

## **UNFAIR COMPETITION - AND INFLUENCING FACTORS WITH AN IMPACT ON CONSUMER ECONOMIC INTERESTS**

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**Abstract:** *Until recently, the competition law of the Republic of Moldova was at a stage of training and development. Currently, that is, from 2012, this fact has been confirmed by the specific regulation of competition, which transposes the provisions of art. 101-106 of the Treaty on the Functioning of the European Union of 25 March 1957 [9], the provisions of (EC) Regulation No 1/2003 of the Council dated 16th of 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 dated 4th of January 2003 [6], and, in part, the provisions of (EC) Regulation No 139/2004 of the Council dated 20th of January 2004 on the control of economic concentrations between undertakings, published in the Official Journal of the European Union no. L24 dated 29 th of January 2004 [7]. Thus, according to art. 4 of the Competition Law no. 183/2012, the notion of "unfair competition" is defined as "any action taken by undertakings in the competition process, which is contrary to honest practices in economic activity", being considered by the doctrinaires as an illegal act that may directly or indirectly influence economic interests of consumers.*

**Keywords:** *competition, consumer, court, commercial practice, influence factors, consumer disputes*

Competition is the quintessence of market economy. It represents the possibility of choosing between several alternative products or services offered. Where there is competition, there is a more efficient allocation of resources, as the manufacturer constantly pursues the ratio between such and expenses. However, the manufacturer does not influence the market on its own, but only through competition relations with other producers which always leads to a fall in prices and, implicitly, a diversification of the market - by stimulating purchases. The concept of "competition" is a set of relations between economic agents that stem from their desire to offer the consumer the most advantageous price, thus ensuring the best place on the market. It should be noted that the phenomenon of competition is naturally linked to the consumer's freedom to choose, competition being the most important balancing force of the market economy.

Competition is an inherent feature of a market economy, based on the free initiative generated by private ownership. Moreover, it can be said that the mechanism of any real market

economy is a competitive one. A competitive and healthy market leads to increased productivity and competitiveness, lower prices and costs, as well as innovation. In the Republic of Moldova, the foundations of a systemic competitive environment have only begun to be laid down in the past few years. Due to the decades of a complete lack of a market economy, the process of adapting and learning new values has been difficult and has taken long. The Constitution of the Republic of Moldova stipulates in art. 9 par. (3) that the market, the free economic initiative, loyal competition, are the basic factors of the economy. Moreover, according to art. 126 of the Constitution of the Republic of Moldova, the economy of the Republic of Moldova is market economy, of social orientation, based on private property and public property, engaged in free competition, and the state must ensure fair competition.

In the context of the obligations assumed by the Republic of Moldova under the Partnership and Cooperation Agreement between the Republic of Moldova and the European Union, as well as the RM - EU Action Plan [4], it was necessary to develop a legislative framework that promotes economic development by improving the investment climate, in view of ensuring non-discriminatory conditions for the conduct of business. This implicitly presumes an adequate legislative framework in a liberalized economy and in a loyal competitive environment. The adjustment of the competition law of the Republic of Moldova has taken place over several years, with external assistance. Competition, as the fundamental trait of the market economy, represents in fact the competitive manifestation between the economic agents, in order to obtain better conditions of production and selling. Competition, thus being a race or a confrontation, involves the use of specific means and tools to reach the interests. These means can be economic and extra-economic.

When we talk about economic means, we are considering: reducing the price as a result of reducing production costs, diversifying the structure of the offered goods' assortment, granting certain advantages to buyers through different promotions or special sales conditions, all of which have the effect of improving goods and services. Certainly the extra-economic means include: corruption acts; economic espionage; blackmail; theft of information and documents; advertising based on false information.

It seems that Moldova has made progress compared to other countries in the region, yet however, further efforts are still needed to complete reforms which are already under way, in order to adapt their legislation to the legislation of the EU [1]. The culmination of the efforts of the Moldovan specialists in the field of competition law, the competition authority and the support of foreign experts, was the elaboration and adoption by the Parliament of the Competition Law no.183/2012 [8]. Although some consider that very detailed provisions of the law should be reflected in secondary legislation, such as internal regulations and guidelines, this normative act is an innovative one for the Republic of Moldova and closely transposes the provisions of art.101-106 of the TFEU [9] and other secondary European provisions, as confirmed by the Joint European Commission Document on the progress of the Republic of Moldova in implementing the European Vicinity Policy of 2013, which stipulates that competition law "is well aligned with EU rules ". This Competition Law no.183/2012 is one of the most progressive pieces of legislation, as it introduces new attitudes, procedures and mechanisms that the Competition Council will have to deal with in the future. Moreover, the recent conclusion of the Association Agreement [4], incorporating deep and comprehensive free

trade area provisions with the European Union, has marked an important benchmark in the European integration trajectory of the Republic of Moldova.

This agreement will provide an important foundation for mutual trust in trade relations between the EU and the Republic of Moldova, along with specific benefits for enterprises and consumers in Moldova in the framework of the market economy. But this also requires, concurrently, scientific research on the content of the obligations undertaken by the Republic of Moldova, obligations reflected in the Competition Law no. 183, adopted in 2012. To this end, professionals in the legal environment, the competition authority, as well as businesses and consumers, must know the European Union's legislation and practice on prohibited activities, such as horizontal anti-competitive agreements, existing leniency policies, etc. Furthermore, we can ascertain an absolute lack of monographs, scientific works and research regarding horizontal anti-competitive agreements, especially in light of proximity to the European Union. Reason for which there is a strong need for a clear analysis that explains the existing notions within the competition laws, taken over from the EU legislation and practice.

The issue of unfair competition determines the need to assess the entrepreneur's illicit behavior towards consumers, taking as basic criteria certain factors, because, by their very essence, unfair competition can affect the economic interests of each consumer:

- can be applied to the marketing of any product and provision of any service starting with the ones for basic needs to the luxury ones;
- can be applied to any consumer category (according to age, purchasing potential, etc.);
- can be applied both in large and small commercial units located in rural towns or municipalities.

There is indeed a worldwide concern today to find the meanings and dimensions of the quality of products and services that reflect the progress of terrestrial civilization at the beginning of the third millennium, as well as the concerns and expectations of the most numerous community groups in relation to this aspect. An agreement on these concerns can only be achieved by analyzing the dimensions of the concept of unfair competition in accordance with the requirements and needs of all the stakeholders that could influence their unfairness. In this respect, we have two main categories of factors that influence the economic interests of consumers:

- Environmental factors (external) and
- Internal factors.

Hereafter, we shall examine the influence of environmental factors and the organization's partnership with such. In fact, each organization interacts permanently with the environment in which it operates. The components of the surrounding environment can be expressed by:

- the environment of outlets and consumers;
- traders' environment;
- the competitive environment;
- economic environment;
- the educational and human resources environment;

Between these components of the environment and the organization, the factors corresponding to each component act, factors by means of which the environment asserts its demands regarding the quality of the product and / or service provided by the trader. We shall briefly continue to outline these factors, analyzed in the [5] doctrine and the manner in which

they influence the economic interests of consumers.

Market factors and consumers. These factors, referred to as socio-cultural factors, represent the entirety of factors of interaction between the market, consumers and traders, factors that make the organization aware of the emergence of needs, demands and product exchange capabilities on the market. Although it is not possible to elaborate a general recipe with market factors, there is still the possibility of forecasting market demand, represented by the segment of the end consumers as well as of the intermediary beneficiaries (first assembly, distributors, retail shops, intervention units / services, repairs, direct consumers, etc.). Thus, identifying market needs for a product is achieved through marketing studies and takes into account the rational needs of consumers as well as their emotional needs. There are three essential components of necessity, which give it its actual character, namely:

- The consumer has desires, tastes and product preferences, direct aspects of the need for the product (sometimes expressed in the form of reasons, motivational impulses, images, attitudes, aspirations, etc.) that determine the psychological side of demand;
- The consumer has buying power, this representing the economic aspect of demand;
- The consumer has a willingness to buy, which is the volition aspect of action and decision-making.

The final demand for a product takes place when these three aspects are concurrently combined, and in the event that they are not cumulatively gathered, an incorrect commercial practice is admitted. The product's outlet as well as its user clients are studied by the organization's marketing sector. Between this function of the organization and the market / customers there is a continuous exchange of information, favored by the current technical means of communication .

## **2. BUSINESS ENVIRONMENT FACTORS**

As a dynamic and socio-economic system, the enterprise takes the resources from the external environment, inputs them into specific processes resulting in products, services or works that will be transferred to the same environment. The materials, components, assemblies and natural resources that the organization needs are extremely important elements that effectively participate in achieving the quality of the respective product and / or service. For this reason, a special emphasis is given to the relationship between the trader and the consumer, the new culture from the beginning of this century marking a real revolution in supply. In this search flow for optimum in this relationship, traders have been compelled to comply with quality requirements for delivered products or services, and subsequently, between consumers and them, they have established the basis of co-producers relationships or partners strongly involved in achieving the end product or work.

The main directions of such partnership relations generally address the following aspects:

- cooperation in designing new products and technologies;
- joint investments in research and development;
- sharing information on processes and products, but also on strategic issues;
- collaboration in redistribution of profits.

The factors of the traders' environment and their partnership therefore play a major role in establishing and achieving the objectives of a fair trade practice.

### **3.COMPETITION FACTORS**

The competitive environment and its factors must be observed in the context of today's free competition markets, world-wide, in the framework of which they manifest, as an ongoing challenge which they project on the product-making organization, as a fierce competition against it to occupy market segments. Competitive factors can manifest themselves under the following aspects:

- competition in relation to the manufacturing volume over a certain period of time;
- competition with reference to the development cycle of a new product;
- competition in maintaining and expanding product markets;
- competition in relation to product performance characteristics (technical, aesthetic, reliability and availability aspects, etc.);
- competition in terms of efficiency, turnover, manufacturing costs and profit of organizations of the same type;
- competition in access and availability to performing information and know-how;
- competition in obtaining the best suppliers;
- competition to improve and provide working conditions and staff salaries;
- competition in having the most competent and better-trained staff;
- competition in offering after-sales support services that offer customers more satisfaction than those provided by competing organizations;
- competing in offering certified products and services and well-known brands in terms of quality.

All these aspects highlight a fierce competition between organizations that produce the same products or services and require a profound knowledge of the competitive factors. In this sense, we have to see the concept of "orientation towards competition", which in many organizations comes to counterbalance the concept of "customer orientation". Competitive factors have, as seen above, a strong influence on trade practice and are significantly involved in setting its objectives .

### **4. LEGAL FACTORS**

Legal factors represent the totality of all legal regulations that directly or indirectly concern the business of the enterprise. The complexity of supplier-client relationships and the many litigations generated by functional deficiencies, non-conformities, damages, warranty interventions, third-party damages, etc. have led to the creation of a legislation that must be taken into account by any manufacturer aiming to achieve the quality expected by the customer. The elements that shape the legal framework of this environment are the laws and regulations on producer's responsibility (manufacturer's responsibility for product quality deficiencies and breach of warranty granted), the supplier's and the seller's responsibility. These regulations concern several aspects:

- a) regulation of product and / or service definition documents (technical specifications,

norms, technical rules);

- b) proper development of consumer products and / or services;
- c) properly informing consumers and accessing such information to allow selection;
- d) protection against the distribution of poor quality products as well as those affecting the lives, health and safety of consumers;
- e) protection against unfair business practices;
- f) organizing associations to protect the interests of consumers;
- g) liability for quality defects (negligence or defects), whether due to inappropriate manufacture, design or labeling;
- h) liability for the warranty period (through fast and free-of-charge supplier's intervention) and for the average duration of use (the period during which the safe use of the product and the provision of spare parts and service interventions must be guaranteed);
- i) liability for rewarding the buyer who loses the pleasure of using the product due to its damaging.

## **5. ECONOMIC FACTORS**

Economic factors have a decisive influence on the establishment and functioning of the organization producing goods or services. Thus, economic factors can be considered real levers through which the following macroeconomic context policies are manifested:

- employment policy (training and retraining, labour regulation, social issues);
- capital management policy (monetary control, fiscal control, industrial control - subsidies, facilities, social control, taxes, contributions, aids);
- economic goods management policy (budget, competition regulation, infrastructure insurance, foreign trade management, taxes, exchange rates, other facilities).

All these government macroeconomic policies are transmitted through the various structural components: ministry, departments, etc., manifested at the level of the organizations in its interface activities with the economic environment, but also within its internal activities, starting from the managerial function to operative functions. In this way the factors of the economic environment intervene in the activities involved in establishing and achieving the product quality objectives, influencing them strongly.

The objectives of the product and / or service quality with reference to the economic factors are then established, starting from the overlaps of the economic policies mentioned above, with the respective product and / or service quality dimensions.

## **6. CONSUMERS' EDUCATIONAL FACTORS**

The educational environment of the society in which the organization operates is manifested through the following aspects:

- education and training systems for consumers;
- the means, resources and funds allocated to the components of the education system;
- levels of organization of education and training systems;
- the degree of participation of consumers in the various forms of training and education.

Appropriate and continuous training of consumers in society represents a tool that is currently used by all the companies that have succeeded in affirming and achieving success, and the manner how this consumer education is achieved and its efficiency are closely linked to the educational environment of the society. The factors of the educational environment influence in an overwhelming manner the activities of the traders through the educational construction of their employees, thus putting their mark on the quality of the product and / or the service that they perform directly [2]. The partnership of the organization with the factors of the educational environment of the consumers is obvious and is manifested through the connection: training institutes - training and organization, a almost symbiotic form in the context of any human community today.

## **7. TECHNICAL AND TECHNOLOGICAL FACTORS**

These factors are mainly represented by the technical level of equipments, machines, machinery, facilities provided to enterprises in the country or abroad, the level of technologies used, the number and level of registered licenses and patents, the documentation and innovation capacity, etc. The technical, technological environment through all the specific factors influences the level of productivity, production cost, production quality, profit level; generally, the company's final economic results. Given the impact of scientific research results, these factors have an increasing influence due to the acceleration of the moral wear and tear of technologies, the reduction in the duration of application of knowledge in all areas of activity.

Analyzing the technical and technological endowment used by the enterprise compared to other enterprises in the country and abroad, with similar activity, it can be observed that it is situated at an equal, superior or inferior level. Technical or technological disparities that arise in such situations generate economic disparities between businesses, which in turn generate economic gaps between countries. An enterprise may have a higher technical, technological endowment than other firms in the external and domestic environments and still achieve a reduced efficiency and competitiveness if it has a poor performance management.

Here comes the important role of management, decision-making aimed at eliminating the unfavorable business disparities in order to increase its competitiveness. The consumer uses the information thus obtained to feed its reflections and reach a judgment on a product by processing information in a controlled reflection process or in semiautomatic processes that may be conscious or not. This perceptual activity has several characteristics [3, p.350], which are particularly significant for the marketing specialist. Perception is selective, therefore the individual operates the choice for stimuli, interpreting only those who are imposed by quality (intensity, difference) and those that correspond to a state of internal imbalance; perception is distorted, deformed by a series of factors such as: similarity, first impression, stereotyping; perception is subjective, on the same stimuli it may be different from one individual to another.

## **CONCLUSIONS**

According to European Commission regulations, agreements between different competing undertakings, which aim at fixing prices or sharing the market so that everyone can ensure a monopoly position, can be classified as infringements of the competition rules.

Anticompetitive agreements may be public or classified (i.e. cartels) concluded in writing or may be less formal (as "business-to-business agreements" or as decisions or regulations of professional associations). Businesses which are part of cartels are not exposed to competitive pressure, which forces economic operators to launch new products and propose consumers a better quality offer at competitive prices. As a result, consumers will pay more for lower quality.

In conclusion, competition policies stimulate entrepreneurship, provide consumers with a more diverse supply of goods and services, helping to increase their quality and, implicitly, lowering consumer prices. Benefits are thus created, directly or indirectly, for consumers. We believe that effective enforcement of competition rules leads to the development of a competitive culture and enables businesses to learn to respect both the consumer and the regulations in the field.

In the matter of abating unfair competition, civil liability prevails, as the practices that affect generally concern individual interests. In cases where practices that are detrimental to fair competition can have a significant impact on the overall economic environment and where public interest may be targeted, criminal or contravention liability also operates. Nothing prevents these types of liability from being applied cumulatively. Fair competition must be understood as a competition or a rivalry situation between companies pursuing simultaneously sales / profit / market share, competition in which honest practices, the principle of good faith and the interests of consumers are observed. A number of factors influence the competition, thus affecting the interests of consumers. Enterprises have an obligation to act in their trade relations in accordance with the established and applicable rules, in order to prevent the infringement of legitimate rights.

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