

Anatolie CARAGANCIU,
Lucian Blaga University of Sibiu
Viorica CARARE,
Competition Council of Republic of Moldova

COMPETITION ADVOCACY: CHALLENGE FOR COMPETITION POLICY

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Abstract

A large variety of different countries conditions requires a modernization of criteria, norms and standards of competition regulation and methods of enforcement. Competition advocacy is a type of complementary activity exercised by antimonopoly authorities additional to enforcement measures, through active cooperation with market, government and civil society actors and increasing the understanding of the benefits of competition. Relevance of article is determined by summarizing the theoretical studies and the present practice of advocacy in the USA and the EU. Originality and practical applications of research are based on empirical studies completed by Moldovan Competition Board.

The efficiency of "traditional" and antimonopoly regulatory instruments is challenged and reviewed by regulatory and judiciary authorities. It generates active discussions concerning broad competitive processes among researchers of different markets and among the leading practitioners. State authorities are responsible for appropriately regulating the competitive considering changing situations. We are looking for the most effective model of competition policy. (Jonathan B. Baker, 2007). "Apart from the strengthening of supervisory functions, rules and procedures, competition policies need to inform a wide range of citizens, as well as market players at all levels and the Member Bodies of organizations on the advantages to the society and must provide a variety of other economic and social benefits ". (p.3,Knyazeva, 2013).Disturbances within the competition process lead to inefficient use of resources, a decrease in innovation and can break consumer welfare. Competition authorities are meant to preserve a truly competitive environment. To this end, there are two possibilities: punishing those who violate the rules of fair competition and prevention of these violations. A comparison with the medicine field is welcome. It is much harder to treat a disease than to prevent its occurrence. Competition protection bodies have the clear role of acting as an advocate in government policy measures. This is especially valid for emerging countries. Branches and many areas of activity and markets are highly concentrated here. We have only one actor or group of actors that is concentrated in major areas of activity. Authority must not admit a confrontation with state authorities in achieving its duties as a competition lawyer, as it would be counterproductive.

The selection dilemma between methods of taxation and prevention and punishment of deviations from fair competition can be solved by combining both rational ways.

The term "advocacy" WAS the proposed first by T. Murrisa, Chairman of the US Federal Trade Commission. His words - "Advocacy of Competition is one of the activities of Antitrust Authorities, Aimed at Strengthening the competitive environment through mechanisms that do not involve the use of coercion measures, and the use of active relationships with other government agencies and increased understanding by the general public of the benefits of competition "(Murrisa Terry, 2002). More recently definitions of the phenomenon of advocacy have been found. For example, the definition below presents competition advocacy as being an autonomous activity that avoids any aspect of complementarities.

"Competition advocacy - the systematic management activity by the competition

authorities, aimed at establishing mutual understanding between the government, society and business, including complex communication, advocacy and educational activities, and informing market participants about their rights and obligations to the society and the market. "(p.7,Knyazeva, 2013). Competition advocacy is a soft power - capacity to reach voluntary and desired results, based on the voluntary participation of the partners and not by coercion. Competition advocacy focused on activities to promote competition from two perspectives: counseling and education.

From the point of view of consulting services, adequate application of competition policy requires an analysis of all the components that affect the economic activities. Nothing shall prevent the free exercise of the competitive process. Promoting the principles of free competition involves identifying the reasons that could prevent him. Dissemination and promotion in the business environment and society is implemented by various means: media, conferences, studies, opinions presented in parliament, ministries and so on.

We have selected three levels of Promoting a culture of competition:

- ***Advocacy towards partners from Government Departments and Public Authorities;*** In addition to the work done by competition with officials in contributing with opinions and recommendations on draft laws for other sectors of economy and business activity, they also have to carry out a set of activities to the promote competition policy in various public institutions. These have to include providing training to members of the judiciary system, meeting with members of the Parliament to explain the importance for the Competition Board to remain independent.

- ***Advocacy towards businesses;*** Conducted research is necessary within a sector-driven national economy. The purpose of the analysis is the description of the real situation in the event of competition and familiarity with the results of economic actors. Market actors have the possibility to correct and adjust their actions in accordance with the real situation within a given market.

- ***Domestic advocacy.*** To promote a culture of competition, it is necessary to carry out a series of advocacy activities, including dissemination of information on the scope and the benefits of competition, as well as informing the public about progress made on competition policy.

Competition advocacy is used extensively by the FTC to convince actors from all levels of government to develop policies which would be complementary, continuing and in support of competition legislation. A culture of competition helps them solve the problem of organizing collective actions to advocate in support of regulations that do not restrict competition. The

exception is justified if there is a compelling argument that imposes additional costs on citizens.

Specific possibilities to promote the US FTC's views on competition advocacy:

AMICUS BRIEFS. When a court considers a case whose outcome could harm consumers or competition, the FTC can file a "friend of the court" to provide information that may assist the court to reach a decision in a way that protects consumers and promotes competition.

ADVOCACY FILINGS- When government bodies and other organizations analyze cases and policy decisions affecting consumers or competition, the FTC can provide knowledge and experience for decision makers by submitting a letter of advocacy.

OTHER APPLICATIONS, Petitions and requests. Companies, industry associations and consumers can come to meet the FTC's proposal to amend certain acts regulating the competitive space and to initiate an investigation into it.

ADVISORY OPINIONS. FTC presents advisory opinions to help to clarify the rules and decisions in response to requests from businesses and industry groups.

TIPS & ADVICE - Consulting and expert evaluation of different competition collisions, and providing instructions for consumers.

Moldovan Competition Council: the main activities in the domain of competition advocacy.

Two specific features in Moldova determine a special approach of competitive space: it is a country in transition and a small country. From these two traits come some important constraints in the functioning of the competitive environment: the small size of the domestic market; natural monopolies; areas of influence market dominance; high barriers to market entry; jurisdiction influences.

The small size of the domestic market. Small countries usually have a small domestic market. This amplification generates several deficiencies in competition, especially if a small country comes from the collapse of a totalitarian state like the Soviet Union. Obtaining small market dominance is achieved more easily, especially if the dominance of the field of activity is inherited from the previous economic system. The manifestation of dominant position and inclination of authorities in terms of justification dominance, including monopolistic and oligopolistic structures, may hinder the development of competition culture.

Natural monopolies. Natural monopolies appeared and were planted in the previous economic system and are inherited in newly formed small states. Natural monopoly in public utilities such as electricity, landline, gas and water, retained because of the relatively high costs, which never permit new units on the market. The emergence of a new supplier would create their own service

delivery infrastructure /. For this reason it is unlikely that more than one entity to provide a viable service.

High entry barriers. There are natural barriers formed by the existing market of goods or services. It's hard to break into an existing market, given existing relationships formed between the actors of this market. In addition, a small market, i.e. where consumers buy in bulk from a small number (often one) supplier limits the number of players in this market. Entry barriers can also be created, often imposed by the government. In many cases, entry is also limited in a field in which competition would be possible, but it would decrease the added value, that lies within firms. In this case, the nature of a service license limits the number of actors in the market, such as in the operation of taxi services or pharmacies.

Domination areas of influence within the market. Specifics lower post totalitarian countries that harmsfree competition the most, is kinship politics and business. In this case politics is an area of interest in business, making it hard to access for new players and existing players favoring.

Jurisdiction influence. In smaller jurisdictions, imposing forced removal of unfair competition actions can sometimes be harder than in larger countries. It happens because everyone knows, and social networks and family are important.

In these conditions, small countries may have inefficient competition, favoring other methods merged under the name of competition advocacy. Promotion of a competition culture among citizens, to make them aware of the benefits of competition policy are relevant in this regard. It is important that competition authorities to be transparent and explicit. Although competition advocacy is important in all jurisdictions, large and small, this is even more valid in smaller ones, given that social and family networks are likely to proceed through collusion by independent competitive action. In addition, small jurisdictions are turning more often to price control systems, and this leads to the belief that regulated prices are fair prices and that competition leads to instability. As aforementioned, government involvement influences a long perspective on the state of the market in competition.

Promoting competition in dialogue with public authorities.

One of the tools to promote competition culture in society is the dialogue with public authorities and various institutions. In this regard, the competition authority has gone the way of originating and developing a dialogue with all institutions related to its scope of involvement. Information on the sugar and oil market were presented in the collaboration with the Moldovan parliament were presented, competition concerns

related terms. This ensured the establishment of dialogue and cooperation relations with the authorities and institutions of the country was achieved through participation in public debate launched by the central public administration, where the Competition Council representatives participated as experts on competition and state aid.

Seminars, round tables and workshops.

An important tool in achieving and promoting competition culture is the organization of seminars, roundtables and workshops. The importance of organization and participation in such actions is undeniable, allowing them to determine possible gaps in the perception of information and the replace them. In carrying out these actions Competition Council has promoted cooperation with foreign embassies in Chisinau, business, civil society representatives, media etc. Also, the Competition Council representatives attended seminars, meals and the international conference organized by public authorities and NGOs in Moldova; these events are very important as experts offer their opinions and insights.

Ensuring transparency of Competition Law No. 183 of 11.07.2012, in turn contains a number of rules such as to ensure transparency in decision making by the competition authority and the right of defense of the parties. Thus, art. 59 of the Law establishes that the submission of an investigation report for information to the parties who are entitled to comment on it. Prior to adoption of administrative acts, the Competition Council ensures that all procedures fully guarantee rights of defense of the parties concerned by allowing to express their views on the findings and proposals of the investigation report, access the file and the right to a hearing. The right to defense is inviolable for all economic agents.

It is important to mention that the promotion of competition culture made by the Competition Council during 2013 was assessed in a competition launched by the World Bank Group, the Competition Council was selected for Honorable Mention in the category "Raising awareness stakeholders from the private sector and consumers' ability to deter anti-competitive practices." The aim of this contest was to highlight the role of competition in promoting a culture of competition. The contest was presented through success stories of competition authorities around the world, including the Competition Council of the Republic of Moldova. Success stories have focused on the activities conducted by the competition authorities to promote and encourage a competitive business environment through mechanisms of coercion but not by promoting relations with other public and increasing awareness of the company vis-à-vis the benefits competition. This honorable mentioning is of particular importance for the Competition Council of the Republic, the joint effort by the

whole team for the successful implementation of the actions and policies of the competition authority in Moldova, while being the proof of assessing these actions internationally.

Establishing effective dialogue with public authorities and courts, in collaboration with the Competition Council, as we consider that it is important to communicate with the central public authorities (especially the government, the State Chancellery, ministries and agencies) and local (levels I and II) on various aspects of problems of competition, state aid and publicity. In collaboration with public authorities, the Competition Council intends to carry out actions such as:

- Assistance in conducting market research and analysis in order to more accurately reflect market knowledge of the field,
- Cooperation supported by the enforcement of competition law in order to prevent and discourage anti-competitive practices which have as their object or may have the effect of restricting, preventing or distorting competition in the field,
- Supervision of compliance with competition law and the legislation in question, according to authorities and powers of each of the mutual information on the measures taken in breach of the law in these areas,
- Mutual consultation, both at management level and among experts on various issues arising in connection with consideration of sensitive issues in terms of competition,
- Collaborating with parties for simultaneous investigation of the same act or acts or the acts or similar acts in connection with the other party previously ruled by a decision or action by taking action,

It is also important to increase the competitive culture of judges for the correct application of the Competition Law no. 183 of 11.07.2012 and the Law on State Aid No. 139 of 15.06.2012, enhancing the quality and uniformity of decisions making on similar cases.

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