SUMMARY

The global crisis has an impact on social relations both at national and international level. Several dilemmas are distinguished which do not always have clear and well-defined answers. One of them concerns the importance and the degree of competition regulation. There are views that support the need for a more rigid competition control during the crisis period, arguing that the "insolence" and abuses by certain undertakings are more likely to occur in difficult periods. Others, on the contrary, consider the need for a more moderate competition control, tolerating the minor shortcomings of companies and allowing them to survive, since "crisis" comes with enough problems.

So, the problem of crisis emergence is not the lack of competition, but the absence of market regulation. For breaking this deadlock, an optimal regulatory solution would be absolutely necessary. It is hard to talk about competition without specifying the scientific approaches and their evolution.

In order to conclude the opinion regarding the competitive process, it is necessary to address the following dependency: the theory of competition – the competition policy – the competition regulation. Certainly, competition regulation is an important concept and it is treated differently. The EU law does not have a clear definition of economic competition. Each country implements its own concept and legislative system. Basically, the implementation of competition rules is a daily decision of choosing between prohibition and permissiveness. That is why the importance and the role of defining the procedures of applying the competition legislation are increasing.

I. GENERAL DESCRIPTION OF THE RESEARCH

Actuality of the research. The competition legislation is new both at international (50-100 years) and national level (10-20 years). Many problems arise at the implementation stage of the competition legislation. In order to ensure effective implementation, a complex set of procedures is imperative, which would facilitate the implementation of the actions, embodied in the formation of a complex matrix of procedures in the procedural competition law.

The competition notion is rooted in classical theories, evolving to the new concept of competition, which was launched in the 21st century. This concept of competition has been promoted over time both by the political class and society. The

main cause of the emergence of the revolutionary competition phenomenon was the economic growth of industry organizations, favoring the use, by the businesses environment, of the competition rules, necessary at that time.

In their works, scholars, such as Adam Smith, Claude Cournot, Leszek Balcerowicz, have studied the invisible hand theory, which suggests that individuals who pursue their own interests, promote the interests of society, although their actions do not have that purpose. The invisible hand remains a powerful concept in antitrust, however, given the recent development of markets, skepticism about its application is gaining ground.

Smith's basic idea started from the fact that entrepreneurs who want to attract their rivals' customers tend to improve their products and to innovate, in order to reduce costs. These actions increase the innovators' short-term profits, but rivals react similarly, adopting similar innovations, competition, in this way, succeeding to reduce both the selling price and the profit. Ultimately, according to Smith, consumers enjoy the greatest benefits.

With the evolution of society and the changing of geopolitical borders, the European Union has developed a common market for its Member States with one goal - the economic advantage based on competition principles. It is very clear that the economy plays an important role in the matters of competition legislation. As Jean Tirole mentioned - recently awarded the Nobel Prize in 2014 - economics plays a crucial role in competition matters. This can be demonstrated by the existence of several key terms used in competition law, particularly: the concept of "competition", "monopoly", "oligopoly" and "barriers to entry" are concepts that derive from the competition law and not from other sciences, and are part of the economic field. Application and enforcement of competition law cannot take place without taking into account the economic aspects.

Competition can be defined as an area where economics meets law. Therefore, legal qualification of anticompetitive behavior due to its social danger is very important. In response to the importance of competitive relationships in the functioning of the state, 50-80 years ago, competition authorities were established in Europe, Canada and the USA. In Republic of Moldova, the first antitrust authority was established in 2007. It was called the National Agency for Protection of Competition and it had functioned under the Law No.1103 on Protection of Competition from 30 June 2000.

Moldova's relations with the European Union were formally launched with the signing, on 28 November 1994, of the Partnership and Cooperation Agreement, which

entered into force on 1 July 1998. Thus, European integration represents the primary and irreversible objective of Republic of Moldova’s internal and external agenda. Moldova's economy is characterized by a low level of competitiveness. Despite certain social changes on the commodity markets of Moldova, an effective competition was not yet developed, this fact being determined by several internal and external factors.

In order to ensure effective and fair competition on the commodity markets of Moldova, the competition legislation required a new conceptual adjustment and thus it was adopted the new regulatory framework, the Competition Law No. 183 of 11 July 2012, while the competition authority, the National Agency for Protection of Competition was reorganized as the Competition Council.

The newly adopted regulatory framework is aligned with the EU acquis and provides new mechanisms for eliminating competition violations.

It is important for businesses to comply with the competition rules and it is also important for the competition law to clearly define procedural rules both for determining competition violations and for their removal.

This research was made by comparing, on one hand, the national and European practices, and on the other hand, the procedural competition law with the procedures in other branches of the procedural law.

The purpose of the doctoral thesis "The comparative study of the procedures applied to anticompetitive practices" is the complex analysis of the legal mechanism of ensuring a fair competitive environment and of the procedures applied in the examination of cases of competition law infringements.

In order to achieve this purpose, we have identified the following tasks**:**

1. Examining the necessity, actuality and the role of regulation of competition relations;
2. Determining the place of the procedural competition law in the legal system;
3. Identifying the particularities, premises and elements of the competition procedural legal relationship;
4. Complex analysis of the legal procedures applied in providing a fair competition environment;
5. Systematizing the procedural acts, used in the application of procedural competition law.

The scientific novelty of the research consists in:

1. Defining the branch of procedural competition law;
2. Determining the elements of the procedural competition law branch;
3. Describing the principles of the procedural competition law branch; analysis of the particularities of procedural competition legal relationships, through:

- the basis for the emergence of procedural competition legal relationship;
- the elements and particularities of the procedural competition legal relationship;

4. Elaboration of the procedural division matrix in the investigation of competition law infringements;
5. Synthesis of new procedures in the process of investigating competition law infringements.

The paper highlights, like a red thread, the need of procedural regulation of the relationships that arise in the process of examining cases of competition infringements.

The author proposes the development of the procedural division matrix, which represents a totality of systemic and situational procedures that occur in the relationships, held during the investigation stage of competition law infringements.

It is worth mentioning the situational character of the procedural division matrix, taking into account the difference of applying procedural rules to each competition infringement.

Given the specific relationships, elements and features that appear in the examination of competition law infringements, it was proposed to define the procedural competition law as a distinct branch of law, which constitutes a scientific novelty of the work.

II. THE MAIN CONTENT OF THE RESEARCH

We started our research with a comprehensive analysis of the premises of the procedural competition law. Analyzing the legal system and its evolution, we have described it as a defined construction of social relations.

The correlation between the complexity of human needs and their impact on motivation seems particularly interesting. Human needs grow, from the physiological ones (absolutely necessary) – survival, food, shelter, rest, physical security and physical protection – to the social ones, needs of belonging to a group, social interaction, affection, support. And only after satisfying those listed, one can proceed

to the last 2 steps (according to Maslow's theory): esteem, respect and self-realization, the need to achieve one’s own potential and personality development. Through this classic concept, we can explain the emergence of the procedural competition legal relationships. Human needs represent the foundation and motivation for regulating procedural competition relationships.

One cannot speak of rights regulating specific relations, e.g. the competitive relations between undertakings, only in situations when basic rights, ensuring legal protection of basic needs (the right to life, security, etc.), are satisfied primarily.

Approaching the legal system as a totality of independent parts, branches of law and legal institutions, we find the existence of a complex, open system, interacting not only with the social environment, but also with each of its component parts, thus both with external and internal factors.

In this way, the rules of law, including of the competition law, are grouped according to the basic relationships vis-à-vis the anticompetitive practices, subjects of competition relationships, etc.

The structure of the legislation, as a whole or outside the branches of law, corresponding to the branches of the law system, encompasses also other law branches.

In competition disputes, regulation of procedural relationships is found in many legal acts and leads to the idea of separation of a distinct public law branch. The existence and delimitation of the procedural competition law is an actual reality and necessity. We cannot talk in depth about the procedural competition law, without providing specifications about the competition concept.

As a process, competition has always existed, still, only after reaching certain stages of human evolution, some regulation of this process started to appear. Scientific movements and schools have emerged, which have developed this concept, both in dynamic and static terms.

Starting from the first antimonopoly acts, e.g. "Constitution on pricing" of the Emperor Zeno (483 AD), which contained certain restrictions on monopolies, licensing restrictions (England, 1561), we get to one of the most important antimonopoly acts, adopted in 1890 - Sherman's law, which tries to establish a link between the operation of competition rules and consumer welfare.

In the US, the antitrust legal framework appears in the early XX century, with the establishment of the FTC (Federal Trade Commission), the antitrust authority from the USA.

We described the development of the competition concept through the Chicago, Harvard and Brussels schools, which, in time, have influenced the EU regulations, particularly the Treaty of Rome. Also, this chapter presents the evolution of European legislative changes, which have established the fundamental elements, both in terms of competition and competition law. A separate aspect remains the correlation of the national competition legislation with the European one, in terms of content and priority ranking.

Yet, the specialized literature is completely lacking the procedures, applied in the examination of cases of competition law infringements, which allow the efficient implementation of the state activity in the antitrust field.

The idea that competition leads to increased welfare and efficiency and represents an important reason for innovation is widely accepted. But it is also a commonly accepted view that competition cannot solve all the problems that may arise in the economy and that, especially in these cases, state intervention is necessary and justified.

The most discussed circumstance is the regulatory level, i.e. the level of state intervention in the economy, in order to avoid competition distortion, but also to preserve social balance. The state can use several tools, including state aid.

The consolidated version of the TFEU, art.107 para. 1, states that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

In particular, state aid, as a way of state intervention in the economy, is manifested in the form of subsidies, including export exemptions or reductions in fiscal or social burdens, credit guarantees, reduced-interest loans or credit deferred payments, conversion of guaranteed loans into capital, unfair practices on prices for domestic goods and services, regional and sectorial aid, transfer of land and real estate, free of charge or on particularly advantageous terms, etc.

We conclude Chapter I with the detailed description of the national antitrust legislation, from the first legal norms in the Government Decision of RSS Moldova in 1991, until now, when we have a more substantial evolution of the national competition legislation. In 2012, the new antitrust law was adopted, the Competition Law No. 183 of 11.07.2012, published in the Official Gazette on 14.09.2012, further Competition Law of the Republic of Moldova no.183/2012. This law, being a European one, takes into account the best practices, including from Romania,

covering both the activity and the compartments of the newly created body: the Competition Council, anticompetitive infringements, their prevention and elimination and the liability for committing them.

Antitrust regulation in Moldova is governed by the Competition Law No.183/2012[1] and the Law on State Aid No.139/2012[2]. The object of the competition law is to prevent and counteract anticompetitive practices and unfair competition, to authorize mergers. The law also sets out the role and legal framework in relation to the powers and the activity of the Competition Council. The Competition Council is the authority responsible for the infringements of competition law and has competences of authorizing, monitoring and reporting of state aid.

The Competition Law of the Republic of Moldova no.183/2012 expressly provides the transposition of Art. 101-106 of the Treaty on the Functioning of the European Union of 25 March 1957, the provisions of Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, published in the Official Journal of the European Union no. L 1 of 4 January 2003 and, partly, the provisions of Regulation (EC) no. 139/2004 of 20 January 2004 on the control of concentrations between undertakings, published in the Official Journal of the European Union no. L24 of 29 January 2004.

In the same set of national competition legislation, we can include the Law on State Aid No.139 from 15.06.2102, published in the Official Gazette, 16.08.2012, adopted also in the negotiation of the Moldova-EU Association Agreement, whose fair and efficient implementation will lead to minimizing competition distortions by the state.

For the first time, the state aid in Moldova was regulated by the Law on State Aid no. 139 from 15.06.2012, which established:

- the rules for authorizing, monitoring and reporting of the state aid granted to beneficiaries from all the sectors of national economy, excluding the agriculture sector, for the purpose of maintaining a normal competition environment;
- determination of the type and form of state aid;
- assessment of the compatibility with a normal competition environment of each state aid category.

If, in Chapter I we have explained the necessity and the premises for the existence of the procedural competition law, in Chapter II, “Theoretical-conceptual aspects of the procedural competition law branch”, we have defined the

[1]Competition LawNo.183 from 11.07.2012. In: Official Gazette of the Republic of Moldova No. 193-197 from 14.09.2012
[2]Law on State AidNo.139 from 15.06.2012. In: Official Gazette of the Republic of Moldova No. 166-169a from 16.08.2012

characteristics, elements and principles of the procedural competition law. The procedural competition law was delimited from other areas of law, analyzing the criteria for structuring the legal system. In the examination of antitrust infringements, procedural relationships have a specific character and distinct object of regulation. The regulatory method, used in procedural relationships between competition authorities and other market actors and the investigation participants is one, characterized by subordination relationships. Common principles, social interest, penalties and the quality of the subjects of legal relationships were analyzed.

Delimitation of procedural competition law from other law branches can be done by analyzing the correspondence of the structuring criteria of the legal system. One of the basic criteria for delimiting a law branch is the object of regulation.

I. *The object of regulation* of a law branch represents a certain group of social relations, which have specific features of the concerned branch.

Social relations arising in the process of examining infringements of competition law are characterized by their occurrence at the same time with the regulations of the procedural competition law. Although procedural competition law does not correspond to a normative act with the same profile, the regulation of the examination process of competition law infringements is contained in the antitrust legislation, being separated from the substantive rules. In this way, the object of regulation represents the procedural relations that arise in the examination of cases of competition law infringements.

Stating the establishment of a distinct branch of law, based only on its own object of regulation is insufficient, therefore it is necessary to further analyze the procedural competition law in the light of the structuring criteria of the legal system: the regulatory method, common principles, social interest, legal sanctions, legal status of the subjects.

II. *The regulatory method* represents the means used by the lawmaker, in order to exercise a degree of influence on different social relations. Depending on the given criteria, we can distinguish methods based on the principle of equality of parties, the authoritarian method, the autonomist method, the recommendations method.

Regulation of procedural relations arising between the competition authorities, the parties and other participants in the process of examining infringements of the competition law, describes the procedural competition law through relations of subordination, the method used being the authoritarian.

III. *Common principles* are general basic rules, common to the most rules of law that make the law branch.

The procedural competition law is characterized by the following principles: the principle of proportionality, the principle of presumption of innocence, the principle of legality, the principle of protection of confidential information, the principle of independence, the principle of truth, the principle of officiality, the principle of equality of the parties, the principle of publicity, the principle of orality, the principle of contradictoriality, the principle of the right of defense, the principle of availability, the principle of free evaluation of evidence, the principle of continuity, etc. Examination of procedural competition law principles shows us that, in addition to the principles common to several branches of law, there are principles specific only to the procedural competition law, such as the principle of proportionality, the principle of protecting confidential information, etc.

IV. The *social interest* can determine detachment of certain legal relations from a law branch and migration to some related branches, which make part of another one or towards an emerging branch, as a result of the importance, in society, of a certain social reality at some point.[3]

Analyzing the procedural competition law, we can see that this law branch can be regarded as a mixed, complex law branch, that was created in response to the social interest to regulate relations that arise in the process of enforcement of competition law, and their separation from the group of rules that was previously directing these relations in other areas of law, such as: competition law, administrative law, procedural civil law, etc. The procedural competition law is aimed at protecting both values in which the whole society is interested (genuine market economy, fair competition) and values, whose protection interests only the damaged party (trade secret or confidential information of the undertaking).

V. *Legal sanctions* applied in the procedural competition law can be set out in two groups: sanctions targeting the legality of acts and pecuniary sanctions. So, as in other branches of procedural law, procedural documents, produced violating the legislation, are void. Pecuniary sanctions (fines) have a distinct character in terms of application and their size.

VI. *The status of legal relationships subjects* represents an auxiliary criterion for the delimitation of the law branch. Thus, the subjects of the procedural competition law relations have special statuses: one of the subjects is the antitrust

[3] Popa Carmen, Teoria generală a dreptului, Editura: Lumina Lex, 2001, p. 302

authority – the Competition Council, another mandatory subject is the undertaking, as a participant in competition relations on the market.

In conclusion, after analyzing the procedural competition law in the light of the structuring criteria of the law system, we can ascertain that we find ourselves in the presence of a genuine branch of law, with its own object of regulation, its own regulatory method, common principles, social interest, legal sanctions and status of subjects.

As a distinct law branch, the procedural competition law is characterized as:

1. A public law branch, because: a) it protects an interest, common for all the individuals of society, mainly the enforcement of the competition legislation, in order to establish a true market economy with a fair competition; b) by its nature, the procedural competition law is an imperative law; c) it manifests itself mainly through the authoritative action of the Competition Council, in this way, regulations of the procedural competition law are governing the activity of the Competition Council, as well as its relations with other subjects (undertakings, public authorities, etc.);
2. a mixed law branch of a complex nature, because it meets legal institutions of several law branches and, although apparently, it is a branch of domestic law, it includes multiple rules of international law, which the signatory states are obliged to apply, including by harmonizing their national legislations;
3. a sanctioning law, regulating the use of the person's right before the competition authority and before the courts;
4. a procedural law, regulating relationships between the subjects of law and the state authorities, able to resolve the disputes, emerged as a failure to comply with the competition rules.

Each branch of law regulates a specific domain of social relations. Thus, the procedural competition law consists of all the legal rules that feature procedural norms, necessary for carrying out the examination of competition law infringements.

The procedural competition law encompasses the totality of all the legal norms governing the work of all the state authorities and parties, as well as the relationships that are established in the process of stating the facts that represent infringements of the competition legislation and in the application of sanctions and measures provided by the competition legislation in relation to those who committed the infringements.

Alongside the definition of the procedural competition law, another novelty in the research is the *procedural division matrix* of the application of the competition law provisions. Since the enforcement of the procedural competition legislation is a

complex activity, targeting more legislative areas and more bodies, among the characteristics of the procedural competition law, it is required its division into several main elements, called procedural phases.

Not every element of procedural competition legislation enforcement can be regarded as a procedural phase, so in this regard there are smaller partitions. Thus, procedural application of competition law can be divided into: *phases*, *steps*, *stages*, *moments*.

Phases correspond to the most important groups, where the main procedural activities are the criteria: examination of the competition infringement, judgment enforcement. Phases and activities are carried out in a successive, progressive and coordinated way. In some situations, certain phases may be missing from the application process of the competition law. Thus, in cases of unfair competition acts, if the undertaking, whose interests were harmed, has exceeded the limitation period, it may appeal directly to the court. The voluntary enforcement of the Competition Council Decision excludes the judgment stage.

Further we describe and compare the elements and principles of procedural competition law with principles of the civil procedural law.

The principles of procedural competition law, common to other law branches are: the principle of legality, the principle of independence, the principle of truth, the principle of officiality, the principle of availability, the principle of equality, the principle of the right to defense, the principle of publicity, the principle of orality, the principle of contradictoriality, the principle of free evaluation of evidence, the principle carrying out the case in Romanian language.

We analyze, in parallel, the characteristics of procedural competition law.

Based on the analysis carried out in this chapter, we can conclude that the procedural competition law is a distinct law branch, with its own elements and principles and the need of its delimitation is obvious and actual.

Chapter III “The procedural competition legal relationship”. Although procedural legal relationship in the specialized literature is rarely addressed, we consider the examination of this topic being appropriate and necessary, because only in the presence of a distinct legal relationship we can speak of a genuine branch of law.

In order to define the procedural competition legal relationship it is necessary to emphasize the characteristics of such relationships, with their peculiarities. So, we consider appropriate to start from the approach through which the legal relationship is governed by the legal norm, hence a relation between certain determined participants,

linked by a system of rights and obligations that can be defended by the coercive power of the state.

The procedural competition legal relationship has a *volitional character*. As such, the procedural legal relationship is the ground where the two wills meet: the will of the state, stipulated in the norms of competition law and the will of subjects participating in procedural competition relationships. In the procedural competitive relationship, the correlation between individual will and the general will is determined by the imperative character of procedural competition rules.

Procedural competition legal relations *promote, encourage and protect* social values. Market economy, private property, fair competition, the right to defense, etc. are social values enshrined in the Constitution and protected by the competition legislation. Violation of the social values aimed at ensuring a functioning market economy is sanctioned.

Another feature of the procedural competition legal relationships is that they are *an expression of the historical evolution of social relations*. Only with the transition to a market economy we can talk about competition. Under the centralized economy, the rivalry between undertakings was missing because there were no prerequisites for economic competition. The establishment of market economy mechanism imposed the adoption of competition legislation and the creation of a competition authority, able to enforce competition rules. Relations between competition authorities and the subjects participating in anticompetitive practices are based on the principles of legality, the principle of the right to defense, on the independence of the competition authority, etc., and were materialized in the procedural rules of competition. In this way, we can conclude that the procedural competition legal relationship is a *relationship, governed by the rules of procedural competition law*. These rules establish the legal capacity of undertakings and public authorities and the competence of the competition authority.

In the light of the conducted analysis, we can conclude that the procedural competition law is a social relation of superstructure, that emerges based on the rules of procedural competition norms arising between the state authority and the participants in anticompetitive actions, which are holders of rights and legal obligations, the realization of which is provided by the coercive power of the state.

The specific characteristics of the procedural competition legal relationship are:

a) The antitrust authority, empowered to enforce the competition legislation, is a mandatory subject of the procedural competition legal relationship. Other subjects of the procedural competition legal relationship include the participants

in anticompetitive practices. In this case, we distinguish the *complainant* - usually is the undertaking that has suffered as a result of competition restrictions actions / inactions, and the *defendant* - an undertaking or public administration authority which has restricted competition.

b) Subjects of the procedural competition legal relationship are not equal in rights and obligations. So, two categories of relationships are required: 1) between the competition authority and the participants in anticompetitive actions and 2) between the participants in anticompetitive actions. In the case of relations between participants in anticompetitive actions, we consider that the principle of equality before the law is respected.

c) The procedural competition legal relations emerge, change or become terminated based on the unilateral manifestation of will, and this unilateral will is manifested ex officio or upon request.

d) Another feature of the procedural competition legal relationship is that it contributes to resolving legal conflicts arising from non-compliance with the antitrust legislation on a relevant market.

e) The last feature of the procedural legal competition relationship is the nature of liability for the subject of the relationship that does not respect his obligations deriving from the legal relationship in which it is part. Failure to comply with the obligations arising from the procedural competition legal relationship determines the application of sanctions for violation of procedural rules of the Competition Law.

The procedural competition legal relationship is a distinct element of the general mechanism of legal regulation, representing a dynamic system of legal means through which the activity of law enforcement is regulated by state authorities, in order to dispense justice and to establish a sound competition.

Every procedural competition legal relationship has three characteristic elements: the subject, the object and the content.

The subject represents a distinct and important element for identifying any procedural competition legal relationship.

Procedural legal relationships are based on the principle of subordination. And so, in procedural legal relationships there are always subjects with decision making power. In procedural legal relations, one and the same subject, having decisional power at various stages of a case with different subjects, may have different a different status. For example, in the phase of case examination by the Court, the

Competition Council is subordinated in the relations with the Court, whereas in the preliminary phase, the Competition Council is an independent body.

Given the particularities of procedural legal relationships, several classifications of these subjects are suggested: according to the legal interest of subjects: persons with legal interest in the proceedings, in their turn, can be persons who have their own interests (material) in the settlement of the case and parties who have a public interest (procedural) in the settlement. Persons who have no interest in the case. Depending on the importance of participation in the proceedings, subjects can be divided into two categories: mandatory subjects: the public authority and subjects who have committed infringements, optional subjects: other subjects of procedural competition relations which do not have an interest in the case settlement (witnesses, experts, interpreters, etc.). Depending on the status of procedural legal relationships subjects: subordinated subjects include persons who have a private interest in the case settlement; superior subjects are state authorities that have certain powers in the organization process of case examination.

The object of procedural competition legal relationship is the result of activity of the participants in the examination process of the antitrust case, which meets the procedural interest of the persons, interested in the examination of the case.

This can be regarded as a general object, specific for all the procedural competition legal relationships. At the same time, there is a particular object, specific for every procedural competition relationship. For example: the special object of the relations between the competition authority and representative is formed by the rights and interests of the representative, protected by law; the special object of the procedural relations between the competition authority and witness is the information about the facts that are important for the case.

Given the definition of the procedural legal relationships content set above and the particularities of the procedural competition law, *the content of the procedural competition legal relationship* can be presented as the relation of the procedural competition legal relationship subjects, determined by subjective rights and obligations, the competition authority competence, the legal liability for breach of procedural rules and the appropriate conduct for the examination process of competition law infringements.

Analyzing the object of procedural legal relationship, we determined that the competition relationship is the result of activity of the participants in the examination of antitrust cases, that meets the interest in the examination of the concerned cases. And, consequently, the content of the procedural competition legal relationship

represents the relation of subjects of procedural competition legal relationship, determined by subjective rights and obligations, the power of the competition authority, the liability for the procedural competition law infringement, as well as the examination procedures of competition law infringement.

Chapter IV "The procedures applied in the examination of anticompetitive practices" is one of the important chapters describing in detail the specific procedures for each action and sub-action from the procedural division matrix, reflecting the experience of the Competition Council from Romania, the Competition Council of the Republic of Moldova and the Directorate-General for Competition of the European Commission. It describes all phases, stages, steps and moments in the light of the procedures that exist in the legislation in force, as well as of those that are implemented according to internal documents, or those which are proposed to be implemented.

Procedural division matrix represents a systemic and situational totality of procedures that occur in the relationships held during the investigation phases of competition law infringements.

Thus, the examination process of competition law infringements was structured in three phases, divided into several steps and stages.

In the first phase, *examination of the competition law infringement by the antitrust authority*, its activity is governed by the rules of procedural competition law. The scope of work in this phase is the complex procedural examination of anticompetitive practices, using procedural legal acts. It is the phase that formalizes the relationships between the Competition Council and other market actors – undertakings, associations, public authorities – in order to efficiently conduct the investigation.

The set of procedures used in the first phase can be divided into 3 steps:

I.1. Preliminary examination of the case. The preliminary examination procedure (1.1) can be carried out:

- when a complaint is filed by the person affected by the anticompetitive practice
- ex officio, based on the information collected by the authority

a) The complaint is submitted at the premises of the Competition Council or by mail. The complaint must correspond to the form, and the author must demonstrate a legitimate interest. Here starts the initial assessment of the complaint, whether it corresponds to the form requirements. We can specify 2 moments:

(01) If the complaint does not correspond to the form requirements, it is not considered a complaint, just general information. The formal examination period of the complaint cannot exceed 15 days. The complaint can be returned at the request of the author.

(02) If the complaint corresponds to the form, then starts the examination of the facts that need to be established and the legal classification of the conduct which constitutes the subject of the complaint.

b) Another method of initiating preliminary examination is the ex officio examination. This method can be used mainly when we have cases of overriding public interest and sufficient materials, which would have led to certain signs of competition law infringement.

According to the Competition Law of the Republic of Moldova no.183/2012, preliminary examination cannot exceed 30 working days from the lodging of complaint; in Romania, preliminary examination cannot exceed 60 working days, but in both cases the law provides consequences of exceeding the preliminary examination deadline.

Refusal of the authority to solve a claim in its explicit (expressed) or implicit (tacit) form is actually considered an administrative act, in the meaning of its will, just for this purpose. Public administration authorities are accountable if their activity or silence causes damages or losses. Thus, failure to solve the complaint in due time gives the complainant the right to censor the activity of the public authority through the Court of administrative litigation.[4]

According to the internal procedure, we divided the **Preliminary examination of the case** (1.1) in 2 stages:

I.1.1 preliminary examination by the specialized subdivisions of the Competition Council;

I.1.2 preliminary examination with the participation of the Competition Council Plenum.

During the preliminary examination, the Competition Council can request documents and information from all the parties involved in this examination. As a result of examining the materials, if there is no reasonable basis, the case handler can terminate the stage I.1.1, informing the complainant about the lack of reasonable basis. The Competition Council of the Republic of Moldova offers 10 days for the author to examine the point of view and present additional evidence and observations.

[4] Ghencea Flavia, Aspecte teoretice şi practice cu privire la nesoluţionarea în termen a unei cereri adresate autorităţilor administraţiei publice // Revista de drept public nr.4/2011, p.55-63

If the author fails to respond in legal deadlines, the complaint shall be deemed tacitly withdrawn, and the information provided shall be considered by the Competition Council as general information that may be helpful in opening ex officio investigations.

In the case of presenting relevant information, this starts stage I.1.2. - preliminary examination with the participation of Plenum members. Preliminary examination of observations and additional evidence by the Competition Council Plenum members may lead to 2 moments:

01. - opening an investigation can be justified, and then a disposition on the initiation of the investigation is issued.

02. - the presented observations are not considered relevant and a decision rejecting the complaint is adopted.

If, at the end of stage I.1.1, the case handler has reasonable basis, he/she presents the note to the Competition Council Plenum, and then proceeds to stage 1.1.2 - preliminary examination with the participation of the Competition Council Plenum members, which ends with the start of the investigation through the issuance of the disposition of initiating the investigation.

With the adoption of the disposition of initiation, begins the second step of phase I (I.2), the actual investigation by the Competition Council's rapporteur. Depending on the procedures applied, step I.2 can be divided into two stages:

I.2.1. The closed stage of the investigation, carried out by the rapporteur and other members of the investigation team from the specialized subdivisions of the Competition Council.

I.2.2. The open stage of the investigation, carried out by the rapporteur and other members of the investigation team from the specialized subdivisions of the Competition Council.

The closed stage (I.2.1) of this step starts with the issuance of the procedural act, based on which the investigation is triggered.

According to art. 55 of the Competition law of the Republic of Moldova, No. 183/2012, the Disposition of the Competition Council Plenum is the procedural act, on the basis of which the investigation is launched. Through the disposition of initiating the investigation, the Plenum assigns a rapporteur, responsible for carrying out the investigation, the preparation of the investigation report and the communication with the concerned parties. After receiving the observations, the appointed rapporteur presents the investigation report at the meeting of the Competition Council Plenum. The appointed rapporteur investigates all the acts

of the investigation procedure, proposing the Competition Council Plenum to impose the measures which lay within its competence.

According to Art. 40 of the Regulation on the organization, operation and procedure of the Competition Council, implemented by Order of the Competition Council president from Romania, no. 101/2012, the investigation, initiated ex officio, shall be ordered by the president's order based on the decision of the Competition Council Plenum, whereas the investigation, initiated following a complaint, is based on the decision of the commission, designated for the particular case, or on the Plenum decision, as appropriate. The rapporteur is appointed by order of the President of the Competition Council, on a proposal from the Director General.

After adopting the procedural act, under which the investigation is triggered, an order is issued on the formation of the investigation team. The head of the specialized subdivision submits to the President of the Competition Council proposals for the creation of the team. This team is legalized by the order of the Competition Council President. The investigation team has to develop the investigation plan and collect the necessary evidence.

In a broad sense, the evidence means the act, establishing the existence of a particular fact, the legal means through which can be established the fact that has to be proven or the result obtained by using the means of evidence. In a narrow sense, an evidence designates be it the legal means to prove a fact, be it the evidentiary fact, i.e. a material fact which, being proved by a means of evidence, it is used to prove another material fact. Typically, the evidence concept is used in the sense of means of evidence, such as documents, witnesses, presumptions, confessions of a party, investigation, on-site investigation.[5]

In order to prove the infringement of the antitrust legislation, the following procedural acts are used:

01. request of information: in written form and on-the-spot;
02. requesting and obtaining information through interview;
03. inspections

In the European Union, official investigative powers are owned by the Directorate General for Competition, in Romania - the Competition Council from Romania, and in Moldova - the Competition Council from Moldova. The above mentioned institutions can be generically called competition authorities. Investigative powers of the competition authorities are correspondingly set out in the EC

[5] Ciobanu Viorel Mihai, Tratat teoretic şi practic de procedură civilă. Volumul II, Editura Național, 1997, p.147

Regulation No.1/2003, the Competition Law of Romania, no. 21/1996 and the Competition Law of the Republic of Moldova, no. 183/2012. These normative acts strengthen the investigative powers and, also, provide a formal mechanism for obtaining relevant evidence.

EC Regulation No.1/2003, sets an important change that modifies the Commission procedure at the investigation stage through the fact that, in art. 12, it provides for the detailed information exchange between the Commission and National Competition Authorities.

The powers of the competition authorities from Romania and Moldova are similar, which is due to the harmonization of legislation and the use of the same procedural acts in the investigative process. It is also necessary to note that in the case of Community-scale investigations, they are made by the Directorate General for Competition of the European Commission.

The collected evidence shall generally constitute current documents, recording the conduct of the parties of the investigation, or statements made during the investigations. It is generally assumed, however, that regardless of the type or form of the investigation, undertakings should cooperate, according to their fundamental rights. There is an obligation concerning the undertakings' response to information requests. Nevertheless, effective cooperation does not absolve the parties from the obligation to respond to requests.

One of the tools used in the process of investigation is the interview. "Interview" is the term used in the Competition Law of the Republic of Moldova, No. 183/2012, and "declaration" is the term used in the Competition Law of Romania, No. 21/1996. Interviews (declarations) are used for obtaining information and usually take place at the premises of the Competition Council. The procedure is similar for all the competition authorities: before the interview, the employee is obliged to declare the legal basis, the purpose of the interview and the intention to audio- or video record the interview. Likewise, the interviewee is acknowledged about the right to refuse the interview. Statements made during the interview must be made available to the interviewee for approval and shall be given a reasonable period for certain rectifications. The requested information can also be confidential.

The Commission uses the principle of extraterritoriality, i.e. it can use its powers to obtain information from firms located outside the Community. Powers can be used only by the Commission for the implementation of EU competition rules.

Examination of undertaking's requests of granting the confidential status to certain documents by the Competition Council from Romania is carried out in accordance with Art. 27 of the Competition Law of Romania, No. 21/1996.

In order to invoke the confidentiality of certain information contained in the documents provided to the Competition Council, considered as business secrets or other confidential data, undertakings shall provide a non-confidential version of those documents, in which the passages containing information considered to be confidential shall be removed. If a non-confidential version of the documents is not provided, they are regarded as not containing confidential information. Confidentiality cannot be invoked for a whole document or entire sections of a document, but only for punctual information, in a motivated way.

In Republic of Moldova, the information which may constitute a trade secret is defined by the Law No. 171-XIII of July 6, 1994, on Trade Secrets. This information must be marked by the applicant, as required by the legislation in force. Other information, except the one constituting trade secret, shall be deemed confidential by the Competition Council Plenum, if submitted by the complainant in a request, motivated in that regard. Information can also be considered as confidential and, respectively, receive protection if and to the extent to which its disclosure might significantly harm a person or a company. Confidential information may include data that would enable the parties to identify the complainants or other third parties if the latter have a reasoned basis, proved in written form, to remain anonymous. Inspections are another means of collecting data and, therefore, many of the issues discussed above are as potentially relevant for inspections, because they relate to the obtaining of information.

Art. 20 (1) of the EC Regulation No.1/2003 provides that "the Commission may conduct all necessary inspections of undertakings and associations of undertakings". This apparently simple statement raises multiple arguable aspects.

It is important to prove the need for an inspection. First of all, the investigation must be "necessary". Just as in the Art. 18, discussed above, the meaning of the words from the foreword is important: "In order to carry out the duties assigned to it by this Regulation". The restriction concerns the purpose of the investigation and not its merits under the given circumstances. An investigation must be "necessary", in other words it is a necessary tool to determine the applicability of Art. 101 or 102 TFEU. This gives the Commission a very significant discretion, especially given the limited extent to which a court may require the justification for inspection, submitted by the Commission. It is certainly arguable that the power to conduct investigations should

be exercised in a manner consistent with the principle of proportionality and with a limited intervention.[6]

Secondly, investigations can be conducted only in the case of "undertakings and associations of undertakings".[7] For obvious reasons, there is no reference to governments and competent authorities of the Member-States, as it happens to requests for information.

Thirdly, as in the case of information requests, it appears there are no restrictions as to which enterprises can be investigated. The powers of the investigation commission are not limited to those undertakings, which are believed to violate Art. 101 or 102 of the TFEU. Therefore, third party undertakings can be investigated. Nevertheless, the principles of proportionality and limited intervention can be applied and act as a restriction for the Commission to exercise its powers of inspection of records and other business documents, etc. of the third parties. The Commission accepted that inspections should not be arbitrary or excessive.

Finally, it is not clear at first what obligation, if any, is placed on the undertakings under investigation. There are two basic types of inquiry: (a) inquiry initiated by decision; and (b) inquiry initiated by the Commission officials, in order to exercise certain specific powers of investigation.

The organization can be informed in advance, usually by phone or fax, about the proposed investigation. If the element of surprise is not necessary, there is an obvious advantage for the Commission: the company can prepare and have the adequate representatives ready to meet with inspectors. On the other hand, warning parties about the inspection involves the risk that the evidence could be destroyed. When arriving by surprise, inspectors will ask, from the door, to speak with a certain director or senior employee by name or rank, to whom they will present themselves and announce the purpose of their presence. The enterprise can decide then and there to refuse entry. There isn't an established model of inspection, but inspectors, usually, ask to see the offices and the original files, before examining some specific files and documents. For businesses it is good to allocate, from the start, managerial personnel for monitoring the investigation. They should observe where the inspectors go, the files they see, the copies they take, the questions they ask and the answers they are given.

According to art. 38 of the Competition Law from Romania, no. 21/1996, the antitrust inspector can conduct inspections in any premises, only based on a signed

[6] Case31-59 Acciaieria e Tubificio di Brescia v High Authority of the European Coal and Steel Community, 1960.
[7] Case 108/63 Officine elettromeccaniche A. Merlini v High Authority of the European Coal and Steel Community ,1965

judicial authorization. Antitrust inspectors can carry out inspections, only based on an order issued by the President of the Competition Council and with the judicial authorization given by the President of the Court of Appeal, or by a judge delegated by him. Upon the start of inspection, a certified copy of the inspection order and of the judicial authorization shall be communicated to the person, subject to inspection.

The Competition Council from Romania carries out inspections at the request of the European Commission or other competition authority of a Member State, according to Art. 22 of EC Regulation no. 1/2003 and Art. 12 of EC Regulation no. 139/2004, based on the inspection order, issued by the President of the Competition Council.

According to Moldovan legislation, inspections are carried out only if there is a disposition of initiating the investigation. If the inspection is done indoors, on land or in vehicles owned or used by the undertaking, the association of undertakings or by the public authorities, it shall be carried out based on the order of the President of the Competition Council.

Inspection of accommodation spaces, land and related means of transport belonging to members of the management or staff of the undertakings or associations of undertakings, shall be conducted based on a decision of the Competition Council Plenum, authorized by the judge.

The order of the President of the Competition Council stipulates the goal, the objective, the date of starting the inspection, as well as the sanctions provided for obstructing the inspections. The order must be accompanied by an official, empowered delegation. The antitrust legislation of the Republic of Moldova does not provide other ways to conduct the inspection. According to art. 56, para. (3) of the Competition Law no.183/2012, during the inspection, the Competition Council employees have the following rights:

a) to have access to premises, land and means of transport owned or used by the undertaking, associations of undertakings or public administration authorities;

b) to examine, to retrieve or obtain copies and excerpts from the records and other documents related to the object and the purpose of the investigation, regardless of the physical or electronic support they are kept;

c) to seal, without suspending the activity of the undertaking, the offices of the undertaking, during the inspection (but no more than for 72 hours);

d) to ask any representative or staff member of the undertaking, of the association of undertakings or public administration authority, for explanations on

facts or documents relating to the object and purpose of the inspection and to record their answers;

e) to ask that the information relating to the subject-matter and the purpose of the inspection, kept on the computer and available in the room, is submitted in a form so that it can be taken and it is visible and readable.

During the inspection, the members of the investigation team are obliged:

a) to inform the person subject to inspection about his/her rights and obligations;
b) to conduct the inspection in compliance with the entitled competences and taking account of the purpose of the inspection

At the same time, the subject under inspection is obliged to submit to inspection, which takes place between 09:00 and 18:00. Results of the inspection are recorded in the minutes.

The documents, seized during the inspection conducted by the Competition Council, which, as a result of a more detailed research, prove not be related to the object of the investigation, are returned to the undertaking from which they were taken and are no more part of the case file.

During phase I.2.1, the economic agent may use a set of tools to assert its ***rights of defense***, one of the fundamental rights, including in the competition legislation.

Among these rights, at the given stage, we can mention the right to be interviewed. In order to carry out its duties, the Competition Council can invite for an interview any person or entity, indicating the legal basis, the purpose and the person's right to refuse the interview. The person can make use of his right to participate in the interview and to provide the necessary information, as well as the right to refuse participation in the interview.

The period of accumulation of evidence, information, analysis and processing ends with the investigation report. The report must be prepared within 2 months after receiving the last information. And here, when forwarding the report to the parties, starts the next stage (I.2.2), the open stage.

The report is sent to all the parties involved, and they are given the legal deadline of 30 days to submit observations. The report must have a well-defined structure, according to internal regulations, and must contain the mandatory elements stipulated in the Competition Law of the Republic of Moldova no. 183/2012, the object of investigation, the established facts, the evidence, the conclusions and the rapporteur’s proposals.

Phase I.2.2. - ***the open stage of the investigation, carried out by the specialized subdivisions of the Competition Council*** - starts with ensuring the right of defense of the undertaking, through the following moments:

01) access to the file;

02) granting the right to express its views on the findings and the proposals from the investigation report;

03) ensuring the right to request hearings.

01) The access to the file is a fundamental right, based on the principle of equality of arms. DG COMP provides access to the file through the Hearing Officer.

The Competition Law of the Republic of Moldova, No. 183/2012, Art. 60, includes clear provisions on the access to the file. In this regard, following a written request, the complainant shall be given a one-time access to the documents based on which the Competition Council made its preliminary examination, as a result of informing by the Competition Council.

In their turn, undertakings and associations of undertakings, which are object of the investigation conducted by the Competition Council, have the right of access to the Competition Council's file, subject to the legitimate interest of undertakings to protect their trade secrets. Access to the file shall be given only one time, as a result of presenting the investigation report by the Competition Council for observations. Given that, in accordance with Art. 59 of the Competition Law no.183/2012, submission of comments can take place within 30 working days from receiving the investigation report, we conclude that access to the file may only be granted during this period.

Access to the file is granted, provided that the information in the file is to be used only within that specific procedure, conducted by the Competition Council, or any possible legal proceedings related to that procedure.

In the European Union, the right to hearing of any person demonstrating a sufficient interest is stipulated in the EC Regulation no. 1/2003. This right is respected both by the Competition Council from Romania and the Competition Council from the Republic of Moldova.

According to Art. 59 of the Regulation on the organization, operation and procedure of the Competition Council, implemented by the Order No.101/2012 of the President of the Competition Council from Romania, the President of the Competition Council shall request the parties concerned, upon sending the investigation report, that when submitting written comments, to communicate if they want the report to be debated at a hearing.

According to Art. 64 of the Competition Law of the Republic of Moldova, parties to which the investigation report was transmitted are entitled to request hearings. The hearings are requested by the parties, in written form, with the submission of observations on the investigation report. If deemed appropriate, the President of the Competition Council Plenum may order or allow the hearing of other legal or natural persons. The requests for hearing of these persons shall be approved in the event they prove sufficient interest. Where these persons' requests are approved, they shall be passed on, if appropriate, upon request, a copy of the non-confidential version of the investigation report.

After the completion of the procedures described above, the investigation report with the objections of the parties and the table of divergences is presented to the Plenum members. Here starts the third step of the first phase (I.3) namely: ***Investigation under the auspices of Competition Council Plenum***.

It should be noted that, at this stage, the procedures applied by the Competition Council from Romania and the Competition Council from Moldova are different. This is due to the structural differences and powers granted. Thus, in Romania, the decision establishing an infringement can be adopted by the Plenum, but also by the Commission, consisting of 3 members of the Plenum. The president of the Competition Council establishes the commission's composition for each case and appoints one of the members to lead its work. At the request of a commission member or of Competition Council President, the case for which the commission has been appointed is examined by the Plenum of the Competition Council.

In Republic of Moldova, decisions on cases are adopted only by the Plenum, whereas each Plenum member is obliged to examine the presented file and to attend the hearings on the case.

Investigation under the auspices of Competition Council Plenum consists of 2 stages: the hearings and the deliberation of the decision.

One of the most important steps of the examination phase of the antitrust law infringement by the competition authority is the deliberation. At this point takes place the synthesizing of all the information collected in the process of investigation and the finalization of the most important procedural act of the Competition Council - the preparation of the decision.

Deliberation is the operation in which the Plenum members establish solutions to be delivered on the conducted investigation. This stage occurs after the examination of evidence, when Plenum members shall consider that they have sufficient information for adopting a decision.

As a result of deliberations, the Competition Council Plenum or the resolution commission adopts a decision on the investigated case.

According to Art. 65 of the Competition Law of the Republic of Moldova, No. 183/2012, after the examination of the observations submitted by the parties on the investigation report, and if appropriate, after the hearings, the Competition Council Plenum decides on the case. Plenum meetings, in which the deliberation takes place, are closed, to protect the information whose disclosure is restricted. Competition Council decisions are adopted by a majority vote of the members present. In case of equal votes, the vote of the chairperson of the Plenum meeting is decisive.

It should be mentioned that the members of the Competition Council Plenum of the Republic of Moldova are not allowed to abstain from voting, while within three days they can present their dissenting opinion, in written form, if they voted against the decision adopted by the Plenum. Competition Council Plenum members are required to keep the secrecy of deliberations.

The decisions and the prescriptions of the Competition Council Plenum, adopted in view of carrying out its duties, are notified, in written form, to the persons concerned, within 10 days from the date of adoption thereof.

The first implementation phase of the procedural competition legislation, related to the infringement of the antitrust law, falls within the exclusive jurisdiction of the Competition Council. The second phase, ***"Judgment of the case",*** is an optional one and falls within the competence of the court of justice. The judgment of the case can take place in two steps:

Step **II.1** – Judgment in the first instance (judicial control);

Step **II.2** – Appeals (judiciary control).

As mentioned above, this phase of the examination of competition infringements takes place in court, taking into account the principle of access to justice, in accordance with the administrative litigation procedure. If the undertaking or the public authority complies with the decision of the antitrust authority, this phase can be avoided.

The third phase, **"Enforcement of the decision establishing an infringement of competition law"** is the final phase of implementing the procedural competition legislation. The aim of the competition authority and the court cannot be limited only to obtaining a favorable decision. The mere recognition of the right to restore a violated right is often not enough.[8]

[8] Leş Ioan, Tratat de drept procesual civil, Ed.a 5-a, rev.- Bucureşti: Ed.C.H.Beck, 2010, p. 1041

Here, we can distinguish two situations:

a. voluntary execution
b. forced execution

Decisions, adopted by the competition authority, can establish violations of the procedural and substantive rules.

a) *Voluntary execution of the Competition Council decisions* can only take place when material violations of the antitrust legislation are found. Decisions establishing the procedural rules are adopted in order to oblige undertakings, associations of undertakings and public authorities not to hinder the activity of the competition authority by failing to provide the requested information, etc.

In case of voluntary execution of the decision ascertaining the infringement of the substantive competition law, the second phase of the trial, "Judgment of the case" is avoided. We consider that such a practice is welcome and it shows that the antitrust authority's decision is well reasoned and substantiated, because the undertaking has realized the danger of anticompetitive behavior and believes that the consumption of resources to appeal this decision is irrational.

b) *Forced execution of the Competition Council decisions* can take place when the decision was upheld by the courts or when, although it was not appealed, it was neither executed by the sanctioned undertaking.

Chapter V, the last one, "Legal liability and special procedures in the procedural competition law" is devoted to legal consequences for breaches of procedural rules and to explaining special derogatory rules, specific for the procedural competition law. Liability and sanctions are an important part of the legal system. Sanctions intervene whenever legal provisions are violated. There are legal liabilities for non-compliance with the law requirements, this is a prerequisite for the functioning of the legal system and even of the rule of law.

As mentioned, procedural competition law is a branch of sanctioning law. Procedural penalties in all situations have a particularly important role, since they are intended to contribute to an optimal administration of justice. Without the existence of procedural sanctions, legal activity - based on the collision of certain interests - would not be achieved under the proposed terms of the rule of law. Consecration of procedural rights and obligations would remain only formal, in the absence of sanctions to intervene for imposing a proper conduct to the participants in the legal activity. However, procedural penalties do not correspond only to a general interest, but also to a concrete interest of the litigants, for which civil trials should not be externalized, but on the contrary, are to be sanctioned according to all safeguards

provided by law. In these circumstances, it can be said that the procedural law sanction is in itself a guarantee of restoring the rule of law and, ultimately, the contested subjective rights.

When analyzing the legislation applied for examining competition law infringements, we can highlight the following procedural sanctions: nullity, forfeiture, fine, penalty and extinctive prescription.

Special procedures in procedural competition law, that help streamlining the investigative work include the commitments of undertakings, which can, voluntarily, through the business environment, eliminate the concerns of the competition authority. The second special procedure is the leniency policy, which is still not very efficiently implemented in the EU countries, and it has many reservations when it comes to procedures.

The previously examined principles and rules of procedure are devoted to the general examination method for antitrust cases. These rules are very diverse and can be considered as a common law in the procedural competition matters.

Evolution of social relations in the economic and competition environment imposed the establishment of special procedural rules, derogating from the general law. All these rules make up the special procedures.

The **leniency policy** is provided in the Competition Law of the Republic of Moldova, no. 183/2012, and it should lead to the erosion of cartel agreements, by reducing or providing immunity from fines. Thus, *leniency is the reward granted by the Competition Council for the cooperation of the undertakings and the associations of undertakings with the Competition Council*.

To qualify for leniency, the undertaking must submit an application in this regard to the Competition Council. To submit the request, the undertaking must cooperate in actual fact, continuously and promptly with the Competition Council throughout the entire investigation (e.g. provides the necessary information, does not falsify nor destroy the evidence, does not conceal information, nor reveal the existence of the application for leniency up to the submission of the report to the parties, etc.) and is obliged to end the involvement in this agreement.

The procedure of granting the fine immunity consists of several elements:

The undertaking or association of undertakings, willing to apply for a fine immunity, should contact the Competition Council, submit the declaration and provide the evidentiary materials.

The undertaking provides a list, reflecting the nature and content of the evidence, copies of documents from which certain information was removed and which can be

used to confirm the evidentiary nature of the elements, presented in the list. The Competition Council confirms, in written form, the receipt of the application, the time when the application was filed and the information and evidence was received.

After receiving the information, the Competition Council grants the undertaking the conditional fine immunity (in written form).

Where the Competition Council must examine the evidence, it can reserve time to perform verification procedures, after which it conditionally accepts the leniency procedure.

The Competition Council informs the undertaking about its decision.

Where there are more requests for leniency, the requests shall be analyzed in chronological order of their receipt.

The undertaking has the right to withdraw, at any stage, its request for leniency.

At the end of the investigation procedure, the Competition Council grants immunity to fine, by Decision of the Competition Council Plenum.

In all the decisions issued, at the end of the investigation procedure, the Competition Council shall establish the reduction level from which the undertaking or the association of undertakings shall benefit, compared to the fine which would have been applied regularly.

In the EU, the special procedure for accepting the commitments is governed by the Commission's Communication on remedies acceptable under Council Regulation (EC) No. 139/2004 and under Commission Regulation (EC) No. 802 / 2004 (2008 / C 267/01) published in the Official Journal of the European Union, No. C-267/1 of 22 October 2008.

In Romania, remedies are regulated by the provisions of the Competition Law from Romania, No. 21/1996, and the Guidelines on the conditions, terms and procedure for accepting and assessing remedies, in anticompetitive practices, enforced by Order of the Competition Council from Romania, nr.724/2010.

In Republic of Moldova, regulation of the procedure of accepting commitments is done through the Competition Law of the Republic Moldova, No. 183/2012 and the provisions of the Regulation on the acceptance of commitments proposed by enterprises, adopted by Decision of the Competition Council Plenum No. 3 from 22.01.2015.

Taking into account that the Moldovan legislation is harmonized with the EU legislation, we can say that the procedures applied in accepting remedies in Romania and Moldova are identical.

The main purpose for accepting commitments is to restore the competitive environment, by taking measures to eliminate the situation which led the Competition Council to initiate the investigation.

Businesses can propose remedies in the case of anticompetitive practices and mergers, thus, accepting commitments is not possible for acts of unfair competition, acts of public authorities that restrict competition and unlawful State aid. It should be noted that the Competition Council is not entitled to accept commitments in the case of very serious infringements, as defined by Art. 72 of the Competition Law of the Republic of Moldova, no. 183/2012.

The procedure for accepting commitments is a special procedure which represents derogation from the procedural rules of the procedural competition law. These special regulations are justified by the ultimate objective of the competition policy of the state, elimination of competitive problems and the prompt establishment of a normal competitive environment for the benefit of the consumer. In this way, the procedure of accepting commitments is a non-litigation procedure for solving competition concerns with limited resources.

CONCLUSIONS AND SUGGESTIONS

Based on the conducted research, we can draw the following conclusions:

Society development has led to the awareness of the need to develop the regulation of economic and legal relationships, including competitive ones, specific to undertakings.

Law, as a complex social phenomenon, incorporates the essential features of society, including economic life, social and political aspects, such as the collective will.

We explained the emergence of procedural competition relations through Maslow's theory.

The motivation for regulating procedural competition relations is determined by the needs of the people. After providing the legal protection of needs at the bottom of the pyramid (e.g. the right to life), satisfaction of the other needs, located towards the top of the pyramid is desired.

Being in close connection with the social practice, legislation is more responsive to changes in social life than the legal system. Often, the legislative process exceeds the scope of the law branch. This also refers to the regulation of

procedural relations in antitrust litigations, which is a situation found in several branches of law.

Separation of the procedural competition law as a distinct public law branch of the legal system is a necessity determined by modern realities.

Antitrust legislation has undergone a long evolution, from Zeno, 483 AD, who wrote the first anti-monopoly act "Constitution on pricing" until today.

The contemporary antitrust legislation appeared in the US in the early XX century, and it is manifested through the support and promotion of monopolies, as one of the few opportunities for the development of science, innovation and advanced technologies.

European antimonopoly legislation, which appeared later than the US legislation, puts more emphasis on protecting free competition and limiting monopolization of areas of activity.

International and national competition regulations aim to create conditions and rules necessary for economies to efficiently develop, respecting the interests of consumers.

Antitrust regulatory developments in Moldova evolved over the last 20 years and now are governed by the Competition Law No.183/2012, corresponding to the most advanced European practices.

We analyzed the distinctive branch of the procedural competition law with its own object of regulation, regulatory method, common principles, social interest and legal sanctions.

We identified a distinct branch of law - the procedural competition law as a totality of the legal norms governing the work of state authorities and parties, as well as the relationships that are established in the process of stating the facts that represent infringements of the competition legislation and in the application of sanctions and measures provided by the competition legislation in relation to those who committed the infringements.

We developed the procedural division matrix which includes 3 phases, several stages, steps and moments of the procedures in the investigation of competition infringements.

The procedural elements and principles of the procedural competition law were established, including through the analysis in different law systems, as well as in various branches of law.

Analyzing the procedures of the procedural competition law it was found that there was a lack and complexity of procedures that would allow the efficient implementation of the competition law, which led to the necessity to develop new procedures.

We determined two special procedures in the procedural competition law, namely the right to resort to commitments and the right to leniency.

The drawn conclusions allow setting out the following recommendations and proposals de lege ferenda:

a) Algorithmization of procedures from the procedural competition legislation, and the introduction of new procedures that would allow an accurate and unambiguous interpretation of the legislation in force, for example:
   - Regulation of the procedure of investigation resumption when, after submitting the investigation report to the parties, new circumstances emerge that modify the infringement of the legal act.

b) Regulation of special procedures, including interim measures (in internal legal acts).

c) Specifying the cases of "when" and "how" the overriding public interest is established, for the initiation of the ex officio investigation by the Competition Council.

d) Rewarding, from the amount of the fine, the person, providing information to the Competition Council, that would allow establishing the infringement under Art. 5 of the Competition Law No. 183/2012.

e) Establishing the settlement procedure, by the Competition Council, between the undertakings participating in the case.

THE LIST OF PAPERS AND ARTICLES, PUBLISHED ON THE SUBJECT OF THE DOCTORAL THESIS