and then will be eliminated under the laws of competition.

- In a free market fair competition based on economic instruments prevents some companies hold monopoly positions and earn monopoly profits. The market economy but also allow the existence of monopolistic enterprises in various forms, is a reality of modern economies. The government intervention is more effective and permanent the limited opportunity to use in the fight monopolies competition and non-economic tools to dominate the market.

- Competition fulfills an important psychological function among economic agents by stimulating initiative and creativity, the desire to maximize profits and boost consumption. Competition creates changes in the value system of consumer

psychology and behavior by changing market demand agents, producers and consumers, generating options for a new lifestyle and a new behavior in society.

- Often, the virtues of competition are overshadowed by some negative effects explained by economic agents in their action to conquer the market and survive by any means, shall deteriorating product quality, environmental pollution cost reduction actions to become competitive through lower prices.

Therefore, the competition should be understood as being able to solve its own problems because the economy and society, as we have shown, in addition to the effects of positive order, can generate negative effects on economic and social life. Therefore it is necessary legislative and governmental intervention in this process to protect, maintain and stimulate normal competition. Market competition that occurs among economic agents differ depending on several factors: the number and economic power of the transaction participants, the degree of differentiation of goods that satisfy a human need; facilities granted or restrictions on entry into a branch; degree of market transparency, degree of mobility of factors of production, the ratio of supply and demand, domestic and international political situation etc.

The report and the way it combines these elements and working out competitive mechanisms at different stages of economic development, there are several types of competition: direct competition and indirect competition, fair and unfair competition, competition in homogeneous and heterogeneous competition, perfect competition and imperfect competition.

Direct competition define those relationships that competition between economic operators carrying out the same product and satisfy the same needs , squaring them and the same consumers as customers. The winner stands out by the quality of the product, brand

(originality) product, service mode, after sales warranties. All are direct competition and competition relations that occur between operators that produce substitutable, and the winner is distinguished by the quality of products, prices, product promotion policy. Competition defines those relations indirect competition arising between operators that offer different products on the market but serve the same customers - consumers. Using the competitive struggle, discrimination, economic instruments: the economic power of each Participant, product quality and limits the possibility of maintaining cost efficiency, the possibility of those competing to support mobility market price of the product, enable economic bidders offer customers additional economic benefits etc. generate fair competition and fair competition. The use of means that are inconsistent with the rules and regulations ( extra- tools ) hoarding pursuing market penetration of a given market, creating artificial situations of certain goods market for speculative purposes Slut influence tax evasion, etc. Moral pressure generates unfair competition, unfair competition, considered unlawful, being rejected by regulations of governmental institutions.

When a free market enter in competition operators offering substitutable product , the competitive struggle using economic instruments (quantity, quality , price), we distinguish homogeneous competition, and when offering diversified products, substitutes, using the same economic instruments we distinguish heterogeneous competition.

Perfect competition is the kind of competition that determines the efficient functioning of the economy and market relations requires that operators are able to sell

their entire production at market prices, without being able to midify together or separately. The market situation in which economic agents participating in the battle of competition by their unilateral actions can influence the relationship between supply and demand, the price of goods and services in order to maximize profit defines imperfect competition.

### 3. Enforcement of competition

The main form of national and Community trade is the trade. Freedom of trade and industry is based on the principle of free competition which is the foundation of modern economic systems. But free enterprise and the freedom to decide - principles of liberal inspiration led to a series of abuses, for which the legislature has intervned in the way regulations to determine more precisely the limits of freedom of action in the free competition. Businesses can no longer act as freely as in the past, are obliged to respect a number of legal and administrative provisions. Compliance with these provisions is currently pursued by the national authorities closely with the European Community which, while respecting the freedom of competition has developed a series of rules and regulations that discourage traders to use procedures and customary practices against national and Community trade.

Competition regulation is necessary for several reasons:

- competition is a competition between operators can only take place on the basis of uniform rules and common leeway scrolling down according to their previsions;
- breach of competition imposes negative shade measures in situations where buyers are deceived by price advertising, false labeling, as to the source of origin of the product, product structure, etc.;
- stopping achieve the interests of the powerful at the expense of others and consumer interests by force, giving the social responsibility they have;
- stopping anticompetitive agreements whereby participants seek advantages over other competitors, ultimately from consumers .

Competition regulation at Community level is based on EU law , which is an autonomous right, original, with its own institutions and legal norms. According to the Treaty on the Functioning of the EU, the rules of Community law are found in the content of national law, but EU law has supremacy over national law. Any breaches of Community law by Member States or operators are tried before the Court of Justice of the European Union member states competence is required.

Functioning of the European Union demonstrates unity of will and action of the Member States , and the acceptance by each state to the surrender of part of sovereignty to EU institutions. With regard to Article 3 of the Treaty competition running EU states: the Union shall have exclusive competence to establish the competition rules necessary for its operations, The Commission, however, Member States play a part in skills competition law to apply the principle of subsidiarity. This means that decisions will be made and actions to be taken at a higher level only when the interests of those affected can not be protected by Louat decisions at lower levels (national, regional, local), or the interests of those affected can be better protected if decisions are taken at higher level.

Under the principle of subsidiarity as set out in the Treaty of Lisbon, in 2007, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives envisaged section can be sufficiently achieved by the Member States nor the central level or at regional level of the scale and effects of the proposed action, be better achieved at Union levels. Under the provisions of the Treaty of functioning of the EU (Lisbon Treaty, 2007) Community institutions involved in the legislative process of the competition are: EU Council, European Parliament, European Commission, European Court of Justice and national authorities.

Community competition law includes primary law (the Treaties) and secondary legislation (resulting from the implementation of treaties). Primary law competition established by the Treaty of Rome creating the European Economic Community and the European Atomic Energy Community has undergone changes and improvements in the Treaties of Maastricht, Amsterdam, Nice and Lisbon. Under Articles 101 and 102 of the Lisbon Treaty is declared incompatible with the common market and prohibited agreements between companies which may affect trade between Member States, restriction or distortion of competition within the internal market , the abuse of a dominant position within the internal market, Articles 107, 108 and 109 governing State aid and Article 106 provides rules - public enterprises to meet specific competition rules. Council of the European Union under the provisions of Article 103 of the Treaty on the Functioning of the EU has developed secondary legislation implementing rules, which consists of rules of the EU Council, European Commission and European Court of Justice in the form of regulations that apply to Member, companies , authorities and citizens Directive, which sets the objectives to be pursued; decisions that apply to a specific situation, recommendations and opinions, which are not legally binding.

In the right derivative of the five acts manifesting: regulations, directives , decisions, recommendations and opinions, regulations and decisions have importance for competition because they are directly applicable in the Member States without the need for transposition into national law Member State by an act or law.

In the EU, regulatory and competition are used atypical, which belong to the so called soft law (communications, guidelines, white papers, green papers) who only informative, being developed uropean Commission.

In Romania competition is governed by the Competition Act (Act no.21/1996 ) with subsequent amendments made through Emergency Ordinance 75/2010 and Law 149/2011, becoming a modern law, harmonized with EU competition requirements .

The stated purpose of the law is to protect , maintain and enhance competition to promote consumer interests and apply to acts and deeds that restrict, prevent or distort competition committed by operators, authorities and institutions of central and local government. Implementation of Competition Law The Competition Council, an autonomous administrative authority created for this purpose. Where acts or facts enterprises affects trade between Member States of the European Union and the Competition Council has the task of applying article 101 and 102 of the Treaty on European Union. Content Competition Council's activity is to achieve the objective of ensuring operation without distortion of competition in Romania, to allow consumers to have more choice, encouraging technical and technological innovations and price competition. The Competition Council has an important role in the dissemination of competition culture in order to create the necessary environment to avoid distortion of

competition nationally. Knowledge, promoting, nurturing and strict adherence to the rules of competition creates a transparent business environment, the market becoming more stable and attractive to investors.

The competition advocacy Competition Council acts in two ways: law enforcement and competition protection and promotion of competition culture. Competition advocacy by the Council includes two components: activities directed by the regulatory authorities responsible for the regulation and activities aimed at all parts of society for awareness of the benefits they can bring competition and competition protection activities.

Competition advocacy by the Competition Council is done through the following ways: seminars, conferences, symposia for businessmen and professional development of staff on competition and state aid, presenting the principles of protecting competition on the media, press releases decisions taken and the solutions adopted in different test cases of violation of competition: the communication of instructions, use of publications: journal □ Profile: Concurrent □, annual reports of the Competition Council, newsletters and so on, thereby ensuring greater visibility of the Competition Council.

Competition Council was reorganized based on the requirements of the Competition Law, representing a device territorially by the staff that worked on the ground in the Competition Office. Currently Competition Council has representatives in all counties in the 15 counties where there is Court of Appeal has inspectorates involved coordinating role in the monitoring of state aid granted to local budgets.

Competition authorities in Rome and the European Union cooperate in international forums Committee Organization for Economic Cooperation and Development, competition law and competition policy, Intergovernmental Panel of the United Nations Conference on Trade and Development (UNCTAD), in law and competition policy: working Group of the World Trade Organization (WTO), the interaction of trade competition. Therefore, the analysis of the competition rules to consider a number of international regulations emanating from the UN, OECD and WTO.

The United Nations has campaigned for the creation of the World Trade Organization to contribute to the progressive abolition of restrictions on international trade and the adoption of general rules and conduct international trade.

Efforts have resulted in: General Agreement on Tariffs and Trade, GATT, in 1948, the World Trade Organization, WTO, in 1994 and the United Nations Conference on Trade and Development UNCTAD, 1964, the organ of the UN General Assembly U.S..

Among the issues examined included the UNCTAD Competition Policy and Consumer because: a globalized economy based on competition rules more efficient and fairer by promoting a competition culture is accelerating the development of developing countries, by applying the rules competition enhances quality of goods and services and the choice appears to lower prices of goods and services.

As a result of discussions that took place for nearly a decade (1971-1980) in the UNCTAD on competition was developed and adopted ensemble of rules and principles of the United Nations competition, which is recommendatory in character and whose implementation is supervised and monitored by the Intergovernmental Panel on competition and United Nations conferences.



Organization for Economic Cooperation and Development, in competition matters and encourages acts on governments to stop and fight restrictive business practices and competitive market development . In the OECD Committee operates a competition consisting of representatives of the competition authorities of the Member States and observers from non-member states, and Division competition are developed analytical, statistical summaries, recommendations and provides assistance and practical support of governments seeking to strengthen organize the national competition.

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