ECONOMIC ACTIVITY REGULATION AND COMPETITION ASSESSMENT

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In a broad sense, the term „competition" defines the relations between economic operators acting on the same market seeking attainment of certain interests in economic freedom conditions.
The need for regulations in the area of competition stems from the nature of free, open market economy which is founded on the existence of fair competition between economic agents, competition which must be observed, maintained and protected by the law.
Public authorities who issue various regulations should be cautious about how far this role is played in the economy and they way adopted regulations affect competition in the market. Hence, the need for prior assessment relating to the potential effect of a regulation on competition.
*It was proven in practice that some regulations may lead to measures that may affect competition directly or indirectly by: limiting the number or range of suppliers**;** limiting supplier capability to compete and reducing interests of suppliers to compete vigorously.*

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1.Introduction
In a broad sense, the term „competition" defines the relations between economic operators acting on the same market seeking attainment of certain interests in economic freedom conditions.
In economy, competition may be approached on three levels, i.e.

- direct competition (also known as brand or category competition) where products with the same functions compete directly against each other;
- indirect or substitute competition, where products which are close substitutes for one another compete;
- budget competition, which refers to competition between any good or service for which the consumer wants to spend his available money.

It should be noted that in most countries economic and business competition is often limited and restricted. Competition often is subject to legal restrictions. Tariffs, subsidies or other protectionist measures may also be instituted by government in order to prevent or reduce competition. Depending on the respective economic policy, pure competition is to a lesser or greater extent regulated by competition policy or competition laws.
Competition law, described in the United States as "antitrust law", has three major functions:

a) it prohibits agreements or cartel type understandings;
b) it prohibits the existence or abusive behaviour of a company which holds a dominant position in the market ;
c) it supervises the mergers and acquisitions of large companies.

In all cases the law aims to protect the welfare of consumers by ensuring competition between businesses and by eliminating any restrictive practice.

2. Evolution of competition policy
„Rigorous application of the competition policy is the best way to guarantee economic freedom. Therefore, free competition represents a public liberty which influences not only the economic

environment but also the organization of civil society. In this sense, competition policy is a policy for the citizens"[29].
The need for regulations in the area of competition stems from the nature of free, open market economy which is founded on the existence of fair competition between economic agents, competition which must be observed, maintained and protected by the law.
Its very reason for being in the area of competition is determined by the fact that the market cannot operate normally by nature and require some external intervention. Nevertheless, the open market principle does not infer passive attitude towards the way markets operate but on the contrary, it calls for keeping constant vigilance, so as to enable market mechanisms to operate properly. This becomes all the more necessary in the current worldwide globalization context distinguished by deepening integration at markets level.
According to economic theory, increased market competition leads to higher efficiency of resource allocation as a result of the fact that prices of goods and services will tend to the level of marginal costs. In perfect competition conditions marginal prices will equal marginal costs, hence profits will be nil. Therefore, producers will try to intervene so as to increase profits by initiating measures resulting in restrained competition. Under a „laissez faire" government one cannot intervene against such a strategic option[30].
Limited, in the past, to some developed countries, competition policy spread out progressively in various regions of the world, today is constitutes an essential tool in the paraphernalia of regulatory policies[31]. The origins of competition policy as a regulatory tool stem in the United States of America where the first competition regulatory legislative act was adopted in 1890 (Sherman Act).
In Europe, competition policy has developed with the creation of the European Economic Community and has become an integral part of the economic integration project, being comprehended under this title by the Treaty of Rome in articles 85 and 86.
Subsequently, the importance of protecting competition became obvious to most countries, i.e. developed, developing and transition countries (currently, over 80 countries have competition legislation in place).
Reality of the past two or three decades, after the beginning and intensification of the European integration process materialized in a multitude of negative impact developments, which had to be regulated, determined instatement of an European wide legislation meant to strictly regulate competition in all member states.
Based on research conducted on the objectives of competition policies, two distinct views or models can be highlighted:

- the „structural" model inspired by the theses of Harvard school, which focuses on dilution of the economic power;
- the model inspired by the theses of the Chicago school centred upon economic efficiency.

The structural approach, widely spread in the 1950-1970's by J. Bain and E. Mason, is based on the concept of pure and perfect competition whose existence is conditional upon atomicity, that is the presence in the market of as large numbers of economic agents as possible[32].
In the opinion of economists R. Posner (1976) and D. Demsetz, proponents of the Chicago school, concentration does not always have negative consequences for consumers[33]. On the

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[29] Monti, Mario. Competition European Commissioner, http://www.ier.ro/Proiecte/Brosuri/Politica%20concurenta.pdf, accessed on 10 November 2008
[30] Gabriela Drăgan, *UE între federalism şi interguvernamentalism Politici comune ale UE*, Edit. ASE, Bucureşti, 2005.
[31] M. Plămădeală, *Politica concurenţială - origini, obiective şi modele, particularităţi.*// Simpozion internaţional "Integrarea europeană şi competitivitatea economică"
[32] Bain, J.S., *Structure versus Conduct as indicators of market performance: the Chicago school* // Antitrust law and economic review, vol. 18, no.2, 1986, pp. 17-50.

contrary, they say, concentration is merely a selection process of more efficient companies which leads to increasing profits of the companies but also, implicitly, to increasing innovative capability which in turn results in lower production costs and thence improved consumer welfare[34].

Irrespective of specific conditions in one or another area, the final purpose of competition policy is the same, i.e. development of competition as such. As insisted the classic model proponents, the purpose of competition legislation cannot be brought down exclusively to securing efficiency. *The actual economic purpose of competition policy is threefold: economic efficiency, consumer welfare, and competition between companies.*

Manifest competition is not always fair, based on fair-play principles and aimed to improve competitors' activity. Oftentimes, economic agents make use of numerous anti-competition acts and actions seeking elimination of competition from the market and making as high as possible profits. This has consequences which affect both the competition environment and the overall economy and draws in pretty heavily on the life of citizens. Therefore regulation has been and still is required in the area of competition, which stemmed up the policy in this area or competition policy. This type of policy mainly aims to create real, free and fair competition within the reference market by the instrumentality of measures related to market structures and to the behaviour of economic agents.

3. Commercial policy and competition policy interaction

The so called „new topics" negotiated within the World Trade Organization[35] (WTO) deal with the way instruments related to competition policies on domestic and international markets interact with international trade.

Decisions made at the Singapore Ministerial Conference in 1996[36], enabled creation of two taskforces intended to examine more in a general manner, the ways trade is linked with investments and competition policies. In addition, ministers acknowledged the importance of the activity of the ***United Nations Conference on Trade and Development*** (UNCTAD)[37] and of other international organizations in the matter of competition. The taskforces were encouraged to cooperate with these organizations so as to ensure development issues have been fully taken into consideration.

In our attempt to go into further details relating to the link between commercial policies governing international trade, and competition policy, it is worth highlighting to what extent these two policies are antagonistic or complementary. Thence, commercial policies primarily aim at international trade liberalization by elimination of tariff and non-tariff barriers. Certainly, in a market economy materialization of such an objective is translated into the reduction of marketing costs and decreased retail prices. This means easier consumer access to the concerned product or service. As regards competition policy, it is likewise subordinated to defending consumer interests. This objective is attained by fighting and eliminating practices in restraint of competition which may occur in the market by: understandings between competitors, abuse of

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[33] Pradeep Mehta, *Multilateral Competition Agreement. Looking ahead to Cancun*. WTO, Symposium on trade and competition policy, 22.02.2003, p. 1

[34] Demsetz, H., *Industry structure, market rivalry an public policy*.// Journal of law and economics, vol.16,1973, p.1-9

[35] World Trade Organization (WTO) is an international organization which supervises a large number of agreements which define "commercial rules" between member states. WTO is the successor of the "*General Agreement on Tariffs and Trade*" and operates towards reducing and abolishing international trade barriers.

[36] Singapore (1996) – within this Conference, developments in international trade and implementation issues and aspects of various WTO Agreements were examined.

[37] United Nations Conference on Trade and Development. Established in 1964, UNCTAD promotes development of friendly integration of developing countries in the world economy. UNCTAD evolved progressively as a knowledge based authority of institutions whose activity aims to contribute current policy debates and thinking development especially focused on guaranteeing that domestic and international policy actions support each other in achieving sustainable development.

dominant position by a company holding an important position on the market, as well as rigorous control of economic concentrations and of authorization and checking of state aids.
It is evident thus, that both policies mentioned above promote protection of consumer interests directly or indirectly. Moreover, they are complementary by their fostered objectives and actions. Indeed, international trade liberalization efforts would be in vain if tariff or non-tariff obstacles were replaced by competition restraining practices of the type shown above. Should strict rules fail to exist ensuring normal market operation competition wise, the consumer will no longer be in a position to take advantage from trade liberalization.
Therefore, both trade liberalization and ensuring normal competition climate occur conditional on states having actual intervention possibilities when the two processes do not unfold under normal conditions.

4. Competition and world economy globalization

One of the most recent trends in world economy is represented by globalization[38], an intricate and multidimensional process which influences, directly or indirectly, the economies of all countries. Hence, it also influences the constituents of economies, i.e. domestic demand and supply, prices, competition. In this context, it is worth noting a few peculiarities of competition delineated by changes occurring at the level of national economies under the impact of the globalization process, namely:

- enhanced competitiveness as a result of opening national economies to international trade by gaining new outlet markets;
- diversified competition engagement strategies, determined by goods and capital trade liberalization;
- establishment of the intervention capability of states in a market economy. It is more difficult in such circumstances for the state to control market relations extended at global level. This theory should not be absolutized either, since opening borders and international trade liberalization should not be mistaken for creating pandemonium. International trade liberalization occurs at the sale time with its regulation.

Then, it is evident that also in the economic processes globalization, including at the level of competition, states are attempting to regulate the various activities in order to prevent competition restraining forms and practices from appearing and occurring.

5. Assessment of regulations impact on competition

Public authorities who issue various regulations should be cautious about how far this role is played in the economy and they way adopted regulations affect competition in the market. Hence, the need for prior assessment relating to the potential effect of a regulation on competition.
This is why it not surprising that worldwide concerns with competition assessment have increased in the context of adopting regulations which might affect competition climate. Among international organizations which made themselves conspicuous in this respect is the Organization for Economic Cooperation and Development (OCDE) by the study it conducted relating to its Set of Competition Assessment Instruments.
The starting point in the implementation of such set of competition assessment instruments is represented by the identification of aspects which may be subjected to regulations. It was proven in practice that some regulations may lead to measures that may affect competition directly or indirectly by:

a) Limiting the number or range of suppliers

Limiting the number of suppliers creates the risk for the market power[39] to appear and for

[38] Joan Bari, Globalization of Economy, chapters 9 and 13
[39] Suppliers' market power represents the capability to increase prices profitably, to reduce quality or innovation relating to levels which would prevail on a competitive market.

competition reduction. When the number of suppliers decreases, the possibility of collaboration (or understanding) between them increases and the capability of individual suppliers to increase prices may be greater. From a competition perspective, this can lead to lessened interest to satisfy consumer requirements and to long term reduction of economic efficiency. While there are reasonable political grounds based on which political leaders can sometimes limit the number of range of suppliers, the benefits of a market entry limiting policy need to be assessed in consideration of the fact that easy new supplier market entry is apt to prevent existing suppliers from becoming dominant on the market. Market power leads to higher prices, lower quality and little innovation.

Forms in which such limitation may become the subject of a regulation are diverse, and the most important are:

- Granting exclusive rights.

Granting an exclusive right to manufacture a certain good or provide a certain service implies establishing a regulated private monopoly. Potentially, exclusive rights may lead to monopoly prices and to other market power related issues.

- Establishing a license registration system or approvals for carrying on certain activities.

Licenses or permits required for carrying on activities inevitably limit market entry. Requirements for licenses or approvals are often a lot more stringent than necessary for consumer protection and may reduce consumer's choice uselessly and create an artificial shortage resulting in higher prices. A guiding principle is that restrictions should not lead, more than needed or satisfactory, to the attainment of regulatory objectives.

- Limiting certain suppliers from supplying a good or providing a service.

In certain circumstances, governments seek to encourage suppliers from certain regions, small suppliers, or specific featured suppliers by limiting the capability of certain types of suppliers to participate in a commercial activity, especially with regard to public procurement. Such restrictions are excessive since they limit unreasonably the number of suppliers participating in the tender, reducing competition between suppliers and resulting in higher prices or less desirable contractual terms for the government.

- Significant increase of entry or exit costs.

Regulations which lead to increased market entry or market exit costs will deter newcomers and will therefore reduce the number of market players.

- Restricting the flow of goods, services, capital and labour.

Regulations often limit the flow of goods, services, capital and/or labour across the area determined by borders falling under national jurisdiction, frequently as a regional policy instrument. However, such restrictions will reduce artificially the geographical competition area for supplying a good or providing a service. This can limit the number of suppliers and may potentially allow them to exercise market power and increase prices.

There is also a material risk that „temporary" protections change into semi-permanent arrangements due to the considerable influence exercised by the suppliers who benefit of such restrictions.

b) Limiting supplier capability to compete

The main forms whereby a regulation may affect the capability of suppliers to compete are:

- Controlling prices used to sell goods or services.

Oftentimes, governments regulate prices in the traditional monopoly sectors, such as for instance in the case of utilities. These types of controls on prices are probably beneficial to consumers and are used as a counterbalance to the lack of alternatives for them. However, controls on prices are often applied in situations when there are numerous potential suppliers for the same consumer. When minimum prices are set, low priced product suppliers are prevented from gaining a percentage of the market by ensuring better value for the consumers. Similarly, when maximum prices are set, the interest of suppliers in innovations so as to ensure new and/or higher quality

products may be significantly low and suppliers may effectively coordinate prices around the maximum price level.

- Limiting advertising and marketing.

Regulations limiting the capability of suppliers to advertise or market products and services exist often for the purpose of restricting false or deceptive advertising.

However, in many cases, restrictions on advertising and marketing are too general and unreasonably limit competition. Restrictions on advertising and marketing may have considerable disadvantages for the newcomers since they limit their capability to inform potential buyers about their presence on the market and about the nature and quality of goods and services they can offer.

- Setting product quality standards beyond the desirable level for well-informed buyers.

Regulations laying down standards often ensure benefits for consumers and may promote new types of products while making sure they are compatible. But setting a standard may also ensure an excessive benefit for certain suppliers against others.

When certain consumers prefer lower costs to higher safety the need for a standard is less justified. Consumer welfare may be reduced by such standards since consumers are prevented from buying less expensive lower quality products which they would prefer even when fully informed about all associated risks.

- Increasing costs for some suppliers compared to others.

In certain periods, regulations determine unintentionally cost increases for some suppliers as compared to others. One of the asymmetry generating sources relating to costs is represented by regulations which unreasonably require using a certain production technology against another one. Another such source is represented by the „seniority clauses" which exempt existing suppliers from being applied a regulation which this way would affect only newcomers. Such arrangements affect competition by increasing costs for some suppliers to a considerably higher extent than for others.

c) Reducing interests of suppliers to compete vigorously

Regulations may affect supplier behaviour not only by changing the capability of a supplier to compete but also by altering the interests of suppliers to act as vigorous rivals. Two of the main reasons suppliers may compete less vigorously are related to the fact that some regulations may result in facilitating coordination between suppliers while other regulations may result in reducing goodwill, capability or means to encourage buyers so as to enable easy selection among the various suppliers.

Forms taken by the reduction of interest in competing are:

- Regulation and self-regulation

When a business or a professional association fully assumes responsibility for regulating the behaviour of its members without being supported from a legislation standpoint by the government (often as requested by the government) the „regulation" term is used. When the government provides the legislation support for regulations developed at least partially by the relevant business/professional association, the „self-regulation" term is used. Regulation and self-regulation structures may produce substantial benefits by ensuring technical standards compliance and their advancement in line with technology.

- Requirements for the publication of information about suppliers' prices, production, and sales.

Regulations requiring market players to publish information about their own prices or their levels of production may significantly facilitate creation of cartels, since a key requirement for a cartel to operate is that its participants are able to effectively monitor their competitors' market behaviour. Cartels appear where there are fewer market players, where entry barriers are raised, where products of the suppliers are relatively unvarying and where information about prices or about production changes are available either before or after the price or production has changed. There are alternatives to collected data publication. When information is originally collected in

order to develop a governmental policy it is unlikely that publication of such information should be justified. The purpose however consists in supporting the consumers or supplying general statistics, as aggregate statistics support cartels to a lesser extent than specific statistics relating to suppliers.

- Exemptions from general competition norms.

In many countries, certain suppliers or certain economic sectors benefit of exemptions from general competition norms. In some cases, these sectors are governed by their own legislation in the area of competition specific to every sector. In other cases, there is no restriction relating to anti-competition behaviour in these sectors. Where there is substantial derogation of the general enforcement of competition legislation there is also the obvious risk of cartel formation, of abusive imposition of prices and of the ensuing anti-competition mergers[40].

- Reducing client mobility by increasing costs associated with changing suppliers.

Regulations may cause the consumers to be less wiling to change a supplier for another due to concerns for "transfer costs" – explicit and implicit costs borne by a supplier when changing a supplier. Transfer costs may result due to various reasons, including unreasonable long contractual periods or restricting goods by the suppliers in a manner that makes it uncomfortable to change suppliers, such as restricting access to a telephone number for a certain services supplier. When consumers are faced with high transfer costs, suppliers may impose higher prices for their goods and services. Consequently, suppliers often seek to create high transfer costs, sometimes by promoting regulations which will ensure such transfer costs.

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[40] A merger is a combination between two (or several) previously independent suppliers for the purpose of creating a larger supplier.