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CRECIUN ILIE

LEGAL MECHANISMS FOR COMBATING
ANTI-COMPETITIVE AGREEMENTS AND PROTECTING
COMPETITION IN THE LEGISLATION
OF THE REPUBLIC OF MOLDOVA

SUMMARY

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Author: _____ **Creciu Ilie**

Doctorate supervisor: _____ **Roșca Nicolae**
doctor of law, associate professor

Guidance committee: _____ **Băieșu Sergiu**
doctor of law, university professor

_____ **Cazac Octavian**
doctor of law, associate professor

_____ **Chiroșca Dorian**
doctor of law, associate professor

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The thesis was written at the Doctoral School of Legal Sciences, Moldova State University.

Author:

CRECIUN Ilie

Doctorate supervisor:

ROȘCA Nicolae, doctor of law, associate professor

Doctoral Commission:

*The President of the
Commission:*

SADOVEI Nicolae, Ph.D. in law, university professor

Doctorate supervisor:

ROȘCA Nicolae, doctor of law, associate professor

Official reviewers:

ALMĂȘAN Adriana, Ph.D. in law, university professor

BĂIEȘU Sergiu, doctor of law, university professor

BOLOGAN Dumitrița, doctor of law, university lector

*The Scientific Secretary of
the Commission:*

CEBOTARI Valentina, doctor of law, associate professor

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Author _____ CRECIUN Ilie

Scientific Secretary
of the Doctoral Commission _____ CEBOTARI Valentina
doctor of law, associate professor

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CONCEPTUAL RESEARCH GUIDELINES

The actuality of the research topic

The actuality of the research topic is conditioned by the issue and its importance for a certain field of activity, and the topic of the thesis is to analyze the legal mechanisms to combat anti-competitive agreements and determine the causes of low efficiency or inefficiency of their operation at this stage. We are going to find the answer to the questions: why are the current mechanisms not effective? What needs to be done to make them functional and efficient?

Anti-competitive agreements affect competition and pose an imminent danger to both real and potential competition, harming the interests of competitors, consumers and society. Therefore, as a result of these actions, the entrepreneurial freedom is affected, the economic situation of some companies worsens, prices rise and, finally, an economic effect of underdevelopment is reached. For a long time, anti-competitive acts were not considered current and were of no particular interest to the state authorities or to legal science. In recent years, however, the issues related to the institution of competition are becoming more acute. They are brought to public attention by consumers who have been deceived, by businesses that suffer as a result of anti-competitive actions, as well as by public authorities who cannot fail to notice their detrimental effects on the economy.

The topicality of the thesis is also conditioned by the rather long transition of the Republic of Moldova to the market economy, due to the failures of some reforms and the weakness of public institutions, which prevented the state from fully benefiting from the most important factors of the market economy: entrepreneurial freedom and fair competition.

The topicality of the research also owes to the huge gap in the national legal literature on the protection of competition in general, and that of mechanisms to combat anti-competitive agreements, in particular. Even if recently some research and doctoral theses have been carried out, they only tangentially examine the problems of anti-competitive agreements and the mechanisms for combating them.

Description of the research situation and identification of the research problem

Regulations on competitive actions in the Republic of Moldova appeared relatively recently, once the transition from the planned economy to the market economy took place, a transition process that began with the declaration of sovereignty and independence of the state - in the 90s of the twentieth century and continues to this day. The transposition of legal norms into practice raised a number of issues of interpretation and application that were considered not only by representatives of state authorities, but also by members of the academic community.

The doctrinal background of the Republic of Moldova, which has as an object the research of competition, in general, and the fight against anti-competitive agreements, in particular, is very modest and is in the process of completion. Several Moldovan authors, such as Roșca N., Baieș S., Volcinschi V., Cojocari E., Mărgineanu G., Mărgineanu L., Rusu V., Focșa G., Mihalache I. in their works dedicated to business law, tangentially approach the anti-competitive agreements and the mechanisms to combat them. Other local doctrinaires, including Brînză S., Stati V., Borodac A. analysed the composition of the crime „limiting free competition by concluding an anti-competitive agreement”, elucidating its components and signs in their scientific papers.

An important contribution to the supplementation of the local doctrine in the field of competition are the doctoral theses in law: „*Organizational and legal measures regarding entities carrying out anti-competitive practices*” written by Bulmaga Olga, „*Legal regulation of cartel agreements*” written by Bologan Dumitrița, „*Crimes in the field of competition (aspects of criminal law)*” elaborated by Timofei Sorin.

In countries with advanced economies, the doctrinal background is even richer in studies and analyses on the phenomenon of competition, anti-competitive agreements and measures to repress anti-competitive agreements. In this context, the European authors Stephan A., Pascal W., Cseres K., Schinkel M., Vogelaar F., Arhel P. and others can be mentioned. Undoubtedly, at an advanced level is the American doctrine as well, which distinguishes the works of authors Baker D., Hull G., Scott D. Hammond, who have thoroughly researched mechanisms to combat anti-competitive agreements and to protect competition.

With regard to Russian literature in the field of competition, among the scientists who have contributed to the in-depth study of anti-competitive agreements and their countermeasures are Pisenco C., Artiomev I., Suschevich A., Moscalenco A., Shastico A., Klepitskii I. etc.

Regarding the research issue, we mention that the central place of the thesis is dedicated to the theoretical analysis of legal mechanisms of civil, contravention and criminal nature to combat anti-competitive practices in the form of agreements, decisions of business associations and coordinated practices, in order to identify legal issues that appear in the application of the legislation and to elaborate proposals for overcoming or solving them. The author of the doctoral thesis was also concerned with modelling the system of legal mechanisms used to combat anti-competitive agreements and to protect competition, as well as with the scientific substantiation of each, in order to „arm” public authorities with the necessary tools to support public and private efforts in ensuring free competition.

In summary, we can specify that the scientific problem consists in elucidating and scientifically substantiating the legal mechanisms to combat anti-competitive agreements and to

protect competition, which determined the place and role of each legal mechanism, as well as submitting proposals to improve legal provisions, in order to create a fundamental theoretical basis and an adequate application of the identified legal mechanisms.

The purpose and objectives of the work

The purpose of the thesis is to analyse the legal regime of anti-competitive agreements in order to highlight the dysfunctions of the current mechanisms to combat such practices and to propose models of correct and uniform application of the law when examining the causes of determining agreements as being anti-competitive and, where appropriate, propose models of accountability. In case of law enforcement difficulties, actions will be proposed to modernize the legislation in order to create an efficient mechanism.

The purpose of the thesis is not only outlined by theoretical views, proposing to examine the practical aspects of legal combating mechanisms, both in terms of the experience of the Republic of Moldova, as well as that of other states or unions, such as: Romania, European Union, Russian Federation and the United States of America.

In order to achieve the intended goal, we set ourselves the following objectives:

- analysis of national competition law, including analysis in terms of comparison with other states;
- defining the notion, particularities and types of anti-competitive agreements, as well as elucidating their constituent elements;
- the scientific substantiation of the mechanisms for combating anti-competitive agreements and protecting competition;
- theoretical modelling of the application of the mechanisms for combating anti-competitive agreements and for protection of competition and submitting proposals for solving possible problems;
- identifying the causes of the inefficiency of the current mechanisms for combating anti-competitive agreements;
- research into the practice of enforcing competition law to suppress and prevent anti-competitive agreements;
- elaboration of recommendations for the application and improvement of national legislation in the field of anti-competitive agreements, as well as making the counteracting of these reprehensible acts more efficient.

The scientific research methodology

Pursuing the purpose of conducting a complex investigation of the researched topic and wanting to gradually achieve the objectives set, for the methodological basis of the thesis were

used the historical-legal method, the comparative method, the logical method (analysis and synthesis), the statistical method, etc.. Overall, these methods have made it possible to highlight the particularities of the mechanisms for combating anti-competitive agreements and to formulate proposals for streamlining the application of legal mechanisms for combating anti-competitive agreements and protecting competition.

Also, in the process of elaborating the thesis, the jurisprudence and doctrine were studied, both national and foreign. The particularity of the research object required a complex analysis of interdisciplinary issues, located at the intersection of jurisprudence, economics, sociology, history and philosophy.

The scientific novelty and originality of the thesis

The present thesis is one of the first complex researches of anti-competitive agreements as a kind of anti-competitive practice regulated in the national legislation and of the legal mechanisms to combat them. After the analysis of previous legislation, the direct object of the research is the Competition Law no. 183/2012¹ in which the lack of regulations necessary for an effective fight against anti-competitive actions has been shown.

The scientific novelty of the thesis consists in elaborating the theoretical foundations for combating anti-competitive agreements, which is manifested by elaborating the definition of anti-competitive agreements, determining the subjects that may be involved in committing such reprehensible acts, and classifying anti-competitive agreements. Also, in the thesis were elaborated proposals to modernize the legislation in the field of research.

The thesis addresses, in a complex way, the anti-competitive agreements and the legal mechanisms to combat them. This topic is revealed fragmentarily in the studies dedicated to competition, which does not correspond to the topicality of this issue. The paper reflects a multilateral analysis of the content of legal norms in the branches of competition law, civil and criminal, in order to identify and characterize the legal mechanisms to combat anti-competitive agreements, including highlighting gaps and divergences.

The theoretical significance of the paper

At a theoretical level, the thesis reveals explanations, interpretations and clarifications of the concepts approached, existing situations and possible scenarios for the development of certain processes, as well as solutions to the problems identified. The results of the research conducted can be useful in the process of developing future scientific papers in the field of anti-competitive agreements, as well as in the field of protection of competition, in general. The research results

¹ Legea concurenței nr. 183 din 11.07.2012. În: Monitorul Oficial nr. 193-197 din 14.09.2012.

can be used by teachers to prepare the business law course, the special courses on competition protection, as well as serving as a source of study to undergraduates, graduates and doctoral students.

The applicative value of the paper

The applicative value of the paper is determined by the fact that the conclusions, *de lege ferenda* proposals and suggestions presented can be used in the process of improving existing legislation and improving the work of public authorities involved in implementing mechanisms to combat anti-competitive agreements and to protect competition. A number of conclusions and recommendations address specific public authorities, such as the Competition Council and the courts. At the same time, the thesis represents a special practical value for the potential claimants in civil actions for damages following the negative effects of the anti-competitive agreements.

The main scientific results submitted for support

1. The legal mechanisms for combating anti-competitive agreements and protecting competition in national law are identified: mechanisms regulated by civil law (restriction of contractual freedom, nullity of anti-competitive agreements and tortious civil liability) and mechanisms regulated by competition law (enforcement of contravention and criminal liability, as well as leniency policy);
2. In connection with the identification of the nominated mechanisms, their characteristics, modalities of action, implementation problems are explained; reference was made to the practice of other states, especially that of the European Union, etc.;
3. The theoretical foundations necessary for the analysis of the mechanisms for combating anti-competitive agreements are laid out. In this regard, the significance of anti-competitive agreements and the enterprise as a typical subject of competition law was explained;
4. The scientific results are materialized in 5 *de lege ferenda* proposals and 2 recommendations for improving the activity of public authorities.

Implementation of scientific results

The scientific results of the thesis complement the local doctrinal background and can be used to improve the work of public authorities responsible for the application of mechanisms to combat anti-competitive agreements and to protect competition. At the same time, the scientific results are useful for the „Competition Law” course taught in higher education institutions, as well as for the activity of lawyers, judges, etc. Moreover, the scientific results obtained following the elaboration of the doctoral thesis can be used as a basis for new scientific research, both for the author of the thesis himself and for other interested persons.

Approval of results

The thesis was developed within the Doctoral School of Legal Sciences of the Moldova State University. The research results were approved by the Guidance Committee of the Doctoral School and the Department of Private Law of the Moldova State University.

Thesis publications - 15 publications.

The volume and structure of the thesis

The thesis consists of an introduction, 4 chapters, conclusions and recommendations, a bibliography of 281 titles, 2 annexes, 212 pages of main text.

Keywords: competition, anti-competitive agreement, enterprise, business association, concerted practice, cartel, combating, liability, fine, leniency policy.

CONTENT OF THE THESIS

Chapter 1. Analysis of the situation in the field of legal mechanisms to combat anti-competitive agreements and protect competition

This chapter is dedicated to the analysis of the situation of scientific research in the field, the identification of the scientific problem and the formulation of research objectives.

In section 1.1 entitled *Analysis of the situation of scientific research in the field of legal mechanisms to combat anti-competitive agreements and to protect competition*, the thesis focuses primarily on the doctrinal background of the Republic of Moldova, which is modest and in the process of being completed, when it comes to scientific research on competition in general, and the fight against anti-competitive agreements, in particular. Moldovan authors, such as Roșca N. and Baieș S., the work *Business Law*²; Volcinschi V. and Cojocari E. the work *Economic Law*³; Mărgineanu G. and Mărgineanu L. the work *Business Law*⁴; Rusu V. and Focșa G. the work *Commercial Law Course*⁵; Mihalache I. the work *Business Law: Course Notes*⁶ focused on competition law and only tangentially focused on anti-competitive agreements and mechanisms to combat them. The topic of competition is not the main object of study in the works mentioned, but is treated more as an obligation imposed on companies.

In 2014, a paper was elaborated and printed, which represents course notes in the field of competition law, being one of the first attempts in this field. The paper is *Competition Law*, by

² Roșca N., Baieș S., *Dreptul Afacerilor. Ediția a IV-a*. Chișinău: CEP USM, 2021.

³ Volcinschi V., Cojocari E., *Drept economic*. Chișinău: Universitatea de Stat din Moldova, 2006.

⁴ Mărgineanu G., Mărgineanu L., *Dreptul afacerilor*. Chișinău: Elena-V.I., 2004.

⁵ Rusu V., Focșă G., *Curs de drept comercial*. Chișinău: Departamentul editorial poligrafic al Academiei de Studii Economice din Moldova, 2006.

⁶ Mihalache I., *Dreptul afacerilor: Note de curs*. Chișinău: Print Caro, 2015.

author Bologan D.⁷, which, however, expresses a general approach to the whole subject of competition law in the light of the legislation of the Republic of Moldova.

Relevant to our study are also the scientific works in the criminal field. Thus, the local doctrinaires Brînză S. and Stati V.⁸; Borodac A.⁹ analyzed the composition of the offense provided for in Article 246 of the Criminal Code „restricting free competition by concluding an anti-competitive agreement” and elucidated its elements and signs.

A special contribution to the national competitive legal literature is the doctoral theses in law, such as: *Organizational and legal measures regarding entities that carry out anti-competitive practices*¹⁰, developed by Bulmaga O., *Legal regulation of cartel agreements*¹¹ developed by Bologan D. and *Competition offenses (criminal law aspects)*¹², prepared by Timofei S.

In order to achieve the proposed objectives, we have extended the area of scientific research to the contributions of authors from other states. In this sense, are relevant the memorable works from Romania by Professor Căpățină O. (*Commercial Competition Law. Pathological Competition. Monopolism*¹³), by Professor Eminescu Y. (*Unfair Competition. Romanian and Comparative Law*¹⁴), by author Manolache O. (*Legal system of competition in Community law*¹⁵) and others. More recent works of Romanian authors can be mentioned in this list, as well: *Competition law - Comments and explanations*¹⁶ by author Butacu C., *Competition law*¹⁷ by author Dumitru M., *European competition law*¹⁸ by authors Sandu F. and Bălășoiu A., etc.

In the process of elaborating the thesis, the research and opinions of foreign authors were of interest: the German professor Basedow J.¹⁹; French competition law expert Arhel P.²⁰; Professor of Competition Law course in the UK, Stephan A.²¹; Swiss lawyer and mediator Pascal W.²²;

⁷ Bologan D., *Dreptul concurenței. Note de curs*. Chișinău: s.n., 2014.

⁸ Brînză S., Stati V., *Tratat de drept penal. Partea Specială, vol. II*. Chișinău: Tipografia Centrală, 2015.

⁹ Borodac A., *Manual de drept penal. Partea Specială*. Chișinău: Tipografia Centrală, 2004.

¹⁰ Bulmaga O., *Măsurile organizatorico-juridice în privința entităților ce desfășoară practici anticoncurențiale / Teză de doctor în drept*. Chișinău, 2014.

¹¹ Bologan D., *Reglementarea juridică a înțelegerilor de cartel / Teză de doctor în drept*. Chișinău, 2016.

¹² Timofei S., *Infracțiuni în domeniul concurenței (aspecte de drept penal) / Teză de doctor în drept*. Chișinău, 2011.

¹³ Căpățină O., *Dreptul Concurenței comerciale. Concurența patologică. Monopolismul*. București: Lumina Lex, 1993.

¹⁴ Eminescu Y., *Concurența neleală. Drept român și comparat*. București: Lumina Lex, 1995.

¹⁵ Manolache O., *Regimul juridic al concurenței în dreptul comunitar*. București: ALL Educational, 1997.

¹⁶ Butacu C., *Legislația concurenței – Comentarii și explicații*. București: All Beck, 2005.

¹⁷ Dumitru M., *Dreptul concurenței*. Iași: Institutul European, 2011, pag. 159-169.

¹⁸ Sandu F., Bălășoiu A., *Dreptul European al concurenței*. București: Universul Juridic, 2017.

¹⁹ Basedow J., *Private enforcement of EC competition law*. Olanda: Kluwer law international, 2007, pag. 2

Disponibil: www.books.google.md

²⁰ Arhel P., *Pratiques anticoncurrentielles: injonctions et sanctions*. Paris: Dalloz, 2020.

²¹ Stephan A., *Cartels*. În: Handbook on European Competition Law, 2013, pag. 217-241.

²² Pascal W., *Imprisonment for Hard Core Cartel Participation: A Sanction with Considerable Potential*. În: Bond Law Review, Volumul 28, ediția 2, 2016, pag. 89-113. Disponibil: <http://classic.austlii.edu.au/au/journals/BondLawRw/2016/5.html>

English authors Cseres K., Schinkel M. and Vogelaar F.²³; American authors Baker D.²⁴, Hull G.²⁵, Scott D. Hammond²⁶; the Russian Federation professors Pisenco C.²⁷ and Şastico A.²⁸, head of the Federal Antimonopoly Service of Russia Artiomev I.²⁹, author Moscalenco A.³⁰, etc..

Section *1.2 The identification of the scientific problem and the formulation of the research objectives* is dedicated to the exposition of the scientific problem that is proposed to be solved as a result of the elaboration of the thesis and the presentation of the research objectives. Summarizing the analysis in this section, we can specify that the **scientific problem** consists in elucidating and scientifically substantiating the legal mechanisms to combat anti-competitive agreements and to protect competition, which determined the place and role of each legal mechanism, as well as submitting proposals to improve legal provisions, in order to create a fundamental theoretical basis and apply the identified legal mechanisms accordingly.

The dimensions of the investigated problem circumscribe theoretical and practical aspects of combating anti-competitive agreements and protecting protection. Thus, in order to carry out a comprehensive study and to solve the identified scientific problem, the following research objectives are presented:

- analysis of national competition law, including the comparison with the laws other states;
- defining the notion, particularities and types of anti-competitive agreements, as well as elucidating their constituent elements;
- the scientific substantiation of the mechanisms for combating anti-competitive agreements and protecting competition;

²³ Cseres K., Schinkel M. și Vogelaar F., *Criminalization of Competition law enforcement. Economic and legal implications for the EU member states*. Cornwall, UK: Edward Elgar Publishing, 2006, pag. 10. Disponibil: www.books.google.md

²⁴ Baker D., *Trying to use criminal law and incarceration to punish participants and deter cartels raises some broad political and social questions in Europe*. În: European Competition Law Annual. Hart Publishing, 2014, pag. 41-61.

²⁵ Gary Hull, *The abolition of antitrust*. În traducerea: Некипелов А. Д., *Об отмене антимонопольного законодательства в США*. Moscova: Эком Паблишерз, 2008.

²⁶ Scott D. Hammond, *Cornerstones of an effective leniency program*. ICN Workshop on Leniency Programs Sydney, Australia, 2004, pag. 6-19. Disponibil: <https://www.justice.gov/atr/speech/cornerstones-effective-leniency-program>

²⁷ Писенко К. А., *Развитие антимонопольного права: от механизмов противодействия локальным спекулятивным монополиям до современной системы антимонопольного регулирования*. Editura Российский университет дружбы народов, Moscova, 2010.

²⁸ Шаститко А., *Экономические аспекты ослабления наказания за нарушение антимонопольного законодательства*. În: Вопросы экономики, nr. 8, 2007, pag. 68-69.

²⁹ Артемьев И. Ю., Сушкевич А. Г. *Et al.*, *Конкурентное право России*. Moscova: Высшая школа экономики, 2014, pag. 118-119.

³⁰ Москаленко А., *Методы противодействия антиконкурентным соглашениям*. Publicat la 13.03.2017. Disponibil: https://www.zakon.kz/4848529-metody-protivodejstvija.html#_ftnref5

- theoretical modelling of the application of mechanisms to combat anti-competitive agreements and protect competition and submission of proposals for resolving possible problems;
- identifying the causes of the inefficiency of the current mechanisms for combating anti-competitive agreements;
- research into the practice of enforcing competition law to suppress and prevent anti-competitive agreements;
- research into methods of combating anti-competitive agreements and combating mechanisms in the European Union, with the elaboration of conclusions and recommendations for the national legislator;
- developing recommendations for the application and improvement of national legislation in the field of anti-competitive agreements, as well as streamlining their enforcement.

Chapter 2. Theoretical foundations regarding legal regulation of the enterprise and of anti-competitive agreements

This chapter has an introductory character and includes the elucidation of the fundamental elements necessary to study the mechanisms for combating anti-competitive agreements and for protecting competition.

Section *2.1 The enterprise as a typical subject of competition law* highlights the main characteristics of the „enterprise”, which is a special concept for competition law. Although the notion of enterprise can be identified in several national normative acts, however, when examining competition cases, the definition offered by the Competition Law will be relevant, because according to Article 4 of the respective law, the notions defined by the Competition Law are autonomous to the field of competition. According to the mentioned Article, an enterprise is any entity, including a business association, engaged in economic activity, regardless of its legal status and the way in which it is financed. The same article stipulates that economic activity is any activity that consists in offering products on a certain market, and products are those goods, works, services, intended for sale, exchange or other ways of including them in the civil circuit.

As far as we are concerned, we consider that the enterprise is any organizational structure supported by a set of human and material resources, with or without legal personality, with or without profit, but with sufficient autonomy to act on its own initiative, including the natural person, liable to enter into competitive relations with other similar structures, involved in an activity from which financial or material resources can be obtained.

This section of the thesis uses several references to the practice of the European Union and the practice of the Competition Council in which certain subjects of law were assessed as being or

not enterprises within the sense of competition law. Thus, in the European Union were qualified as enterprises: the German Federal Labour Office³¹; members of the liberal professions³², non-profit legal persons³³, legal persons together with their subsidiaries (parent company together with the subsidiary companies)³⁴. Activities strictly fulfilling a social function or those performed in the exercise of public authority were excluded from the scope of the notion of „economic activity” in the jurisprudence of the Court of Justice of the European Union³⁵.

In the practice of the Competition Council, a decision has been identified in which the issue of qualifying an entity as an enterprise in a case of unfair competition is addressed. In accordance with the Decision of 02.07.2015³⁶, the organizations of collective management of copyright were categorized as enterprises, which were public associations with main activity - the management on collective principles of the patrimonial copyrights.

Section **2.2 Legal nature and types of anti-competitive agreements** reveals the analysis of anti-competitive agreements and the ways in which they are implemented. The foundation of the national concept of an anti-competitive agreement is found in Article 5 of the Competition Law. Although it is not expressly defined, the notion of the anti-competitive agreement can be deduced from the provisions of Article 5 Paragraph (1) of the Competition Law, which prohibits, without the need for a prior decision to that effect, any agreements between enterprises or business associations, any decisions of business associations and any concerted practices which have as their object or effect the hindering, restriction or distortion of competition on the market of the Republic of Moldova or on a part of it.

The analysis of the invoked legal provision allows to highlight that the concept of the anti-competitive agreement is a generic notion and integrates as component parts the agreements,

³¹ Hotărârea CJUE din 23.04.1991, cauza nr. C-41/90, Klaus Höfner și Fritz Elser contra Macrotron GmbH. Disponibil: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61990CJ0041>, în română <http://ier.gov.ro/wp-content/uploads/rezumate-cjue/61990J0041.pdf>

³² Hotărârea CJUE din 18.06.1998, Cauza nr. C-35/96, Comisia Comunităților Europene împotriva Republicii Italiene. Disponibil: <http://ier.gov.ro/wp-content/uploads/rezumate-cjue/61996J0035.pdf>

³³ Hotărârea CJUE din 01.07.2008, Cauza nr. C-49/07, Motosykletistiki Omospondia Ellados NPID (MOTOE) împotriva Elliniko Dimosio. Disponibil:

<http://curia.europa.eu/juris/celex.jsf?celex=62007CJ0049&lang1=en&type=TEXT&ancre=>

³⁴ Hotărârea CJUE din 12.12.2007, Cazul nr. T-112/05, Akzo Nobel NV și alții contra Comisiei Comunităților Europene. Disponibil <http://curia.europa.eu/juris/document/document.jsf?text=&docid=71532&pageIndex=0&doclang=RO&mode=lst&dir=&occ=first&part=1&cid=5822679>

³⁵ Hotărârea CJUE din 19.01.1994, Cazul nr. 364/92, SAT Fluggesellschaft mbH împotriva Eurocontrol. Disponibil: <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=98685&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4995194>

³⁶ Decizia Plenului Consiliului Concurenței nr. CN-45 din 02.07.2015. Disponibil: <https://competition.md/public/files/uploads/decizii/Decizie%20nr.%20CN-45%20din%2002.07.2015.pdf>

decisions of business associations and the concerted practices, if these have as their object or effect the hindering, restriction or distortion of competition.

In the absence of legal benchmarks, we mention that by **hindering competition** is meant any barrier to entry into a particular market. Although access to the market, according to the law, is free, an anti-competitive agreement may impose certain restrictions, conditions or limitations on market entry for other participants in the economic circuit. **Restriction of competition** concerns the behaviour of companies already operating in a given market. Competition can be restricted by the effect of an anti-competitive agreement which creates obstacles that make it impossible for businesses to expand. **Distortion of competition** is the interference of enterprises in the competitive environment in a reprehensible manner such as to erode loyalty and freedom of competition. In this case, the competition rules no longer have effect, being replaced by the rules established by the anti-competitive agreement. The most eloquent example of this is the concerted participation in tenders or other forms of competition.

The first form of anti-competitive agreements are the agreements. Following the synthesis of doctrinal opinions and judicial practice, we consider that the agreement (as a kind of anti-competitive agreement) is a communion of wills/ideas of two or more independent companies in the same market regarding their behaviour on the market and manifested by a written or oral agreement. What is important is that the agreement between the enterprises is not a mere coincidence, but presupposes the existence of a link, which necessarily involves contact or communication between their representatives.

In this section it can be noted that the notion of agreement corresponds to the legal definitions of *legal act*³⁷ and *contract*³⁸. However, although the similarity between the meaning of the notion of *agreement* in the Competition Law (art. 4)³⁹ and the notions of *legal act* and *contract* in the Civil Code is obvious, there are differences between them:

- (1) As a rule, the legal act and the contract have a public character as opposed to an agreement, which has, as a rule, a clandestine and secret character.
- (2) At the conclusion of the contract, the parties rely on good faith, but also on the possibility of state intervention in enforcing the obligations, while at the conclusion of the agreement the parties do not rely on the support of state authorities, but rely on mutual trust.

³⁷ „Civil legal act is the manifestation by natural and legal persons of the will aimed at the birth, modification or extinguishment of civil rights and obligations” (art. 308 paragraph (1) of the Civil Code).

³⁸ „Contract is the agreement of will made between two or more persons by which legal relations are established, amended or extinguished” (art. 992 paragraph (1) of the Civil Code).

³⁹ Agreement – „any form (verbal or written) of the expression of a common will regarding the behaviour on the market, expressed by two or more independent enterprises”.

- (3) Usually, in contracts, the parties pursue their own interests, different from each other, but in the case of an agreement, the parties pursue the same goal—to obtain a property advantage due to the decrease in the level of rivalry between them.
- (4) The legal act and the contract generate legal effects for the signatories, but an agreement may not generate legal effects.
- (5) The conditions of validity of the legal act regulated by the Civil Code do not affect the agreements, as the agreements *ab initio* are struck by absolute nullity, because they contravene an imperative legal provision, namely Article 5 paragraph (1) of the Competition Law.

The thesis reveals that the Competition Council identified and sanctioned agreements between companies that were qualified as contrary to free competition. Thus, according to the Decision of the Plenum of the Competition Council no. DA-45 of 28.09.2017⁴⁰, the existence of an agreement between 8 enterprises that managed exchange offices was found. It follows from the said decision that the violation of the law occurred as a result of setting the price for the sale-purchase of foreign currency (EURO and US dollars) in cash in relation to individuals.

In accordance with the information in the mentioned decision, it can be noted that the competition authority initially investigated the case in the light of the existence of a concerted practice, given the similarity of the exchange rate of the companies for a certain period of time. However, during the investigation it was found that there was communication between competitors regarding the behaviour on the market, they met periodically, and their meetings were followed by the display on the information board of the identical exchange rate. Therefore, the latter aspect qualifies the anti-competitive agreement as an agreement, and not a concerted practice.

The second form of implementation of anti-competitive agreements are the decisions of business associations. The business association is a non-commercial organization formed voluntarily by two or more enterprises in the manner provided by law, regardless of the legal form of the organization, the type of its financing, the way decisions are made, their mandatory or optional nature, as well as the public nature of the functions they perform. Following the analysis of the national normative framework, the thesis states that the cooperative, the holding company, the concern, the financial-industrial groups are business associations, but their decisions will not be examined in view of the interdiction established in Article 5 paragraph (1) of the Competition Law, because cooperatives are commercial organizations and the other mentioned associations are formed of dependent enterprises, which are controlled by the same person or group of persons. In

⁴⁰ Decizia Plenului Consiliului Concurenței nr. DA-45 din 28.09.2017. Disponibil: <https://competition.md/public/files/CSV-neconfidentiald533f.pdf>

the Republic of Moldova, the most common business associations that are of interest for our study are employers' associations and legal entities.

The business associations in their activity adopt decisions for the achievement of the statutory objectives that must be respected by the members. The problem that may arise in this regard is that some provisions of those decisions may be likely to influence the behaviour of member businesses on the market and, respectively, to generate the risk of hindering, restricting or distorting competition. The decisions of the business associations refer to the acts of collective will that emanate from the competent body of a professional group. According to the Romanian author Cosmovici⁴¹, there are three elements to characterize a decision of the business association: the common interest of the members for coordinated behaviours; imperative terms of coordination; the fact that the recommendation falls within the competence of the association as defined in its statute. As far as we are concerned, we are of the opinion that the decision of the business association represents the manifestation of the will of two or more companies, made through the governing bodies of their association, by virtue of the mandate offered in this regard, regardless of the form of organization of the association and the acts adopted. In other words, the companies participate in a mediated agreement, where the association has the right of veto. Unlike an agreement between enterprises, which is an act resulting from a competition of individual wills, the decision of the business association is an act of collective will, emanating from the competent body of a professional group.

This section presents a case study of the Competition Council in which the violation of the Competition Law was suspected after a decision of a business association, but no existence of violation was not found. According to Decision no. DA-40 of 01.08.2016⁴², an investigation was initiated regarding the existence of grounds that 2 associations of bakery enterprises in the Republic of Moldova issued decisions on raising the prices of bread by the associated enterprises. In this case, the president of the Association of Bakers of the Republic of Moldova (ABRM), on 13.08.2015, issued a press release according to which ABRM and the Union of Legal Entities „National Association of Bakery and Milling Industries” (UPJANIPM) will increase the prices of bread and bakery products by an average of 15%. However, the Competition Council did not find a violation of the legal norms because no evidence was identified that would confirm the manifestation of the common will regarding the price increase of ABRM and UPJANIPM

⁴¹ Cosmovici P. M., Munteanu R., *Dreptul European al Concurenței: Înțelegerea între întreprinderi. Reguli generale*. București: Editura Academiei Române, 2001, pag. 230.

⁴² Decizia Plenului Consiliului Concurenței nr. DA-40 din 01.08.2016. Disponibil: <https://competition.md/public/files/Decizia-nr-DA-40-din-01082016vn08ba8.pdf>

members, and the ABRM President did not coordinate the press release with ABRM and UPJANIPM members and did not inform them of his intention to issue a statement aimed at raising the price of bread.

Therefore, it was found that the mere statement of the head of the business association, not based on prior coordination with the members of the association or other governing bodies of the association regarding the behavior of all members in the market, is not a solid reason to establish the existence of an anti-competitive agreement. Thus, in the present case, the president of the association is an executive body, which has the task of organizing the execution of the decisions of the general assembly of members, and the lack of a relevant decision cannot be replaced by the unilateral declaration of the president of the association.

The third form of implementation of anti-competitive agreements is concerted practices, which are a way of coordinating actions between independent enterprises and/or independent groups of enterprises, whereby practical cooperation between them intentionally replaces the risks of competition without there being an agreement between the enterprises or the groups of enterprises. Practical coordination or cooperation which may lead to the finding of a concerted practice on the market may take various forms and does not always require the existence of a coordination plan between the enterprises. Both in the legal literature⁴³ and in the jurisprudence of the European Union⁴⁴ was determined that parallel pricing in a market, in the absence of justifications due to the oligopolistic nature of the markets, can be considered a concerted practice. It was thus noted that, in markets with normal conditions of competition, it is less likely for companies to set prices at the same level, in the absence of a secret agreement, due to differences in the cost structure borne by each company. The exchange of statistical data and general information, the mutual communication of prices and quantities sold, the conditions of payment and delivery between enterprises, customer identification data, etc.⁴⁵ contribute to the realization of concerted practices.

At the same time, the Romanian authors, based on European jurisprudence, noted that the concerted practice is a form of coordination between at least two companies that, without reaching the stage of understanding, seeks to replace competitive risks by practical cooperation between

⁴³ Lazăr I., *Dreptul Uniunii Europene în domeniul concurenței*. București: Universul Juridic, 2017, pag. 165.

⁴⁴ Hotărârea CJUE din 24.10.1991, cauza nr. T-1/89, Rhone Poulenc SA împotriva Comisie Comunităților Europene. Disponibil: <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=104842&pageIndex=0&doclang=fr&mode=lst&dir=&occ=fir&part=1&cid=23327964>

⁴⁵ Lazăr I., *Dreptul Uniunii Europene în domeniul concurenței*. București: Universul Juridic, 2017, pag. 165.

them, leading to conditions of artificial competition on the market, given the nature of the products, the importance and number of enterprises and the size and nature of the market⁴⁶.

With regard to the concerted practices, in the case⁴⁷ concerning the conduct of 5 mobile operators in the Netherlands, the Court of Justice of the European Union noted that, although it is true that parallel conduct of competing enterprises is not necessarily explained by a concerted practice that violates competition, the exchange of information must be considered to have an anti-competitive aim, which may remove the uncertainty of the persons concerned as to the date, scope and arrangements for the concerned enterprise to implement them. The exchange of information between competitors has an anti-competitive aim when it can eliminate the uncertainties related to the behavior of the companies concerned.

Therefore, we can deduce that concerted practices have the lowest degree of intensity in reaching an agreement between companies. It can even be said that this form of anti-competitive agreement does not imply an understanding or a compatibility of wills of the companies. The important element for characterizing the concerted practice is that information about the strategic activity of one competitor is possessed by another competitor.

In this context, we consider that the concerted practice is a form of coordination of conduct between independent, competing enterprises, without being based on an agreement, the cooperation between them intentionally substituting the risks related to the free competitive environment.

Following the analysis of the practice of the Competition Council, the most recent Decision of 26.03.2021⁴⁸ is notable, which found a concerted practice of establishing sales prices for the marketing of phytosanitary products and fertilizers on the territory of the Republic of Moldova between 4 companies lasted during the years 2015-2020. In the present case, continuous contact and communication by e-mail between the independent enterprises was found, as well as identical prices for phytosanitary products and fertilizers of the „Bayer” and „Belchim” brands. The content of the e-mails consisted in the fact that the enterprises communicated information on list prices, trade surcharge, average gross profit margin, average gross profitability, and other trading

⁴⁶ Sandu F., Bălășoiu A., *Dreptul european al concurenței. Note de curs. Practică judiciară*. București: Universul Juridic, 2017, pag. 79.

⁴⁷ Hotărârea CJUE din 04.06.2009, cauza nr. C-8/08, T-Mobile Netherlands BV și alții contra Raad van bestuur van de Nederlandse Mededingingsautoriteit. Disponibil: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=74817&pageIndex=0&doclang=RO&mode=lst&it=&occ=first&part=1&cid=974902>

⁴⁸ Decizia Plenului Consiliului Concurenței nr. DA-22/20-09 din 26.03.2021. Disponibil: <https://competition.md/decizieview.php?l=ro&idc=64&id=7161&t=/Transparenta/Decizii/Decizia-Plenului-Consiliului-Concurenței-nr-DA-2220-09-din-26032021>

conditions which they intended to adopt in order to align the price policy and to avoid the risks of changing conditions of competition. Until the above-mentioned Decision, during the period 2012-2019 in the national practice no cases of anti-competitive agreements in the form of concerted practices were identified. At the same time, it was observed that the decisions of the Plenum of the Competition Council, on cases of anti-competitive agreements, do not expressly indicate the form in which an anti-competitive agreement is made in practice, noting the tendency to no longer rigorously distinguish the 3 forms of agreements provided by the Competition Law. Aware of the complexity of the cases, we consider it necessary to assess the facts of the enterprises and to classify them in a concrete form in which the infringement was committed, in order to reflect all the constituent elements of the infringement.

Following the exposition of all the ways to achieve the anti-competitive agreement (agreement, decision of the business association and concerted practice) we came to the conclusion that these are forms of collusion that have the same nature and are distinguished only by their intensity and the forms in which they manifest themselves. The agreement is a reflection of the most intense level of arrangement, when a communion of wills of companies aimed at distorting competition is achieved. The decision of the business association implies a more modest intensity of arrangement, the decisions being taken by the bodies of the association, and not by the companies. The concerted practice does not involve an agreement between the enterprises nor the conclusion of an agreement of will, and implies a deliberate coordination of the conduct of the enterprises which intentionally affects the competitive environment.

Despite the major risks that anti-competitive agreements may generate, however, the Competition Law no. 183/2012 establishes two types of agreements exempted from the legal prohibition and, respectively, from the application of the mechanisms for combating anti-competitive agreements. These agreements are those that ensure an advantage of public interest (art. 6) and those that are of minor importance (art. 8), therefore, the combating mechanisms analyzed in the doctoral thesis do not refer to these types of anti-competitive agreements.

Section 2.3, entitled *A brief evolution of the regulations in the field of anti-competitive agreements, in general, and of the legal mechanisms for combating them, in particular*, reveals the evolution of the regulation of anti-competitive agreements and mechanisms for combating them. In this sense, the historical account begins with the situation in ancient Rome, where Julius' Law on Food⁴⁹ established punishment for those who collectively correlated the prices in order to

⁴⁹ Писенко К. А., *Развитие антимонопольного права: от механизмов противодействия локальным спекулятивным монополиям до современной системы антимонопольного регулирования*. Москва: Российский университет дружбы народов, 2010, pag. 113.

make them higher. A specific historical stage for the approached topic was in the Middle Ages in the states of the European continent, because at the beginning the commercial relations were regulated through the prism of the corporatist system and of the guilds. The form of organization of the guilds and their internal rules (later statutes) are comparable to today's horizontal anti-competitive agreements. Guilds established the prices, the stocks of goods, the geographic markets, controlled the production and realization of goods and more. However, towards the end of this stage, elements specific to a free competitive environment were noted: individual craftsmen began to oppose the guilds, and the English courts annulled the exclusive commercial rights of some personalities.

A major historical leap in the fight against anti-competitive agreements occurred in the United States, where in 1890 Sherman's Law was adopted. This law proclaimed as crimes: the establishment of a monopoly, the restriction of trade, the creation of a business union and conspiracy for these purposes. In addition to fines, the act also provided for a criminal penalty in the form of deprivation of liberty for up to 10 years for concluding anti-competitive agreements. A substantial element, which was contained in the speech of the American Senator John Sherman in support of the above-mentioned act, was the following: „If we will not endure a king as a political power, we should not endure a king over the production, transportation, and sale of any of the necessaries of life”.⁵⁰

On the European continent, at the beginning of the 20th century, anti-competitive agreements, in particular, cartels were frequently encountered. Until the beginning of the First World War, many industries were monopolized by cartels, due to the fact that the authorities were impassive towards them. In order to study the problem of cartels, special parliamentary and governmental committees have been set up in many European countries. The common view of European states and the political elite on the necessary nature of cartel legislation, which has determined the conceptual vector of its future development, found its expression in the Resolution of the 26th Conference of the Interparliamentary Union in London, in 1930. According to it, „Cartels, trusts and other analogous unions represent a natural phenomenon in economic life, in relation to which it is impossible to take a completely negative attitude. However, given that such unions can have adverse effects on both public and state interests, they must be controlled. This

⁵⁰ Gary Hull, *The abolition of antitrust*. În traducerea: Некипелов А. Д., *Об отмене антимонопольного законодательства в США*. Moscova: Эком Паблишерз, 2008, pag. 53.

control must not take the form of such an intervention in economic life, as could affect its normal development. It must only be a check on possible abuses and prevent such abuses”⁵¹.

Following the adoption of the aforementioned Resolution, in the period before the Second World War, only a few states adopted antitrust regulations: the Netherlands, Denmark and Belgium. In other European states, until the beginning of the war, governments instead of limiting the activity of cartels, on the contrary, contributed to their creation and development. After the Second World War, there was an intensification of competitive regulation in Western European countries. The states of Eastern Europe, under the influence of communist ideology, built an economic system in which the dominant economic entity was the state monopoly.

As regards the European Union, the first document that laid the foundations for the process of economic integration, as well as regulating the practices in the field of steel, coal and concentrations, was the Treaty establishing the European Coal and Steel Community, in 1951. The pro-competitive norms of this Treaty were also incorporated into the 1957 Treaty establishing the European Economic Community. The regulation of anti-competitive practices was based on the principle that action must be taken in such a way that „*competition in the common market is not distorted*”. Those provisions concern the European Commission's control over restrictive arrangements or cartels, the abusive exercise of a dominant position on the market and control over the granting of state aid⁵². Subsequently, concrete regulations on anti-competitive agreements were adopted. Currently, Article 101 paragraph (1) of the TFEU⁵³ prohibits all agreements between enterprises, all decisions of business associations and all concerted practices which may affect trade between the countries of the European Union and which have as their object or effect the hindering, restriction or distortion of competition. By way of derogation from this rule, Article 101 (3) TFEU provides that the prohibition referred to in Article 101 (1) may be declared inapplicable to all agreements which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while providing consumers with a fair share of the benefit obtained and that do not impose on the enterprises concerned restrictions which are

⁵¹ *Resolutions, Twenty-sixth Conference Interparliamentary Union, London, July 16-22, 1930*. În: Advocate of Peace through Justice, November 1930, vol. 92, nr. 4, pag. 269. Disponibil:

https://www.jstor.org/stable/20681503?seq=1#page_scan_tab_contents

⁵² *Politica în domeniul concurenței în Uniunea Europeană*. Publicat la 04.11.2003. Disponibil: http://beta.ier.ro/documente/formare/Politica_concurenta.pdf, pag. 5.

⁵³ *Tratatul privind Funcționarea Uniunii Europene din 25.03.1957*. În: Jurnalul Oficial al Uniunii Europene nr. C 326 din 26.10.2012 (versiunea consolidată).

not indispensable to the attainment of those objectives and do not give enterprises the opportunity to eliminate competition in a significant part of the market for the products concerned⁵⁴.

Within this section, the historical evolution of the thesis topic in the Republic of Moldova is analyzed as well. In this sense, the initial regulations that were not applicable, having a more declarative character, were noted: Government Decision of the MSSR no. 2 of 04.01.1991 on urgent measures to demonopolize the national economy of the MSSR⁵⁵ and Law No. 906 of 29.01.1992 on the limitation of monopolistic activity and the development of competition⁵⁶. On June 30, 2000, the Law on the protection of competition no. 1103 (repealed) was passed⁵⁷, being a broader normative act, which, *inter alia*, established a special body on the protection of competition⁵⁸. This legislative act contained a more detailed regulation of anti-competitive agreements, identifying even legitimate agreements. One of the problems of this normative act was that, although it stipulated the liability of economic agents for violating the legislation on protection of competition in accordance with the Code on Administrative Offenses⁵⁹, this code did not criminalize anti-competitive agreements.

An important stage in the evolution of domestic competition law began in 2012. Given the desideratum of the Republic of Moldova for integration into the European Union, on 11.07.2012 the legislature adopted the Competition Law⁶⁰. This normative act represents a transposition of the European pro-competitive practice and legislation in the Republic of Moldova. Through this law, the National Agency for Competition Protection was reorganized into the Competition Council, and clear sanctions were regulated regarding anti-competitive agreements. An important step in improving the climate of domestic competition and in legislating the economic integration of the Republic of Moldova with the European Union, was the signing in 2014 of the Association Agreement⁶¹ between the Republic of Moldova, on the one hand, and the European Union and the European Atomic Energy Community and their Member States, on the other hand.

⁵⁴ Comunicarea Comisiei Europene, Orientări privind aplicarea articolului 81 alin. (3) din TCE nr. 2004/C 101/02// Jurnalul Oficial al Uniunii Europene nr. C 101 din 27.04.2004. Disponibil: <http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=URISERV:l26114&from=RO>

⁵⁵ Hotărârea Guvernului R.S.S. Moldova nr. 2 din 04.01.1991 cu privire la măsurile urgente de demonopolizare a economiei naționale a R.S.S. Moldova // Buletinul Oficial din 04.01.1991.

⁵⁶ Legea nr. 906 din 29.01.1992 cu privire la limitarea activității monopoliste și dezvoltarea concurenței. În: Monitorul Parlamentului nr. 2, art. nr. 46 din 01.03.1992.

⁵⁷ Legea nr. 1103 din 30.06.2000 cu privire la protecția concurenței. În: Monitorul Oficial nr. 166-168, art. nr. 1205 din 31.12.2000.

⁵⁸ Maxim I., Bulmaga O., *Problematika definiției și clasificării concurenței*. În: Analele științifice ale Universității Cooperatist-Comerciale din Moldova, 2013, vol. XI, Chișinău, pag. 33.

⁵⁹ Codul cu privire la contravențiile administrative nr. 47 din 29.03.1985. În: Veștile RSSM nr. 3 din 29.04.1985.

⁶⁰ Legea concurenței nr. 183 din 11.07.2012. În: Monitorul Oficial nr. 193-197, art. nr. 667 din 14.09.2012.

⁶¹ Acordul de Asociere între Republica Moldova, pe de o parte, și Uniunea Europeană și Comunitatea Europeană a Energiei Atomice și statele membre ale acestora, pe de altă parte, ratificat prin Legea nr. 112 din 02.07.2014. În: Monitorul Oficial nr. 185-199 din 18.07.2014.

Chapter 3. Mechanisms for combating anti-competitive agreements and protecting competition in civil law

Anti-competitive agreements fall under the provisions of the Civil Code, being seen as an exception to the principle of contractual freedom. As analyzed in the thesis, anti-competitive agreements have negative effects, both from an economic point of view and from the point of view of the realization of the rights and legitimate interests of legal subjects. In order to strengthen the prohibition of anti-competitive agreements, the Civil Code establishes certain legal mechanisms that support the prevention and fight against anti-competitive agreements. In this context, anti-competitive agreements are struck by absolute nullity, and their detrimental effects lead to tortious civil liability.

In section *3.1 Prohibition of anti-competitive agreements in terms of limiting contractual freedom*, the application of civil law principles on competition law is analyzed, in particular, the relationship between the principle of contractual freedom provided for in Article 1 paragraph (1) of the Civil Code⁶² and the interdiction of anti-competitive agreements established in Article 5 paragraph (1) of the Competition Law. As a result, it is noted that contractual freedom is not absolute, corresponding to the Latin adage „*Nulla regula sine exceptione*”. This freedom is a relative one which, according to the legal regulations, sees its exercise limited by the imperative norms, the public order and the good morals. The prohibition of anti-competitive agreements can be framed precisely in this limitation - limitation that implies a passive behavior - the abstention from concluding contracts that constitute anti-competitive agreements.

In this section we deduced that the legislator qualifies competition as an element of public order. Better said, competition is an inseparable element of public economic order. The market economy presupposes free competition between all market players, and any limitation, restriction or distortion of competition is contrary to public order, in general, and to public economic order, in particular. The rules prohibiting anti-competitive agreements primarily pursue the general interests of society and, indirectly, the private interests of companies. Thus, an agreement concluded between companies, the object or effect of which is to prevent, restrict or distort competition, is certainly contrary to public order. Although the Competition Law prohibits anti-competitive agreements and declares them null and void (Article 5), we consider that, even in the absence of express rules in the Competition Law, the existence of an agreement between competitors in a given market would be contrary to the principle of freedom of trade and entrepreneurship provided for in Article 126 paragraph (2) letter b) of the Constitution of the

⁶² Codul civil al Republicii Moldova. În: Monitorul Oficial nr. 66-75 din 01.03.2019.

Republic of Moldova and the principle of contractual freedom, and the agreement would be affected by nullity.

All the limitations caused by anti-competitive agreements being analyzed, we can deduce the following objectives proposed by the legislator, as a result of their prohibition: non-admission of market monopolization; removing obstacles to competitive market development; stimulating scientific and technological progress; increasing consumer welfare; ensuring prices based on supply and demand.

Section 3.2 *Nullity of anti-competitive agreements and its consequences* is dedicated to investigating the applicability of the institution of nullity of civil legal acts with respect to anti-competitive agreements; aspects of the finding of the nullity of anti-competitive agreements, as well as the effects of the absolute nullity of anti-competitive agreements. In accordance with Article 334 paragraph (2) of the Civil Code, the legal act or the clause that contravenes an imperative legal provision is null or annulable if this sanction is expressly provided by the violated legal provision. In accordance with the invoked provision, the Competition Law prohibits anti-competitive agreements (Art. 5 paragraph (1)) and qualifies them as null and void (Art. 5 paragraph (2)). Therefore, based on the criterion of legislative enshrinement, we are in the presence of an express nullity of the agreements that prevent, restrict or distort competition.

Regarding the mechanism for declaring the anti-competitive agreements null and void, we identified issues related to interinstitutional cooperation between the court and the Competition Council, as both could, simultaneously, examine cases concerning an alleged anti-competitive agreement. In order to minimize the risks of the lack of interaction between these two authorities, the thesis concludes that it is necessary to regulate the possibilities of suspending the lawsuit during the examination of the case by the Competition Council.

During the research it was also noted that the Civil Code in the version up to modernization (01.03.2019), provided for the principle of retroactivity: *restitutio in integrum*, as an effect of absolute nullity, but in the version after modernization, provides that services performed under the act legally void or annulled, as well as other enrichments obtained from those services are subject to restitution according to the legal provisions on unjustified enrichment. Following the analysis, we established that this vision is more successful, because it responds to practical challenges, especially those related to the recovery of damages caused by the implementation of possible anti-competitive agreements.

One of the effects of the nullity of anti-competitive agreements that is examined in the thesis is how the nullity of an anti-competitive agreement affects subsequent legal acts. Following the study of the legal provisions, the opinions expressed in the specialized literature and the

jurisprudence, we consider that those legal acts, to which one of the parties is also part of the anti-competitive agreement, are struck by relative nullity. This conclusion is generated by the fact that, once one of the parties is aware of the anti-competitive agreement and behaves within the limits of that agreement, then the other party may invoke the relative nullity by virtue of the absolute nullity of the anti-competitive agreement which influences the content of the subsequent legal act. Legal acts concluded between subjects, which are not parties to the anti-competitive agreement, cannot be declared null and void, as both are made in good faith. In the event of disputes, however, the rules of the institution of unjust enrichment may be applied.

In section *3.3 Tortious civil liability for the conclusion and implementation of anticompetitive agreements*, the sanctioning of participants in anti-competitive agreements by bringing them to tortious civil liability is elucidated. In this regard, the composition of the civil offense was analyzed, which includes the following elements (conditions): the wrongful act, the damage, the causal relationship between the deed and the damage, as well as the guilt.

The European doctrine of competition law⁶³ sets out three objectives of tortious civil liability caused by the implementation of anti-competitive practices: (1) the establishment of a balance between the right of victims to obtain full compensation for the damage caused and the need to maintain the efficiency of proceedings before the competition authority; (2) providing equivalent protection to all victims of anti-competitive practices; (3) encouraging the initiation of actions for damages that allow the perpetrators of anti-competitive practices to be punished.

The national jurisprudence does not know cases of tortious civil liability for prejudicing the interests of third parties through the effects of anti-competitive agreements. This area is one with potential for the Republic of Moldova, and a beneficial contribution could be made by the competition authority, which, once the decisions on finding and sanctioning anti-competitive agreements are published, would inform the public and, implicitly potential victims, about the possibility of actions for damages. The decisions of the competition authority would, to begin with, be a strong impetus for initiating civil proceedings and, at the same time, would have a strong probative value.

Chapter 4. Mechanisms for combating anti-competitive agreements and protecting competition in competition law

This chapter provides a scientific basis for the following legal mechanisms to combat anti-competitive agreements regulated by the Competition Law and the Criminal Code⁶⁴: contravention liability of companies, criminal prosecution of individuals and enforcement of leniency policy.

⁶³ Arhel P., *Pratiques anticoncurrentielles: injonctions et sanctions*. Paris: Dalloz, 2020, pag. 76, pct. 85.

⁶⁴ Codul penal nr. 985 din 18.04.2002, În: Monitorul Oficial nr. 72-74 din 14.04.2009.

In section **4.1 Contravention liability for the conclusion and implementation of anti-competitive agreements** is noticed that the most effective and perhaps the main mechanism for combating anti-competitive agreements provided for in national law is to hold participants in anti-competitive agreements liable for a contravention. The relevant legal norms that regulate the way of investigating the forbidden agreements, as well as the authority competent to combat them are provided for exclusively in the Competition Law no. 183/2012.

The analysis of the national jurisprudence revealed that the liability mechanism provided for by the Competition Law is the most common. Specific to this form of legal liability are the following distinctions: the investigation of cases and liability is the responsibility of the Competition Council; the investigation shall be initiated, both at the request of the persons concerned, as well *ex officio*; companies are responsible for concluding and/or enforcing anti-competitive agreements; the liability procedure is regulated by the Competition Law; the result of liability is the application of fines.

The process of examining cases of infringement of the prohibition of anti-competitive agreements includes: preliminary examination and investigation. Within this process, the Competition Council can use the following evidentiary procedures: requesting information, interviewing, inspection, hearing, market study, publicity expertise and fact-finding. The most complex procedure is the inspection, which the specialized literature⁶⁵ mentions as being the equivalent of a search in competition law.

Following the analysis of the legislation, the thesis specifies that the Competition Law does not provide for specific amounts in money of the fines that apply to companies signing anti-competitive agreements. In order to determine the fine, the total turnover achieved by the enterprise in the year prior to the sanction serves as a basis for calculation, by applying a certain percentage that depends on the duration and gravity of the act. We consider this specific method of calculating the fine to be appropriate, as it allows the fine to be clearly individualized in relation to the economic situation of the enterprise and the level of gravity of the committed act.

The thesis finds that the legislator did not present a minimum limit amount below which the Competition Council could not set a fine. In this situation, we tend to believe that under certain conditions, the competition authority may not impose a fine or impose a very small one, or it may encourage companies to insist on a very small fine. In order to avoid any doubt, it is proposed to set a minimum fine of at least 0.5% (the maximum fine being of 5%). The reason for such an amount is determined by the fact that this is the maximum fine for unfair competition actions, but

⁶⁵ Petcu G., Dobre C., *Ghidul inspecției inopinate a Consiliului Concurenței*. București: Editura C.H. Beck, 2016, pag. 13.

anti-competitive agreements present a greater social danger and prejudice a larger circle of subjects, and any indicator under this reference would not outline the real risk of anti-competitive agreements.

The experience of the national competition authority is not rich enough in the field of combating anti-competitive agreements. According to the reports on the activity of the Competition Council, in the years 2015-2019⁶⁶ 17 anti-competitive agreements were found. Specific to the activities for the years 2017 – 2019 is that all the sanctioned anti-competitive agreements were made in the form of bid rigging. We thus conclude that the public authority focused more on examining the tender documentation and identifying possible anti-competitive agreements between competitors. We believe that the investigation and probing activity in such cases is easier, because the tender documentation is kept, and anti-competitive behaviour of the bidders can be identified through statistical and observational methods. However, we believe that the public authority should not avoid working on more complex cases, which may have less evidence, but do not have fewer negative effects on the market.

Section **4.2 Combating anti-competitive agreements through criminal liability** is dedicated to the analysis of the harshest mechanism for combating anti-competitive agreements. Currently, criminal liability for anti-competitive agreements is provided by the laws of more than 30 states. The longest terms of deprivation of liberty can be imposed in Canada - up to 14 years, in the USA, Ireland, Australia, Mexico - up to 10 years⁶⁷. In the European Union, at the level of national regulations, most states see as crimes only the most serious acts that harm competition, and some states criminalize only the acts of bid rigging. For most European states, as well as for the Republic of Moldova, the mixed legislative model is specific, which provides for sanctions for companies and criminal penalties for individuals.

The Republic of Moldova aligned itself with the trends of criminalization of anti-competitive agreements in 2002, by inserting in the Criminal Code the crime of restricting free competition. The objective side of the offense of restricting free competition consists of the prejudicial act of concluding a horizontal anti-competitive agreement which constitutes a „hard core” cartel prohibited by the Competition Law, which provides for at least one of the following:

- fixing the selling prices of products to third parties;
- limiting production or sales;

⁶⁶ Rapoartele de activitate ale Consiliului Concurenței pentru perioada anilor 2015 – 2019. Disponibile pe pagina web oficială a Consiliului Concurenței www.competition.md, directoriul Transparența/Rapoarte/Rapoarte anuale.

⁶⁷ Москаленко А., *Методы противодействия антиконкурентным соглашениям*. Publicat la 13.03.2017. Disponibil: https://online.zakon.kz/Document/?doc_id=33027441

- market or customer sharing;
- participation in bid rigging or in other forms of collusive tendering

For the application of the mechanism of criminal liability for the „hard core” cartel it is necessary to find patrimonial damages in the following forms: obtaining a profit in significantly large proportions or causing damages in significantly large proportions to a third party.

According to the statistical reports on the activity of courts of first instance regarding the trial of criminal cases for the period 2009 - 2019⁶⁸, during the respective period of time the national courts did not examine criminal cases based on Article 246 of the Criminal Code—„Limitation of free competition”. However, according to the activity reports of the Competition Council for the period 2012-2019⁶⁹, it is attested that at least 17 cases of anti-competitive agreements were found. This state of affairs shows that the Competition Council has a less proactive attitude and does not notify the competent authorities in criminal matters in due time.

Subsection **4.3 Leniency policy as a mechanism for combating anti-competitive agreements** covers a number of aspects, such as: the notion and origins of leniency policy, national regulations, and the effectiveness of leniency policy.

In the specialized literature, the leniency policy is defined as an „unbeatable weapon that increases the vulnerability of cartels and can destruct even the most compact of them, as well as a free solution to get out of the cartel, but only available to the first „player” who delivers all the other ones to the authorities”⁷⁰. Leniency makes available to the members of the cartel a tempting but difficult calculation of the risks related to the provision of information/evidence or to the compliance with the code of silence, which, in terms of game theory, generates the prisoner's dilemma⁷¹.

The thesis sets out our own vision for defining leniency policy - a programme that can benefit companies participating in anti-competitive agreements, obtaining a total or partial reduction of the fine in exchange for disclosure of the anti-competitive agreement and unconditional cooperation with the competition authority. This programme is only available to participants in anti-competitive agreements, other infringements of competition law are not covered by this programme.

⁶⁸ Rapoartele statistice despre activitatea primei instanțe privind judecarea cauzelor penale pentru perioadele anilor 2009 – 2019. Disponibile pe pagina web oficială a Ministerului Justiției: www.justice.gov.md, directoriul Sistemul judiciar/Studii și analize.

⁶⁹ Rapoartele de activitate ale Consiliului Concurenței pentru perioada anilor 2012 – 2019. Disponibile pe pagina web oficială a Consiliului Concurenței www.competition.md, directoriul Transparența/Rapoarte/Rapoarte anuale.

⁷⁰ Mihai E., *Despre eficiența programelor europene de clemență* // Revista Națională de Drept, nr. 9, 2009, pag.16.

⁷¹ Harding C., Joshua J., *Regulating cartels in Europe*. Oxford: Oxford University Press, 2010, pag. 241.

Leniency policy was incorporated into the competition law system for the first time in the United States of America in 1978. In national competition law, leniency policy as a mechanism to combat anti-competitive agreements was regulated only in the Competition Law no. 183/2012. During the research, the matrix of the leniency policy in the competition legislation of the Republic of Moldova was elaborated, which is annexed to the thesis.

According to the data published by the Competition Council on the official website www.competition.md, the practice of the Republic of Moldova in the field knows only two cases of application of the leniency policy by total exemption from fine for involvement in two anti-competitive agreements in the form of „hard core” cartel, in the year 2017⁷² and another in 2018⁷³.

In order to make the leniency policy more efficient, the thesis adheres to the idea presented in the American specialized literature⁷⁴, according to which the efficiency is determined by the following indicators:

- a) the laws must provide sufficiently severe sanctions for the participants in the anti-competitive agreement;
- b) public authorities must cultivate a climate in which enterprises perceive a high risk of detection if they do not self-report;
- c) there must be as much transparency and predictability as possible throughout the process of combating anti-competitive agreements, so that companies can predict, with a high degree of certainty, how they will be treated if they request leniency and what are the consequences if they do not request the application of leniency.

In the case of the Republic of Moldova, an impediment to the efficiency of the leniency policy is the ambiguous norm in the Article 264 paragraph (2) of the Criminal Code, according to which, „The person who committed the act provided in paragraph (1) is released from criminal liability if he/she benefits from leniency according to the competition legislation”. It follows from that provision that natural persons who have benefited from leniency under legislation in the field of competition are released from criminal liability, but according to the Competition Law, only companies can benefit from leniency policy, because they are subjects of the competitive market, either as natural persons, as legal persons, or as structures without legal personality. Thus, it is not clear whether the employees, administrators or representatives of the company that benefited from

⁷² Decizia Plenului Consiliului Concurenței nr. DA-25 din 21.06.2017. Disponibil: <https://competition.md/public/files/da-2520aee.pdf>

⁷³ Decizia Plenului Consiliului Concurenței nr. DA-39/17-53 din 05.07.2018. Disponibil: <https://competition.md/public/files/Decizia-nr-DA-39-17-53-din-05072018d3291.pdf>

⁷⁴ Scott D. Hammond, *Cornerstones of an effective leniency program*. ICN Workshop on Leniency Programs Sydney, Australia, 2004, pag. 6-19. Disponibil: <https://www.justice.gov/atr/speech/cornerstones-effective-lenieny-program>

the leniency are released from criminal liability. In order to remove the ambiguity and make the mechanism more efficient, the thesis proposes a new wording of the cited provision, so that the natural person who himself/herself benefits from the leniency policy or the company he/she represented at the commission of the crime is released from criminal liability.

At the same time, in order to improve the national leniency policy, based on the European Union model, the thesis proposes regulating the system of serial numbers by introducing a new article in the Competition Law, which regulates the procedure for assigning a serial number to the request for immunity in the situation when the enterprise, for various reasons, does not immediately provide the relevant information in relation to the alleged infringement.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The analysis of the regulations of the anti-competitive agreements in the Republic of Moldova shows that, during the years after independence, the national legislator made constant efforts to improve the instruments that ensure the functionality of the free economy, including taking into account the elements of fair competition. Despite legislative interventions and the modernization of normative acts, the precision of legal norms in the field of anti-competitive agreements leaves much to be desired and does not ensure effective applicability. The practice of enforcing those rules is more than modest, it does not protect the economy and does not ensure an adequate competitive environment. At the same time, the work of public authorities with competences in the field is inert and does not correspond to the deserved effort to combat anti-competitive agreements.

The research of the legal mechanisms for combating anti-competitive agreements and protecting competition in this paper serves as basis for the following **conclusions**:

1. The national legislative basis for combating anti-competitive agreements is a cohesive legal system, inspired especially by European Union law, designed to ensure adequate protection of competition.

2. It was noticed that the concept of an „anti-competitive agreement” integrates 3 ways of implementation: agreement, decision of the business association and concerted practice. These forms of collusion are of the same nature and are distinguished only by their intensity. While the agreement is a reflection of the most intense level of understanding, when a communion of wills of the companies aimed at distorting competition is achieved, the decision of the business association presupposes a more modest intensity of understanding, the latter being overshadowed by the fact that decisions are taken by the bodies of the association, and not by the enterprises themselves.

3. The legal mechanisms for combating anti-competitive agreements and protecting competition have been placed in the normative acts in such a way as to ensure that the authorities and persons concerned have the necessary powers to react promptly to reprehensible acts, choosing the most effective and useful ones for restoring the affected values. Despite the incorporation of legal norms into the national legal system, the analysis shows that their applicability suffers and does not justify the effort.

4. National legislation regulates sufficient mechanisms to combat anti-competitive agreements and protect competition, but their applicability is low and therefore, do not have the expected effectiveness. Of all the control mechanisms investigated in this thesis, in practice only those regulated by the Competition Law are applied: the leniency policy and the pecuniary sanction of the enterprises. The mechanisms regulated by the Civil Code and the Criminal Code have no practical applicability, therefore the jurisprudence does not provide examples.

5. Responsible for the application of the mechanisms for combating anti-competitive agreements are several independent public authorities: the Competition Council, the criminal prosecution bodies and the courts. One of the causes of the inefficiency of the mechanisms for combating anti-competitive agreements is the lack of cooperation between these authorities: the Competition Council does not notify the criminal prosecution bodies regarding the anti-competitive agreements found and does not inform, through press-releases, the persons affected by anti-competitive agreements of the possibility of bringing a civil action; the courts do not seek the support of the Competition Council when examining contracts that are suspected of being or containing anti-competitive agreements and do not have the power to suspend a civil lawsuit in case there is necessity for the results of the Competition Council's examination of an alleged anti-competitive agreement that has tangency with the civil lawsuit; the criminal investigation bodies do not launch investigations on their own regarding the possible commission of the crime provided in Article 246 of the Criminal Code based on the decisions published by the Competition Council. The unblocking of the control mechanisms must be a result of a combined effort, and the Competition Council should be that catalyst of the efficiency of the implementation of the analyzed legal institutions.

6. Specific to the control mechanisms in the civil legislation is the fact that their practical application, as a rule, is within the reach of private persons, but not of public authorities. Thus, even if the law limits the contractual freedom, and the anti-competitive agreements are struck by absolute nullity, the private mechanisms take shape once they are invoked by the entitled persons, usually those prejudiced.

7. The analysis carried out showed that specific to the mechanism for combating anti-competitive agreements in the form of contravention liability are the following:

- a) the Competition Council, which is the national competition authority, is responsible for the investigation of cases and for legal liability;
- b) the actions undertaken by the competition authority are initiated, both at the request of the interested persons, as well as *ex officio*;
- c) only the enterprises bear a contravention liability for concluding and/or implementing anti-competitive agreements. The notion of „enterprise” has an autonomous meaning in respect to competition law and is an economic concept rather than a legal one, because it concerns economic activity and not the legal form of organization;
- d) the result of the contravention liability consists in the application of fines and, as the case may be, of periodic penalty payments when the enterprises do not stop the infringement;
- e) the amount of the fines constitutes a certain percentage of the turnover of the contravening enterprises.

8. With regard to the leniency policy, it is concluded that this is a state measure implemented by the Competition Council, which can benefit companies participating in anti-competitive agreements, that obtain a total or partial reduction of the fine or criminal immunity in exchange for disclosure of the anti-competitive agreement and unconditional cooperation with the competition authority.

9. The research carried out solved the **scientific problem** of the thesis, which consists in elucidating and scientifically substantiating the legal mechanisms for combating anti-competitive agreements and protecting competition, which determined the place and role of each legal mechanism, as well as submitting proposals to improve legal provisions, in order to create a fundamental theoretical basis and apply the identified legal mechanisms accordingly.

The solving of the **scientific problem** determines the formulation of the following *de lege ferenda* recommendations and proposals:

1. The analysis of the mechanism for declaring the nullity of anti-competitive agreements highlights the problem of interinstitutional cooperation and, in particular, the interaction between the court and the Competition Council. In order to minimize the risks of the lack of interaction between these two authorities, we consider it necessary to regulate the possibility of suspending the civil lawsuit during the examination of the case by the Competition Council. Therefore, the *de lege ferenda* proposal to complete Articles 261 and 262 of the Code of Civil Procedure is as follows:

„Article 261 of the Code of Civil Procedure is supplemented by letter i) with the following content: i) the results of the examination by the Competition Council of the alleged case of infringement of competition law are necessary.

Article 262 of the Code of Civil Procedure is completed with letter h) with the following content: h) until the presentation in court of the disposition act of the Competition Council”.

2. The national judicial practice has not found cases of tortious civil liability for prejudicing the interests of third parties through the effects of anti-competitive agreements. We suggest that a beneficial impetus could be made by the Competition Council, which, once the decisions on finding and sanctioning anti-competitive agreements are published, would inform the public about the legal mechanisms to combat anti-competitive agreements and would encourage the potentially prejudiced parties to bring civil actions for damages.

3. The maximum fine under the contravention liability for concluding the anti-competitive agreement is 5% of the total turnover of the enterprise achieved in the year preceding the sanction. The legislator, however, did not provide a minimum limit amount below which the Competition Council could not set a fine. Based on the study presented in Chapter 4, we submit the *lege ferenda* proposal to amend Article 72 paragraph (3) of the Competition Law, by establishing the minimum limit of the basic level of the fine for violating the prohibition of concluding anti-competitive agreements. The mentioned legal norm shall be worded as follows: „(3) *The basic level of the fine calculated for the gravity of the act shall be:*

a) *from 0.5% to 1% of the total turnover, within the meaning of Article 67, for the acts of low severity: [further according to the current wording]*”.

4. We propose that the competition authority notify the prosecuting authorities of each finding of a horizontal anti-competitive agreement that constitutes a „hard core” cartel prohibited by competition law. The analysis of the statistical reports on the activity of the courts of first instance regarding the trial of criminal cases, for the period 2009 - 2019, shows that during this period the courts of first instance in the Republic of Moldova did not have criminal cases in their procedure that fell under Article 246 of the Criminal Code – „Limitation of free competition”, whereas the activity reports of the Competition Council, for the period 2012-2019, attest to at least 17 cases of anti-competitive agreements.

5. The analyses highlight that, although the leniency policy also implies criminal immunity, the ambiguity of Article 246 paragraph (2) of the Criminal Code and the lack of corroboration with the Competition Law does not allow the granting of this immunity. In this sense, the provision provides for the release from criminal liability only of the natural person who has benefited from leniency, but according to the Competition Law, only companies that were

possible participants in prohibited agreements can benefit from leniency. To remove this discrepancy, a new wording of Article 246 paragraph (2) of the Criminal Code is proposed (*lex ferenda*): „*The person who committed the act provided in paragraph (1) is released from criminal liability if he/she or the person he/she represented at the commission of the crime benefits from leniency according to the competition legislation*”.

6. In order to encourage participation in the leniency policy, we consider that for the Republic of Moldova an individual leniency political institution is appropriate (currently, only the corporate leniency policy is regulated), which involves granting criminal immunity to individuals who independently denounce an anti-competitive agreement incriminated by criminal law. Therefore, we propose to regulate the possibilities for individuals to report an anti-competitive agreement incriminated by the Criminal Code and thus to obtain criminal immunity in the case a criminal trial based on the denounced agreement will be initiated.

7. In order to improve the leniency policy in the Republic of Moldova, based on the European Union model, we submit the *lege ferenda* proposal regulating the system of serial numbers, by introducing in the Competition Law no. 183/2012, a new article „92¹”, which will regulate the procedure for reserving a serial number until the direct submission of the leniency application and the evidence confirming the existence of an anti-competitive agreement:

„Article 92¹. Assignment of a serial number to the request for immunity

- (1). Any enterprise or business association intending to request immunity from fines may initially request a serial number for immunity application.*
- (2). The Competition Council shall issue a serial number to protect the queue number of an applicant for immunity in the order of receipt of applications, for a period to be determined on a case-by-case basis, in order to allow for the collection of the necessary information and evidence. The established period of time will not exceed 30 working days, and on request can be extended only once by a maximum of 30 working days.*
- (3). In order to obtain a serial number, the applicant must provide the Competition Council with information about his/her name and address, the parties to the alleged cartel, the product(s) and territory(ies) affected, the estimated duration of the alleged cartel and the nature of the cartel. The applicant must also justify his/her request for a serial number.*
- (4). When a serial number is granted, the Competition Council shall determine the period within which the applicant must complete the serial number by providing the information and evidence necessary to reach the relevant immunity threshold.*

- (5). *Companies that have been granted a serial number cannot complete it by submitting a formal application in hypothetical terms.*
- (6). *If the applicant completes the serial number within the period established by the Competition Council, the information and evidence provided shall be deemed to have been submitted on the date on which the serial number was granted”.*

Potential future research directions related to the topic addressed: 1) Continuation of the scientific study on legal mechanisms to combat anti-competitive agreements and protect competition; 2) Analysis of the integrity of enterprises involved in anti-competitive agreements; 3) Examination of the legal guarantee of non-aggravation of the situation in case of presentation of incriminating evidence within the leniency policy; 4) Study of national and European practice in combating anti-competitive agreements.

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1. Creciun I., Gorincioi C., *Combaterea acțiunilor de concurență neloială în domeniul proprietății intelectuale*. În: „Intellectus”, nr. 2/2016, pag. 12-18.
2. Creciun I., Gorincioi C., *Proprietatea intelectuală, numele de domeniu și concurența*. În: „Intellectus”, nr. 2/2017, pag. 13-19.
3. Creciun I., *Evoluția reglementărilor acordurilor anticoncurențiale*. În: „Studia Universitatis Moldaviae”, seria „Științe sociale”, nr. 3(103), 2017, pag. 113-122.
4. Creciun I., *Reflecții asupra conceptului de acord anticoncurențial*. În: „Актуальные научные исследования в современном мире”, nr. 4-1(36), 2018, Ucraina, pag. 74-85 (colecție de lucrări științifice inclusă în bazele de date: Index Copernicux, РИНЦ, Google Scholar, Библиометрика української науки).
5. Creciun I., *Matricea politicii de clemență în legislația concurențială a Republicii Moldova*. În: „Studia Universitatis Moldaviae”, seria „Științe sociale”, nr. 8 (128), 2019, pag. 113-121.

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8. Creciun I., *Răspunderea penală pentru încheierea și punerea în aplicare a acordurilor anticoncurențiale conform legii penale a Republicii Moldova*. În: „Актуальные научные исследования в современном мире”, nr. 4 (48), partea nr. 5, 2019, Ucraina, pag. 143-148.

Participation in scientific conferences (national and international):

1. Creciun I., *Probele și probațiunea în cadrul examinării cazurilor de încălcare a legislației concurențiale*. Prezentat la Conferința științifică internațională „*Perspectivile și problemele integrării în spațiul european al cercetării și educației*”, Universitatea de Stat din Cahul „Bogdan Petriceicu Hașdeu”, 07.06.2017.
2. Creciun I., *Limitarea libertății contractuale prin prisma interdicției acordurilor anticoncurențiale*. Prezentat la Conferința internațională a doctoranzilor și studenților în drept, ediția a IX-a, Universitatea de Vest din Timișoara, România, 09.06.2017.
3. Creciun I., *Analiza mecanismelor juridice de combatere a acordurilor anticoncurențiale*. Prezentat la Conferința științifică națională cu participare internațională „*Integrare prin cercetare și inovare*”, Universitatea de Stat din Moldova, 09.11.2017.
4. Creciun I., *Considerații privind politica de clemență*. Prezentat la Conferința științifică națională cu participare internațională „*Integrare prin cercetare și inovare*”, Universitatea de Stat din Moldova, 08.11.2018.
5. Creciun I., *Aspecte calificative a practicilor concertate*. Prezentat la Conferința științifică națională cu participare internațională „*Integrare prin cercetare și inovare*”, Universitatea de Stat din Moldova, 07.11.2019.
6. Creciun I., *Particularitățile nulității acordurilor anticoncurențiale*. Prezentat la Conferința științifică internațională „*Perspectivile și problemele integrării în spațiul european al cercetării și educației*”, Universitatea de Stat din Cahul „Bogdan Petriceicu Hașdeu”, 06.06.2019.
7. Creciun I., *Perspectivile dezvoltării mecanismelor juridice de combatere a acordurilor anticoncurențiale*. Prezentat la Conferința științifică națională a doctoranzilor dedicată aniversării a 75-a a USM „*Metodologii contemporane de cercetare și evaluare*”, Universitatea de Stat din Moldova, 22.04.2021.

ADNOTARE

Creciu Ilie, „Mecanisme juridice de combatere a acordurilor anticoncurențiale și protecție a concurenței în legislația Republicii Moldova”. Teză de doctor în drept. Școala doctorală de științe juridice a Universității de Stat din Moldova. Chișinău, 2021.

Structura tezei: introducere, 4 capitole, concluzii și recomandări, bibliografie din 281 de titluri, 2 anexe, 212 pagini de text de bază. Rezultatele obținute se conțin în 15 publicații științifice.

Cuvinte-cheie: concurență, acord anticoncurențial, întreprindere, asociație de întreprinderi, practică concertată, cartel, combatere, răspundere, amendă, politica de clemență.

Domeniul de studiu: dreptul afacerilor și dreptul concurenței referitor la mecanismele juridice de combatere a acordurilor anticoncurențiale și protecție a concurenței.

Scopul lucrării: analiza esenței mecanismelor juridice de combatere a acordurilor anticoncurențiale și protecție a concurenței în legislația Republicii Moldova, evidențierea și caracterizarea componentelor fiecărui mecanism, precum și determinarea particularităților aplicării acestor mecanisme juridice.

Obiectivele lucrării: conceptualizarea acordurilor anticoncurențiale și a formelor de realizare a acestora; fundamentarea științifică a mecanismelor de combatere a acordurilor anticoncurențiale și protecție a concurenței; modelarea teoretică de aplicare a mecanismelor de combatere a acordurilor anticoncurențiale și protecție a concurenței în practică; elaborarea concluziilor și propunerilor.

Noutatea și originalitatea științifică: teza abordează în complex acordurile anticoncurențiale și mecanismele juridice de combatere a acestora. Analiza detaliată și aprofundată a conținutului normelor juridice din ramurile de drept al concurenței, civil și penal a permis identificarea și caracterizarea mecanismelor juridice de combatere a acordurilor anticoncurențiale, precum și înaintarea recomandărilor de îmbunătățire a legislației.

Semnificația teoretică: acumularea unui vast material teoretic și practic care elucidează în profunzime înțelesul acordurilor anticoncurențiale și a mecanismelor juridice de combatere a acestora prevăzute de legislația Republicii Moldova.

Valoarea aplicativă a lucrării: concluziile, propunerile de *lege ferenda* și sugestiile relevate pot fi utilizate în procesul perfecționării legislației în vigoare, eficientizării activității autorităților publice implicate în aplicarea mecanismelor de combatere a acordurilor anticoncurențiale și protecție a concurenței, precum și în activitatea științifico-didactică.

АННОТАЦИЯ

Кречун Илие, „Правовые механизмы борьбы с антиконкурентными соглашениями и защиты конкуренции в законодательстве Республики Молдова”. Диссертация на соискание учёной степени доктора юридических наук. Докторская школа юридических наук Государственного Университета Молдовы. Кишинэу, 2021 год.

Структура диссертации: введение, четыре главы, выводы и рекомендации, библиография - 281 названий, 2 приложения, 212 страниц основного текста. Полученные результаты опубликованы в 15 научных работ.

Ключевые слова: конкуренция, антиконкурентное соглашение, предприятие, ассоциация предприятий, согласованные действия, картель, борьба, ответственность, штраф, политика снисхождения.

Область исследования: предпринимательское право и конкурентное право относительно правовых механизмах борьбы с антиконкурентными соглашениями и защиты конкуренции.

Цель исследования: анализ сущности правовых механизмов противодействия антиконкурентным соглашениям и защите конкуренции в законодательстве Республики Молдова, выявление и характеристика компонентов каждого механизма, а также определение особенностей применения этих правовых механизмов.

Задачи исследования: концептуализация антиконкурентных соглашений и форм их реализации; научное обоснование механизмов борьбы с антиконкурентными соглашениями и защиты конкуренции; теоретическое моделирование практического применения упомянутых механизмов; составление заключений и предложений.

Научная новизна и оригинальность: в диссертации комплексно рассматриваются антиконкурентные соглашения и правовые механизмы борьбы с ними. Детальный и углубленный анализ содержания правовых норм из конкурентного, гражданского и уголовного права позволил выявить и охарактеризовать правовые механизмы для борьбы с антиконкурентными соглашениями, а также представить рекомендации по совершенствованию законодательства.

Теоретическое значение: накопление обширного теоретического и практического материала, который полностью разъясняет значение антиконкурентных соглашений и правовых механизмов для борьбы с ними, предусмотренных законодательством Республики Молдова.

Практическая ценность работы: выводы, предложения *de lege ferenda* и представленные рекомендации могут быть использованы в процессе совершенствования действующего законодательства, упорядочения деятельности органов государственной власти, участвующих в применении механизмов по борьбе с антиконкурентными соглашениями и защиты конкуренции, а также в научно-дидактической деятельности.

ANNOTATION

Creciu Ilie, „ Legal mechanisms for combating anti-competitive agreements and protecting competition in the legislation of the Republic of Moldova”. PhD thesis in law. Doctoral School of Legal Sciences of the State University of Moldova. Chisinau, 2021.

Structure of the thesis: introduction, four chapters, conclusions and recommendations, bibliography of 281 titles, 2 appendices, 212 basic text pages. The achieved results are published in 15 scientific publications.

Keywords: competition, anti-competitive agreement, undertaking, associations of undertakings, concerted practice, cartel, combating, liability, punishment, leniency.

Field of study: business law and competition law referring to the legal mechanisms for combating anti-competitive agreements and protection of competition.

The goal of the paper: the analysis of the essence of the legal mechanisms for combating anti-competitive agreements and protection of competition in the legislation of the Republic of Moldova, highlighting and characterizing the components of each mechanism, as well as determining the particularities of the application of these legal mechanisms.

The objectives of the paper: conceptualizing the anti-competitive agreements and their forms of realization; the scientific substantiation of mechanisms for combating anti-competitive agreements and protection of competition; the theoretical modeling of practical application of mechanisms to combat anti-competitive agreements and protect competition; drafting conclusions and proposals.

The novelty and scientific uniqueness of the paper: the thesis addresses in the complex mode to anti-competitive agreements and to legal mechanisms to combat them. The detailed and in-depth analysis of the content of the legal norms from the competition, civil and criminal law has allowed identification and characterization of the mechanisms to combat anticompetitive agreements, as well as the submit of recommendations for improvement of legislation.

The theoretical significance: the accumulation of a vast theoretical and practical material that thoroughly elucidates the meaning of the anti-competitive agreements and the legal mechanisms to combat them provided by the legislation of the Republic of Moldova.

The practical value of the paper: the conclusions, *de lege ferenda* proposals and the submitted suggestions can be used in the process of improving the legislation in force, streamlining the activity of the public authorities involved in the enforcement of the mechanisms for combating anti-competitive agreements and competition protection, as well as in the scientific-didactic activity.

CRECIUN ILIE

**LEGAL MECHANISMS FOR COMBATING
ANTI-COMPETITIVE AGREEMENTS AND PROTECTING
COMPETITION IN THE LEGISLATION
OF THE REPUBLIC OF MOLDOVA**

553.02 – BUSINESS LAW

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