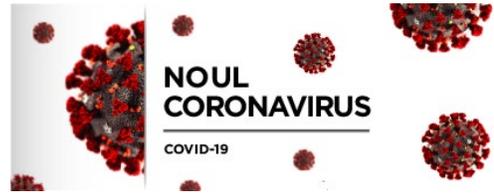


IS COVID-19 SONG-WRITING THE MOLDOVAN COMPETITION LAW?



The nearer we get to the end of the state of emergency in the Republic of Moldova – 15 May 2020, the clearer it gets that the measures containing the spread of Covid-19 are likely (and, of course, involuntary) also measures suppressing the economy and free competition in the country.

Unprepared, the Competition Council became an "assistant" and also a key "doctor" for the health care of the national economy.

➤ **The actions of the Competition Council and other authorities are almost missing**

Unlike other countries (where coordinated behavior between competitors was allowed - see [the example of Romania](#) - or state aid was offered - again, see [the example of Romania](#) where state guarantees will be granted for small and medium enterprises), in the Republic Moldova, there was very little and timid intervention in the field of competition and, in general, for supporting the enterprises.

What was done:

The Competition Council issued no statement relaxing its approach to certain initiatives by companies to cooperate in times of crisis. It just posted some news on its website announcing:

- (i) increased monitoring of the market of all social important goods, which are those from the Government Resolution 774/2016 (announcement of [23 March 2020](#)) - we note, in this context, that on March 26, 2020, the Government supplemented the list of social important products with 3 new categories : medical masks, medical gloves, biocidal products (medical disinfectants). Thus, such products can have commercial add up only 20%;
- (ii) increased monitoring of the petroleum products market, where prices were expected to fall (announcement of [24 March 2020](#));
- (iii) increased monitoring of the food market (announcement of [2 April 2020](#)).

What could be done:

For the next period, it would be appropriate that the Competition Council draws up guidelines on the application of compatible state aid (Article 4 of Law 139/2012). Now more than ever, this is necessary considering the supportive measures took by:

- the Commission for Exceptional Situations (**CES**) - postponing the declaration and payment of income tax for some enterprises (point 26 of Resolution no.3) and the granting subsidies (point 6 of Resolution no 16); and
- the Government and Parliament - the draft law on measures to support entrepreneurship in the context of the epidemiological situation (details [here](#)).

➤ **The application of Law 183/2012 and other competition regulations is not limited**

Although the CES may impose certain exceptional measures, currently *there are no derogations from the application of the competition rules*. So, as before, *companies shall have an independent market behavior*.

Below are listed the main rules to be observed by any company (resident or foreign) falling under the Moldovan competition law.

Anticompetitive agreements:

As before, cartel agreements are not allowed, as they are supposed to prevent, restrict or distort competition, through their object - that is, by (i) fixing the selling prices of the products to third parties; (ii)

limiting production or sales; (iii) sharing markets or customers; or (iv) participating in rigged tenders or other forms of bidding competition.

Certain forms of collaboration though, are still allowed to increase the efficiency of the supply of basic products and to ensure their balanced distribution. However, such collaborations shall cumulatively meet the following conditions: (a) to contribute to the improvement of the production or distribution of products or to the promotion of technical or economic progress; (b) to provide consumers with a fair share of the benefit obtained; (c) not impose on the undertakings concerned restrictions that are not indispensable for the achievement of the objectives mentioned in letters a) and b); and (d) it does not give undertakings the opportunity to eliminate competition in respect of a significant part of the products concerned.

Abuse of the dominant position:

As before, they are not allowed, and the Competition Council reiterated this in the communiqués of [17 March 2020](#) and [23 March 2020](#). Thus, in particular, remain to be prohibited.:

- a) excessive and unjustified increase in prices or imposing unfair trading conditions;
- b) the application of discriminatory treatment between customers or suppliers for whom similar terms and conditions would normally apply;
- c) practicing of excessive prices or predatory prices in order to eliminate competitors;
- d) exploiting the economic dependency status of trading partners;
- e) unjustified refusal to contract/supply certain trading partners;
- f) termination of a contractual relationship previously established on the relevant market for the sole reason that the partner refuses to submit to unjustified commercial terms;
- g) conditioning the conclusion of the contracts of acceptance by the commercial partners of some additional benefits which, by their nature or according to the commercial usages, are not related to the object of these contracts (linking the products).

Unfair competition:

As before, it is not allowed:

- a) publishing an advertisement that would spread false information about its products, which would create a more favorable situation compared to its competitors;
- b) forcing the commercial partner to terminate the contract with his competitor;
- c) embezzlement of the competitor's clientele;
- d) actions that would create confusion with the undertaking, products or economic activity of the competitor.

These bans are also specific to online marketplaces. For instance, [Ebay](#) has blocked the sale of medical products and medical equipment, [Amazon](#) is blocking the marketing of products violating internal policies..

Economic concentrations:

Unlike other countries (where it was initially recommended to submit notifications only in case of emergency and only electronically - see [the example of Austria](#)), in the Republic of Moldova the activity of the Economic Concentrations Department and *the procedural* time limits applicable to notifications under examination, are not affected.

Regarding future notifications, however, taking into account the fact that although the Competition Council has 30 days to adopt a clearance decision, because this time limit starts ticking from receiving the complete notification, we admit that due to the challenges caused by the pandemic, the Competition Council may request additional information thus extend the authorization timing.

➤ **The activity of the Competition Council, including the carrying out of controls, is limited**

Although since 17 March 2020, the public relations activities at its headquarters were discontinued, and later, the entire activity of the Competition Council was interrupted by the CES Resolutions no. 6 (point 3)

and no. 14 (point 1); from 24 April 2020, the Competition Council expects to resume work. It will probably interact predominantly online or over the phone.

Notably, the practice of switching from written to e-mail letters has been adopted by other competition authorities. For instance in Canada, on 18 March 2020, [the Commissioner for Competition has indicated](#) that paper letters will be replaced with e-mails.

Controls:

Along with the controls performed by other authorities, until 1 June 2020, the Competition Council will not perform controls except in connection with the matters exempted from the moratorium established through CES Resolution no. 3. These controls (or inspections as under the Law 183/2012) may be:

- (i) at the request of the consumers, when truthful information about the violation of the legislation is presented (point 25 (4) g) of the Resolution);
- (ii) with the approval of the State Chancellery, at the request of the Competition Council if the economic security of the state may be affected (sections 25 (5) and (8) of the Resolution); and
- (iii) in the cases of control on the manner of price formation and application (point 25 (7) of the Resolution).

The Competition Council may also exercise other measures to monitor compliance with competition and advertising legislation. It may mainly send requests for information or open investigations ex officio or upon request.

Lapse of the limitation periods:

Probably during the state of emergency, the Competition Council will have the activity largely oriented towards preserving the national economy and free competition. This is particularly taking into account the fact that the suspension (or beginning) of the limitation periods of any kind, during the state of emergency.

Although formulated uncertainly, we agree with [the position of the Competition Council](#) that point 8 of Resolution no. 1 of the CES must also apply to certain relevant competition terms (e.g. limitation periods for the application of sanctions, the right of investigated companies to object the reports), in particular due to their administrative character (art. 60 et seq. of the Administrative Code 116/2018).

Suggestions for public relations:

Given the growing necessity of physical distancing required until a Covid-19 vaccine is found, it would be welcomed that the Competition Council embrace the online. To exemplify, prior consultations or interviews could be made using technological means (Skype Meet, Zoom etc). Also through these applications could be provided access to the materials of the investigation reports (e.g. by screen sharing during the video conference). The minutes of such procedural measures could be made on the basis of the video conference records (e.g. by activating the "record" option).

These practices of using technologies are also supported by the law in force - according to Article 7 of Law 1069/2000 on informatics, the computerization of companies is a strategic objective of the first order; also, according to Article 18 (1) of Law 467/2003 on computerization and state information resources, *public authorities, natural persons and legal entities have the right to create, within the limits of competence and in accordance with the legislation on conformity assessment, information technologies, systems and information networks to ensure their own activity and the provision of information services.*

Furthermore, on [8 April 2020](#), the International Competition Network (where we have been a member since June 2007) indirectly acknowledged that competition authorities may issue guidelines on procedural and operational changes, with the recommendation that they be clear, transparent and published in a timely manner.