



The Role of Consulting Services in Promoting Competitive Culture

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Abstract: Maintaining a normal competitive environment on the market is the core objective of the competition authorities. Policies and regulations applied in pursuit of this purpose have the role of identifying and eliminating situations of constraint on free competition. The developing market of Moldova is characterized by a low level of the competitive culture. Therefore, the business community have few knowledge and understanding of competition policies and regulations, relatively new in this market. In other cases, the lack of cooperation with competition authorities leads to erroneous information and ineffective decisions. In this context, the consultancy in the field of competition presents one of the important factors for understanding the essence of the competitive relationship between the market players and their relationship with the competition authorities.

Competition consultancy, through its activity, contributes to the development of competitive culture, increasing the degree of understanding of the competition regulations by market players. Therefore, it argues the need to comply with competition law provisions to establish a normal competitive environment on the market.

Keywords: consulting services; competition advocacy; competitiveness culture

JEL classification: K2, L2

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Vloga svetovalnih storitev v promociji konkurenčne kulture

Povzetek: Osrednji cilj organov za varstvo konkurence je vzdrževanje normalnega konkurenčnega okolja na trgu. Politike in predpisi, ki se uporabljajo za doseg tega cilja, imajo vlogo prepoznavanja in odpravljanja okoliščin, ki ovirajo prosto konkurenco. Razvijajoči se trg Moldove odlikuje nizka raven konkurenčne kulture. Zato ima poslovna skupnost malo znanja in razumevanja o konkurenčnih politikah in predpisih, saj so razmeroma nova na tem trgu. V drugih primerih pomanjkanje sodelovanja z organi za varstvo konkurence vodi do napačnih informacij in neučinkovitih odločitev. V tem okviru je svetovanje na področju konkurence eden od pomembnih dejavnikov za razumevanje bistva konkurenčnega odnosa med akterji na trgu in njihovega odnosa do organov, pristojnih za konkurenco. Svetovalna dejavnost o konkurenčnosti prispeva k razvoju konkurenčne kulture in povečuje stopnjo razumevanja pravil konkurence s strani tržnih akterjev. V

članku avtorji ugotavljajo, da je za vzpostavitev normalnega konkurenčnega okolja na trgu treba upoštevati določbe konkurenčnega prava.

Ključne besede: svetovalne storitve; zagovorništvo konkurence; konkurenčna kultura

JEL klasifikacija: K2, L2

1 Introduction

The development of information technologies, the liberalization of markets, their structural change and the emergence of online markets have led to the sensitization of the business environment on the online market, increasing the need for development to maintain the existence. Thus, an increased interest for market players is to maintain competitiveness and increase market power due to the ongoing changes in the economic environment over the last decades.

Harmonious development of the economic environment is highly dependent on market competition. Thus, regulations and policies in this field have the role of creating and maintaining a normal competitive environment.

In turn, the level of market economy development, its state of liberalization, and the behaviour of market players related to competition rules, have a considerable impact on competition and its mechanisms. In fact, several studies emphasize the impact of market size on the state of the competitive environment.

Therefore, the competitive environment in small markets is more vulnerable to change and can be easily distorted. And due to the dimensional particularities' characteristic of a small market, competitive opportunities are limited by facilitating dominant institutions and the disadvantages of fragmentation. At the same time, specific markets of small size are also the existence of monopolistic and oligopolistic structures, as well as the advantages of business consolidation and the predisposition of authorities to justify them. In this context, the level of training and information in the field of competition, which in developing countries is much lower than the developed countries, is of major importance.

2 Particular aspects of the market and competition regulations of the Republic of Moldova

An important aspect influencing the state of the competitive environment on the market, and the development mechanisms used by market players, is the application and enforcement of competition rules and policies on the market. The regulations on competition in R Moldova, as mentioned in the law, "transpose the provisions of art. 101-106 of the Treaty on the Functioning of the European Union of 25 March 1957, the provisions of Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, published in the Official Journal of the European Union no. L1 of 4 January 2003, and partly the provisions of Regulation (EC) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, published in the Official Journal of the European Union no. L24 of January 29, 2004", formulated in the Competition Law no. 183 of 11.07.2012 (Competition Law of Republic of Moldova).

Aligning economic activities with the requirements and provisions of competition regulations and policies is a complex process, not only to identify distortions of the normal competitive environment on the market. A very important factor is to increase the level of understanding among economic agents of the need to comply with the provisions of the competition law, and what benefits can be achieved as result.

This process requires a long time and due to the relatively short period of implementation of the Competition Law in Moldova, there are gaps in society and the business environment regarding the understanding of the need for the existence and observance of competition rules.

Another equally important aspect is the dimensional characteristics of the market and its peculiarities. Particularly for small markets, respectively on the Moldovan market, there are certain market conditions, such as:

- Natural monopoly in public utilities (e.g. electricity, fixed telephony, gas and water line). Their existence is due to high production costs, which limits the number of entities capable of providing services viably. A low level of the existence of natural resources implies a high level of imports, which also favours the conditions for the formation of monopolies. These are manifested by the dominance of the import channels or their monopolization, which develops resistance to the creation of parallel import channels.
- Entry barriers on the market. Barriers to market entry may be caused by market saturation. This may be achieved when there are many SMEs on a market that offer very diverse services and products which are considered substitutable. The Moldovan market is predominantly made up of SMEs. In this way, market demand is covered, and new entrants require considerable effort to assert themselves on the market. Fragmentation is also considered a barrier to market entry. Limiting the number of actors takes place due to the need to purchase raw materials in bulk to avoid excessive fragmentation of loads.

Barriers to entry on the market can also be created artificially, at the discretion of the authorities, for certain sectors that require substantial spending to increase viability.

Market entry barriers can be considered the conditions for obtaining activity licenses for some market sectors such as pharmaceutical networks or transport services, but they do not create major impediments to the emergence of new players.

- A very important particularity is the social interaction in small markets, that is much more developed than large markets, so collusion is facilitated. Moreover, given the presence of fewer actors on the market, with a close link between them, concerted practices are very difficult to distinguish from independent actions.

In fact, educating the culture of competition is just as important regardless of the size of the market. The lack of information has negative effects the status of economic agents in two aspects:

1. The negative reactions of economic agents towards competition law and authorities. At the same time, the fear of fines undermines the development of economic agents. In addition, many instances of involuntary violations occur, due to lack of knowledge and qualified staff.
2. Failure to have a qualified defence in the case of a pending investigation or file. And imminent fines are plausible for the economic destabilization of the target economic agent.

There is a large number of violations on the Moldovan market due to lack of information. Although the promotion of competitive culture is widely used by Moldovan competition authorities, it is at an early stage. And the relatively new application of the Competition Law, and the poor documentation of the personnel of the companies about the provisions of this law, lead to violations with considerable sanctions.

3 Involvement of consultancy in the state of competitive culture

Regarding the development of the information system in the competition field, both the US and EU competition authorities have created mechanisms such as business assistance and training. The concept of competition assistance was defined in 2002 by Murrissa, Chairman of the US Federal Trade Commission, as one of the activities of the antitrust authorities. This mechanism seeks to strengthen the competitive environment without the use of coercive measures by maintaining active information and communication relations with the business community to explain the benefits of competition (Terry, 2002; Knyazeva, 2013).

In this direction, a series of activities have been developed to allow the business environment to interact with competition authorities and, as a result, to be able to review market behavior. According to the FTC, competition culture development aims to create conditions that will lead to a more competitive market structure, business conduct and economic performance (The World Bank and OECD, 1998).

Particularly on the Moldovan market, a business environment present in a market where the notion of competition is relatively new, it has reserves with the competition authorities, and the direct relationship with them. Complementarily,

the lack of specialists in this area among the staff of the economic agents makes them vulnerable due to their inability to defend themselves in this respect. The solution of this problem can be achieved through the specialized consultancy and assistance services in the field of competition.

Currently, consultancy is the most important sphere of intellectual entrepreneurship, being increasingly demanded in the business environment. In this context, the consultancy activity is shaped as a scientific-applicative field of activity, with its methodology and approaches in different spheres of specialization. Competition advisory services can therefore provide market players with market support in line with their regulatory work, but also contribute to developing knowledge of the legal framework and loyal market conduct.

Independent consultancy services have evolved considerably over the last period of time. As a business sector, consultancy can simplify the activity of economic agents by offering solutions or intellectual products adapted to their needs.

In essence, advice involves applying the knowledge of a specialist in a specific situation, a particular firm, or a process, and aiming to change this situation, according to D. Bell, effective consultation is a transforming element in the new economy (Bell, 1973).

Regarding the competition issues, the consultancy as a specialized activity responds to several needs as well:

- Crisis situations;
- Various restructurings and changes in direction or activity strategies;
- Strengthening or increasing market shares;
- Settlement of disputes;
- Representation in investigations.

The listed critical situations, where the market player is unable to find solutions because of lack of experience and internal resources for making the right decisions, are reasons for using the services of a consultant.

In general, Beych (2007) presents several reasons for the specialized consulting of the management of the companies, which can be fully reported to the current business needs of the RM market regarding the competition issues:

- a. Need for expertise. The skills and knowledge required to ensure economic growth or to cope with major changes in company activities can often not be obtained from internal employees.
- b. Lack of time. Internal employees usually do not have time to carry out new projects or studies.
- c. Lack of experience. To solve any problem, qualified specialists in the field are needed.
- d. Objective vision from the outside. As a rule, foreign specialists offer an impartial view of how to solve the problem.
- e. New ideas. Qualified specialists have ideas from other companies and industries, new knowledge and successful solution models from multiple sources.
- f. Speed and efficiency. Experienced consultants are a faster and more effective way to solve the problem than making a decision with their own strengths.
- g. Assessment of the situation. The Consultant provides an objective assessment of the situation, can identify the problem and provide recommendations for its resolution.
- h. Independence. In the event of contradictory situations and when there is a need to reconcile the interests of different parties (eg in mergers or acquisitions, in the reorganization of the firm), the consultant can act as an independent intermediary in solving contradictions (Biech, 2007).

The important role of the competition consultancy firms is because the risks of market players are very high under current market conditions and violations of competition law cannot be justified by the lack of qualified staff. The Consulting meets the needs of the business environment to carry out their work by providing the necessary information support. It is very important for market actors to align their work with the provisions of competition law, and to build lasting relationships with other market actors. Equally important is the correct decision making when increase the market power, restructure or change the direction of activity.

4 Case study

In the practice of applying competition regulations on the RM market, there are many cases in which the inability of companies to defend or argue certain actions has led to sanctions or imposing the termination of transactions declared incompatible with the competitive environment.

Causes may be diverse, either unnotified transactions, or incorrect determination of relevant market boundaries, or failure to provide information.

Illustrative is the case below, in which the correct setting of the market dimension influenced the general framework of the transaction's impact on the relevant market. Due to a competent assistance, the company obtained the allowance for the transaction considered initially as being incompatible with the competition environment.

4.1 About transaction

Transaction on which was opened the investigation involved the purchase of 100% of the assets of a company X by company Y, carried out in two stages. At the first stage - 49% of the assets, and the second - 51%. Both companies were active in the same markets: perfumery trade; cosmetics; and care products. Company X in had a secondary activity - trade of toys.

The transaction was made in the years 2013-2014, the investigation was initiated in 2017-2018. Next, the important elements for resolving this case will be described and these are mentioned on two stages of investigation. The first stage considers the primary investigation, the second stage being carried out following defence arguments, which were presented with the help of specialized consultancy support.

4.2 The relevant market established at the first stage of the investigation

In defining the relevant market during the investigation, the main type of activity of the companies involved in the transaction was considered. This is how the market for perfumery, cosmetics and care products has been determined.

In the analysis, two types of products were distinguished: luxury and intended for the general public identified for the period of the transaction. For this, considering factors such as packaging, brands, price, consumer perceptions, advertising strategies, etc. At the same time, it was mentioned that luxury products are to be marketed in specialized shops, being distributed through distribution systems distinct from those of products for the general public. Thus, considering the particularities described, the analysis of the assortment of products according to brand, price, perception, etc. criteria, established that the products marketed by the companies involved in the transaction were in the luxury range.

It was therefore established that before the merger, the companies involved in the transaction were active in the same markets, namely: the market for the sale of luxury perfume products in specialized shops; the market for the sale of luxury cosmetics in specialized shops; and the market for the sale of care products in specialized shops. These markets have been identified as the relevant affected product markets.

The relevant geographic market was established as the entire territory of the Republic of Moldova. Due to the existence of several specialized stores within the Chisinau and Balti towns, as well as the existence of the online trade on the company Y site, which offers delivery throughout the country.

4.3 Market competitors and market concentration analysis at the first stage of the investigation

Following the analysis of competitors on the market, by the product substitutability method, two other existing competitors on the relevant market Q and Z were determined.

Based on the turnover registered by all companies identified as belonging to the same market, the market shares held by them were determined. Thus, for the year before the transaction, the following were obtained:

Company X – 27,76%

Company Y – 51,30%

Company Q – 20,87%

Company Z – 0,07%

Respectively, an IHH of 3837.87 was obtained in the calculation of the Herfindal Hirschmann Index (IHH) for the year before the transaction, following the transaction at IHH = 5666.65. This represents an increase in IHH of more than 1.4 times.

According to the FTC horizontal merger instructions, 2010 the market under analysis is moderately concentrated (HH between 1500 and 2500) (U.S. Department of Justice and Federal Trade Commission, 2010). And according to the general standards for the relevant markets, mergers involving moderate merger markets involving an increase in HHI of up to 100 points do not raise significant competition concerns. In related case, the IHH index increase was more than 1500.

In conclusion, the transaction was rejected because of incompatibility with the competitive environment due to substantial increase in market power for company Y, after achieving it. Following the arguments developed by consultancy specialists presented to the authorities, the market framework was revised. This is due to the considerable structural changes the market has suffered in recent years.

4.4 Relevant market determined in the second stage of the investigation

The structure of the perfume market proved to be much broader and more complex than it was presented at the first stage of the investigation. Fragrances are not only distinguished by brand and prestige but also by essences (various flavors), composition (perfume, perfume water, colony water, etc.), destination (depending on age, gender, social position, income, etc.). Thus, the structure of the perfume market is far too varied from the point of view of consumers and includes some segments that do not intersect. The consumer of a certain type of fragrance (we mean a certain essence) is not interested in fragrances of other essences. Accordingly, the perfume market can not be regarded as an integral market. Consumer demand focuses on a specific and very narrow segment.

Analyzing the market, in terms of brand and price, a larger segmentation of the market, with the mastige segment (the combination of mass-market and Prestige), has been determined. As a result, this mutation in the perfume market has taken place in recent years. Customers migrated from table perfumes to Prestige perfumes, forming a new market (nonexistent yet 5-7 years ago) - the mastiff market. The luxury market is newly characterized by unique products, in limited series and with exaggerated prices. The famous perfume houses can have one or a series of luxury perfumes, alongside the branded and high quality continuous perfume series.

Therefore, the relevant market on which the participants in the transaction are active is not the market of luxury perfumes but mastiff. It can be said that the perfumes present on the market of RM are good perfumes, expensive, branded, produced perfumery houses, part of the luxury perfume class.

4.5 Market competitors identified in the second phase of the investigation

The globalization of the perfume market through electronic stores led this market to an advanced level. The number of perfume market players is on the increase from online sellers' accounts. This is an international trend, which also manifests itself in the countries of the immediate vicinity and the same cultural traditions in the region, which includes the Republic of Moldova (Eastern Europe region).

Thus, having regard to the emergence and development of on-line shops, a larger number of competitors has been identified, including online and Duty-Free online stores. Cumulative revenue from on-line sales on the RM market of all

sites is an amount comparable to off-line merchant income. And Websites selling perfumery products that are present on the analyzed geographic market compete with off-line companies to become market players. At the same time, at least one e-shop that is considered to be a competitor, it still owns the brands marketed by Y, complementary to the brands that Y-shops do not have for sale and which are available in online stores.

At the second stage of the investigation, the calculation of the IHH indicator was carried out with consideration of competitors from the on-line environment. Thus, the calculated IHH index resulted in 3168.48. That was lower than the index calculated in the year preceding the concentration, IHH = 3837,87 (resulted in the first phase of the investigation).

4.6 Conclusions

With the support of the consultancy service, the investigated company has succeeded in arguing for the need for a thoroughly updated market study, which resulted in a change in the size of the targeted market. Concluding that the market on which the investigated companies are active is a *masstige*, and involves more bidders than those presented in the first part of the investigation, the risks of distorting the market fall considerably. This has also been demonstrated by the value of the IHH index calculated for the *masstige* market, which has a level that allows the assertion that the perfume market has not changed significantly after the merger. Accordingly, the transaction was declared compatible with the competitive environment.

5 Conclusions

The competitive field cannot be approached only from the point of view of the legal framework. It requires the involvement of both economic and legal analysis, thus becoming a complex product of these two areas. In addition, it has an influence and the economic space in which the activity is carried out.

In developed countries, competition assistance is widespread as a form of activity, even in the context of a high level of competitive culture. The use of specialized sources of business support in any field comes from understanding the need for their use and the resulting benefits.

Taking into account the problems faced by the business environment in a small domestic market, the role of specialized consultancy in this field is being valued.

In addition to competitive regulations, consulting on this field creates the premises for developing a free and competitive market. The opportunity to avoid sanctions and the development of the business in a harmonious way awakens the interest of market players to seek specialist advice.

Through its activity, consultancy contributes to the development of competitive culture. As a result, it develops market capabilities and actors' capabilities to cope with developed foreign markets where the level of competitive culture is clearly superior. At the same time, the consultancy establishes links of the market actors with the competition authorities in order to develop a loyal competition environment.

Note: Some parts of the paper have been presented at the 3rd International Scientific Conference – EMAN 2019. The paper abstract will be published in the EMAN 2019 Book of Abstracts.

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