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EXAMINATION AND SETTLEMENT OF DISPUTES ARISING FROM ANTI-COMPETITIVE AGREEMENTS (CARTEL AGREEMENTS)

553.03 Civil procedural law

Summary of the doctoral thesis in law

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CONCEPTUAL LANDMARKS OF RESEARCH

Actuality and importance of the problem proposed for research

From all the anti-competitive practices stated in the regulatory acts, anti-competitive agreements, especially cartels, are the most harmful to the competitive environment. They affect a very large number of consumers and refer to various goods/services or works, such as: vitamins, airline tickets, TV and computer monitors, the banking system, oil, medicines, trucks, car parts etc. Each of us might be affected by a cartel, but not all of us realize it.

Taking into account the harmful effects of anti-competitive agreements, they are the source of numerous administrative, civil and criminal litigations, which need to be examined in details, in order to highlight the main problems and solutions. The topicality of the investigated theme is also conditioned by the practical aspect of the problem, as the number of anti-competitive agreements detected by the Competition Council is increasing. Thus, if in the period 2012-2017 - 9 anti-competitive agreements were detected, then in the period 2018-2023 - 20 anti-competitive agreements were detected. This statistics data denote that special attention should be paid to the examined issue, representing a theoretical and practical interest; or the majority of the Competition Council Decisions, through which anti-competitive agreements are found, give rise to new disputes in administrative litigation and may be the source of civil disputes regarding the recovery of damage.

The importance of the work is also due to the fact that on April 1, 2019, the provisions of the Administrative Code came into force, which represents a revolution in the field of administrative litigation. Accordingly, one of the goals of the thesis is to analyze the procedures for appealing acts issued by the Competition Council in the context of detecting anti-competitive agreements, through the lens of the new provisions from the Administrative Code, and to highlight the problems that have arisen and that may arise in the process of appealing acts issued by the Competition Council.

Also, the need for research is determined by the insufficiency in the local legal literature of monographies, scientific articles that would address the issue of examining and resolving disputes arising from anti-competitive agreements, thus filling the existing doctrinal void.

Considering the above, we can conclude that the topicality and importance of the topic addressed is obvious and determined by:

- the negative impact of anti-competitive agreements on the economy in general and on each consumer in particular;

- the finding of gaps in national competition legislation and the theoretical substantiation of its improvement;

- lack of scientific research highlighting the main problems arising from the examination of litigation deriving from anti-competitive agreements;

- the increasing number of cases of anti-competitive agreements detected by the Competition Council.

The scope of the research paper: The main scope of this paper is the complex research of disputes arising from anti-competitive agreements, analyzing them through the lens of national and international legislation, legal literature and judicial practice, in order to highlight effective legal instruments, but also gaps/problems in the interpretation and application of the legal framework, as well as to develop proposals to improve national legislation and to align judicial practice with European standards.

The objectives of the research paper:

- analysis of the evolution of anti-competitive agreements and their typology, in order to better understand their legal nature, so as to delimit them from other forms of cooperation between enterprises;

- highlighting gaps or legal uncertainties in the field of regulating anti-competitive agreements and the procedures for examining disputes arising from them;

- developing proposals for the application of national legislation and formulating *lex ferenda* recommendations in order to improve legislation, as well as making the mechanisms for combating anti-competitive agreements more efficient.

Research hypothesis:

- the efficiency of resolving disputes arising from anti-competitive agreements depends on the clarity of the legal framework, which currently contains some gaps and confusions;

- the lack of national regulations on the method of quantifying the damage suffered as a result of an anti-competitive agreement and of regulations on the filing of a collective civil action by a public authority on behalf of consumers who have suffered as a result of that agreement has led to the fact that so far no such civil actions have been filed, and consumers have not been compensated for the damage suffered;

- national courts encounter difficulties in resolving disputes arising from anti-competitive agreements, in particular in motivating decisions, because of the imperfect legal framework, the lack of competition specialists who can provide expertise, but also to uneven judicial practice.

Research methodology.

Various methods, procedures and techniques were used in the development of the thesis. The main research methods used are the following: dialectical, logical-formal, legal-comparative, historical-legal, comparative, statistical etc.

The theoretical importance and applicative value of the work. The thesis represents a complex and comparative study of the examination and resolution of disputes arising from anti-competitive agreements. The ideas and results of the research can be used in scientific work by teachers, but also as a source of study for students. Likewise, they can be used in the work of professionals in the field, who implement legal provisions, as well as in the examination of disputes in courts.

The practical importance of the work is also determined by the fact that the conclusions and proposals of lex ferenda presented can be used by the legislator in the process of improving the legal framework; by the Competition Council, in order to strengthen the mechanisms for counteracting anti-competitive agreements, but also by the courts that will examine the disputes arising from anti-competitive agreements, in order to argue the decision taken.

Approval of results. The thesis was developed and discussed within the Doctoral School of Legal Sciences of the State University of Moldova. The research results were approved by the guidance committee within the Doctoral School and the Department of Procedural Law of the State University of Moldova.

Publications on the topic of the thesis – 11 publications.

The volume and structure of the thesis.

The work consists of an introduction; three chapters, which bring together 13 paragraphs; conclusions and recommendations, as well as the list of bibliographical references and normative acts used. Overall, the work has 237 pages of text, and the bibliographical list includes 243 titles.

CONTENT OF THESIS

Chapter 1. Historical and legal analysis of anti-competitive agreements and the current scientific situation

This chapter has an introductory character, analyzing the historical evolution of anti-competitive agreements and the relevant legal framework. Anti-competitive agreements are approached through the lens of several theories, which have highlighted their effects and evolution.

In subchapter 1.1., entitled Scientific treatments on the historical evolution of anti-competitive agreements regulations, there are scientific treatments on anti-competitive agreements, briefly describing their evolution but also the legal regulations in different states, including the evolution of the domestic legal framework that combats anti-competitive agreements.

The analysis of anticompetitive agreements from a historical point of view demonstrates the interest of civilization in them since ancient times. Starting from the definition of the agreement, which represents a manifestation of common will, verbally or in writing, expressed by two or more people, we can state that anticompetitive agreements appeared with the emergence of the first primitive forms of trade in antiquity, such as barter, which involved the exchange of goods or services between people to meet certain needs. For example, a hunter could exchange meat with a fisherman for fish or with a potter for a clay vessel. Accordingly, we can suppose that fishermen, potters, or hunters agreed among themselves and established how much fish or meat to exchange for another product. Competition existed in those times as well, although not in a form similar to that in modern society.

In the Republic of Moldova, the legal regulation of competition originated with the approval of the Decision of the Government of the S.S.R. Moldova No. 2 of 04.01.1991 on urgent measures for demonopolization of the national economy of the S.S.R. Moldova,[1] which declares as one of the main directions of the economy the development of the spirit of competition and the limitation of monopolistic activity. Later in 1992, the Law of the Republic of Moldova No. 906 on the limitation of monopolistic activity and the development of competition was approved,[2] which laid the foundations for the legal regulation of anti-competitive agreements.

Subchapter 1.2. Typology of anti-competitive agreements contains a detailed description of the 2 types of anti-competitive agreements, namely horizontal and vertical ones,

[1] Hotărârea Guvernului R.S.S. Moldova nr. 2 din 04.01.1991 cu privire la măsurile urgente de demonopolizare a economiei naționale a R.S.S. Moldova. În: Buletinul Oficial din 04.01.1991 (abrogată).
[2] Legea nr. 906 din 29.01.1992 cu privire la limitarea activității monopoliste și dezvoltarea concurenței. În: Monitorul Parlamentului Republicii Moldova nr. 2 din 01.03.1992, abrogată prin Legea nr. 183 din 12.07.2012.

with an indication of concrete causes from the practice of the European Commission, in order to better understand each type of anti-competitive agreement and its effects.

Horizontal anticompetitive agreements are agreements between competing companies on a market that limit direct competition between them. Although they can sometimes be justified from an economic point of view, most agreements of this type are considered illegal. Competition law defines a horizontal agreement as an agreement or concerted practice that is made between two or more independent companies that operate on the market at the same level.[3]

These horizontal agreements are also called cartels, which depending on the object of the cartel can be of several types, but the most dangerous for competition are the following ones: price-fixing cartel; market allocation cartel; production limitation cartel; bid rigging cartel; and technology control cartel.

Vertical agreements are agreements or contracts between companies that are at different levels of the distribution or supply chain. These agreements typically involve manufacturers, distributors and/or retailers, and can take various forms and objectives.

Competition law defines a vertical agreement as an agreement or concerted practice agreed upon between two or more independent undertakings, each acting, within the meaning of the agreement or concerted practice, at different levels of the production or distribution chain, which relates to the conditions under which the parties may buy, sell or resell certain products.[4]

Vertical agreements are generally considered less harmful than horizontal agreements and can offer significant opportunities for efficiency gains. However, competition may be affected, if a vertical agreement contains 'restrictions' on the supplier or buyer. These restrictions can take various forms, for example: agreements involving the exclusive or selective sale of products to one or more buyers may lead to the exclusion of other buyers from the market and/or coordination between buyers.

The most common anti-competitive clauses relating to vertical agreements were inserted into the following types of agreements: distribution agreements; exclusivity agreements; franchise agreements; licensing agreements; and supply agreements.

Vertical agreements can be beneficial for both manufacturers and distributors, helping to optimize the supply chain and increase operational efficiency. Accordingly, all of the vertical agreements mentioned above are legal, being regulated in the legislation of many states, however, they can also raise competition issues, especially when they lead to the restriction of competition or the limitation of choice for consumers. Accordingly, these agreements are subject to competition

[3] Legea concurenței nr. 183 din 11.07.2012. În: Monitorul Oficial nr. 193-197 din 14.09.2012.
[4] Ibidem

regulations and must comply with relevant laws and regulations to avoid anti-competitive practices.

Subchapter 1.3. Analysis of the situation of scientific research on anti-competitive agreements (cartel agreements) is dedicated to the analysis of the situation of scientific research that has anti-competitive agreements as its object of study.

The thesis focuses primarily on the doctrine of the Republic of Moldova, which, in terms of the research topic, is modest and is in the process of being completed. Following the succession in time of the local doctrinal materials that address competition, in general, without it being the main subject, we can highlight authors such as: Roșca N, and Baieș S. – Business Law;[5] Mihalache I. – Business Law: Course Notes;[6] Volcinschi V. and Cojocari E. – Economic Law;[7] and RusuV., Focșa G., - Commercial Law Course.[8] A first work by a local author that has competition as its main subject is by the author Bologan D. – Competition Law: Course Notes.[9]

Taking into account that anti-competitive agreements are prohibited not only by the Competition Law but also by the Criminal Code of the Republic of Moldova, they have also been addressed by specialists in the criminal field, such as: Brînza S., and Stati V. – Criminal Law Treatise. Special Part,[10] and the doctoral thesis prepared by Timofei S. – Competition Offenses (Criminal Law Aspects).[11]

With the adoption of the Competition Law in 2012, interest in competition research has increased among local specialists, with several doctoral theses in law being developed, which have as their research object anti-competitive agreements, such as the theses developed by: Bulmaga O. - Organizational and legal measures regarding entities that carry out anti-competitive practices;[12] Bologan D. - Legal regulation of cartel agreements;[13] and Creciun I. - Legal mechanisms for combating anti-competitive agreements and protecting competition in the legislation of the Republic of Moldova.[14]

The above-mentioned doctoral theses represent a particularly important contribution to the national competition law literature, especially those relating to anti-competitive agreements, but

[5] Roșca N., Baieș S., Dreptul Afacerilor. Ediția a IV-a. Chișinău, USM, 2021. . ISBN: 978-9975-152-86-0.
[6] Mihalache I., Dreptul afacerilor: Note de curs. Chișinău: Print Caro, 2015. ISBN: 978-9975-56-213-3.
[7] Volcinschi V., Cojocari E., Drept economic. Chișinău: USM, 2006. ISBN: 978-9975-4002-2-0.
[8] Rusu V., Focșa G., Curs de drept comercial. Chișinău: ASEM, 2006. ISBN: 978-9975-75-364-7.
[9] Bologan D. Dreptul Concurenței: Note de curs. Chișinău, 2014. p. 164. ISBN: 978-9975-4280-4-0.
[10] Brînza S. și Stati V. *Tratat de drept penal. Partea Specială. Vol. 2.* Chișinău: Tipografia Centrală, 2015. p.1300.
[11] Timofei S., *Infracțiuni în domeniul concurenței (aspecte de drept penal)*, Teză de doctor în drept. Chișinău, 2011.
[12] Bulmaga O., M*ăsurile organizatorico-juridice în privința entităților ce desfășoară practici anticoncurențiale*. Teză de doctor în drept. Chișinău, 2014. p. 183.
[13] Bologan D., *Reglementarea juridică a înțelegerilor de cartel*. Teză de doctor în drept. Chișinău, 2016. p. 199
[14] Creciun I., *Mecanismele juridice de combatere a acordurilor anticoncurențiale și protecție a concurenței în legislația Republicii Moldova*. Teză de doctor în drept. Chișinău, 2021. p. 237.

we consider it insufficient, taking into account the negative effect that a cartel has, and the problems arising from the examination of disputes related to anti-competitive agreements practically remain unexamined in the local legal literature. Thus, in carrying out this research, several scientific works by foreign authors were analyzed, works that include a detailed analysis of competition law and anti-competitive agreements, and the impact that they may have, the emphasis being placed on substantive law and rarely on procedural law rules.

A very important role from a more practical perspective is played by the judicial practice of the European Commission and of the European Court of Justice, which provides important explanations and reasoning regarding the regulation of anti-competitive agreements.

Subchapter 1.4. Legal nature of the litigation resulting from the anti-competitive agreement and its place in the civil process.

This subchapter contains an analysis of the legal nature of disputes arising from an anti-competitive agreement which refers to the specific nature of these disputes and which is determined by the applicable legal rules and the subject matter of the dispute. In all jurisdictions where anti-competitive agreements are prohibited, disputes arising from an anti-competitive agreement may have a civil, administrative or even mixed legal nature.

At the same time, we note that although it is less frequent, it can also be of a criminal nature, which depends on the specific legislation of each state. In certain jurisdictions, some anti-competitive agreements, such as cartels, may constitute crimes, attracting criminal liability of the natural or legal persons involved in the anti-competitive agreement.

The civil legal nature of disputes arising from an anti-competitive agreement is of a reparative nature, the main purpose being to obtain compensation for the damages caused by an anti-competitive agreement, however, most of these agreements cause major damages to a very large number of consumers. The latter have the right to file actions in court against the undertakings participating in the anti-competitive agreements. According to the analysis carried out, we consider that the legal nature of disputes arising from an anti-competitive agreement predominantly takes place in civil proceedings.

Chapter 2. Disputes arising in the process of detecting anti-competitive agreements contains a detailed description of the main mechanisms for detecting anti-competitive agreements, namely: inspection, leniency policy and analysis of information from the public procurement register. The following documents will also be described: The order to initiate the investigation; The order to carry out the inspection; The inspection delegation; The report on the inspection and the investigation report, indicating the formal necessary requirements in light of the new provisions

from the Administrative Code and the Competition Law, including the issues that have arisen or may arise in administrative litigation regarding the challenge of these documents.

Subchapter 2.1 Procedural mechanisms for detecting anti-competitive agreements.

The most frequently used mechanism for detecting cartels by competition authorities is inspections, followed by leniency policy, analysis of information from the public procurement registers and presentation of relevant information through complaints.

The procedure for conducting inspections by competition authorities is a crucial tool in detecting and investigating violations of competition law regarding anti-competitive agreements. These inspections, often called "raids" because they are unannounced, allow authorities to collect evidence directly from the premises of undertakings suspected of cartel agreements. According to art. 56 para. (2) from the Competition Law, inspection is a procedural tool for obtaining the necessary information and documents, regardless of the medium on which they are found and their location, used by the Competition Council to investigate the violation of competition law and can be carried out at any undertaking, including an association of undertakings and a public authority. The persons delegated to carry out the inspection have the right to inspect and obtain all information related to the object and purpose of the investigation from the subject to inspection, including in digital format, regardless of the medium on which they are stored and their location.[15]

For refusing to submit to the inspection or obstructing it, the enterprise is liable to a pecuniary sanction that cannot exceed a maximum level of 1% of the total turnover achieved by the enterprise in the year preceding the sanction, previously until the last changes in 2023, this maximum level was 0.5%.

One of the largest fines imposed by the European Commission for obstructing inspections was in the case of E.ON Energie AG[16] in 2008. The Commission imposed a fine of €38 million on E.ON for breaking seals applied by the Commission to its offices during an inspection. This act was considered a serious obstruction of the Commission's investigation, as sealing premises and documents is a standard measure to ensure the integrity of evidence during inspections.

One of the largest fines imposed by the Competition Council of the Republic of Moldova for obstructing inspections was in the case of SME „47'th Parallel" SRL[17], in 2015. The Council imposed a fine of 4,874,833.45 lei on SME „47'th Parallel" SRL for obstructing the inspection by:

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[15] Legea concurenței nr. 183 din 11.07.2012. În: Monitorul Oficial nr. 193-197 din 14.09.2012.

[16] Decizia Comisiei Europene din 30.01.2008, în Cauza COMP/B-1/39.326 — E.ON Energie AG. [citat 23.07.2025]. Disponibil: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52008XC0919%2801%29&qid=1712616907761

[17] Decizia Consiliului Concurenței nr. DA-08 din 05.02.2015. [citat 28.07.2025]. Disponibilă: https://www.competition.md/decizii/decizia-plenului-consiliului-concurentei-nr-da-ae-08-din-05-02-2015/

giving instructions to employees (verbally) by the general director not to provide information to collaborators involved in conducting the inspection; destroying evidence by the lawyer from the general director's computer; preventing access to the general director's office by delaying the opening of the office and by misleading actions regarding the location of the general director's office; preventing the inspection from taking place until the lawyer arrived.

Another useful mechanism for detecting anti-competitive agreements is the leniency policy. Its main purpose is to encourage companies participating in cartels to cooperate with regulators in exchange for the reduction or elimination of penalties they could receive for violations of the law. This reveals and dismantles cartels that are often difficult to detect or would not have been known about, if the leniency policy had not been applied.

The benefit of the leniency policy is the total or partial exemption from paying the fine for the company that files a leniency application. However, applying the leniency policy can also be dangerous/harmful to the company because it will not be an exempt from civil actions that may be brought by third parties who have suffered as a result of the anti-competitive agreement. Another dangerous aspect is that in some states there is also criminal liability for cartel agreements, and the people who participated in these agreements can be punished with imprisonment, and the leniency policy does not in all cases exempt from criminal liability.

In Subchapter 2.2. Disputes arising in the process of detecting anti-competitive agreements and their resolution methods, the administrative procedure of the Competition Council was analyzed, as well as the disputes that may arise until the issuance of the Decision to establish the anti-competitive agreement. Thus, in the administrative procedure for detecting anti-competitive agreements, until the adoption of a decision by the competition authority, the following documents are issued: Provision for initiating the investigation; Inspection delegation; Order for carrying out the inspection; Minutes on carrying out the inspection and the Investigation Report. Respectively, the disputes that arise in the process of detecting anti-competitive agreements are disputes in administrative litigation and refer to the contestation of the above-mentioned documents.

The Order to initiate the investigation is the first act issued by the Plenum of the Competition Council through which the investigation procedure of an alleged case of violation of competition law is directly initiated. The Competition Law contains few provisions regarding the form and content of the Order. It only provides that the Council appoints a rapporteur responsible for drawing up the report on the investigation. Accordingly, the Order must necessarily contain the name/surname and position of the appointed Rapporteur, who will be responsible for the entire investigation procedure.

Taking into account the fact that the Law expressly provides that the Order to initiate the investigation does not establish a violation of competition law, this fact leads to the idea that it should not be motivated. This aspect is also supported by the fact that in our opinion this does not represent an individually unfavorable administrative act from the perspective of the administrative code. Analyzing the definition of the Administrative Operation, we consider that the Order to initiate the investigation represents a written administrative operation carried out by the Plenum of the Competition Council which does not produce legal effects as such (the investigation/control activity is the basic activity of the officials within the Council).

Taking into account that the Order to initiate the investigation, in our opinion, represents a written administrative operation, according to the provisions of the Administrative Code (art. 31), it must be motivated and can only be appealed together with the Decision or prescription adopted in the investigated case.

Another act that can be issued in the administrative procedure is the Inspection Delegation, which aims to inform the person subject to inspection about the names of the persons empowered and delegated to carry out the inspection and their powers, powers that are also expressly found in the Competition Law, not producing any legal effect as such. Thus, it cannot be contested separately in court, only in the event that the Inspection Order or the Inspection Report is contested, claims can also be filed against the Inspection Delegation.

Carrying out unannounced inspections is a constant practice in recent years, being the most efficient tool of the competition authority in collecting information and documents in investigations concerning anti-competitive agreements. From the analysis of the Competition Council Decisions through which anti-competitive agreements were found, it is found that in almost all cases, the Council has accumulated evidence to demonstrate the presence of an anti-competitive agreement by carrying out inspections.

Art. 56 paragraph (3) of the Competition Law provides that *"For the purpose of carrying out the investigations ordered under art. 55, the Competition Council may carry out the necessary inspections at any enterprise, association of enterprises or public authority. The carrying out of inspections is ordered by order issued by the President of the Competition Council, indicating the purpose and object of the inspection, the date on which the inspection begins, the sanctions provided for by law, as well as the right to challenge the order in court."*[18]

Thus, when issuing the Order to carry out the inspection, the President of the Council must have information demonstrating the presence of indications that relevant documents and

[18] Legea concurenței nr. 183 din 11.07.2012. În: Monitorul Oficial nr. 193-197 din 14.09.2012.

information can be found at the headquarters/production section/branch/other premises belonging to the subject of the inspection. Usually, when an investigation is ordered regarding a possible cartel agreement, the Council has very little information/documents that would demonstrate such agreements, respectively, it is necessary to carry out inspections primarily at the legal headquarters where the decision-makers of the enterprise work, or in other premises belonging to the enterprise where there are indications that information necessary for the initiated investigation could be found.

Analyzing the Annual Activity Reports of the Competition Council[19], it is found that most anti-competitive agreements were detected within public procurement procedures, namely when an investigation is initiated in which there are serious suspicions of cartel agreements between enterprises participating in procurement procedures, there are obviously indications that at the headquarters where the persons with management/responsible positions work or with the persons responsible for submitting documents within the procurement procedures, information relevant to the initiated investigation can be found.

With reference to the content of the order, there is also a wealth of case law of the Court of Justice of the European Union, according to which the obligation to state reasons constitutes a fundamental requirement, since its purpose is not only to highlight the justified nature of the intended intervention in the activity of the undertakings subject to inspection, but also to give the latter the opportunity to understand the extent of the obligation to cooperate which is incumbent on them, while guaranteeing at the same time the right to defence. Thus, it is important to give the undertakings subject to inspection, for the obstruction of which large pecuniary sanctions may be applied, the opportunity to understand the reasons underlying the inspection, so that they can effectively and in due time exercise their rights.

Regarding the aspect of the motivation of the Inspection Order, national courts have also expressed themselves, for example, in the decision of the Chisinau Court, Râșcani office, dated 23.05.2021,[20] the court held that the general phrase used in the preamble of the order as the argumentation/motivation of the order, which only cites that there are indications that documents can be found or information can be found considered necessary for investigating the alleged case of violation of competition law, „is so vague that it can be used for all cases of alleged violation

[19] Rapoartele anuale de activitate ale Consiliului Concurenței. [citat 30.07.2025]. Disponibile la: https://www.competition.md/categorie/rapoarte-anuale/

[20] Hotărârea Judecătoriei Chișinău sediul Râșcani din 23.05.2022, dosar nr.3-644/2021. Disponibil: https://jc.instante.justice.md/ro/pigd_integration/pdf/YmUyODAwZGQtMTRkZC00YWM5LTlmNmMtNDUyYmU3MWM2MzU5

of competition law, attributed by law to the Competition Council. Such an approach does not allow to delimit the intervention necessary to expose anti-competitive actions from a possible abuse".

From the analysis of the Competition Council Decisions, adopted during the years 2013-2024, it is attested that the Competition Council carried out inspections only at the headquarters or other locations belonging to the enterprise subject to inspection, not having carried out inspections on premises or means of transport belonging to a natural person based on a court warrant. This is due either to the fact that such inspections were not necessary or that the procedure for carrying out such inspections is problematic in view of the fact that a reasoned Decision is to be issued containing evidence to demonstrate the well-founded suspicion that the necessary documents/evidence can be found on those premises belonging to natural persons. Obviously, in most cases, it is necessary to first carry out inspections on the premises belonging to enterprises and only after or simultaneously on the premises belonging to natural persons, and in the case when it is carried out first on the premises belonging to natural persons, there must be convincing evidence as the basis for issuing such a Decision.

In this context, it should be noted that according to art. 57 para. (1) of the Competition Law,[21] if there is a well-founded suspicion that registers or other documents regarding the activity and the object of the inspection that could be relevant to prove a serious violation of art. 5 and 11 are kept in the premises, land and means of transport of natural persons, including in the homes of members of the management bodies or of members of the staff of the enterprises subject to the inspection, the Plenum of the Competition Council may order, by a decision, the conduct of an inspection on these premises, land or means of transport.

Taking into account that inspections represent a mechanism that provides the Competition Council with the necessary procedural autonomy to detect the necessary evidence and, at the same time, leaves room for abuses by the competition authority, in the case of premises or means of transport belonging to natural persons, the legislator introduced an additional filter to prevent possible abuses, namely that such an inspection must be ordered by a Court Order.

Unfortunately, even though Article 57 (3) of the Competition Law states that the inspection is carried out based on a court warrant issued under the terms of this article, the law does not contain provisions regarding the procedure for issuing/adopting court warrants by the courts.

Any inspection carried out by the Competition Council is concluded by drawing up a report in which the result of the inspection is recorded. Thus, taking into account the fact that the report contains all the findings made during the inspection and what documents/information are collected

[21] Legea concurenței nr. 183 din 11.07.2012. În: Monitorul Oficial nr. 193-197 din 14.09.2012.

during the inspection that can later be used to establish a violation of competition law, the legislator expressly provided that it is drawn up in two identical copies, one for each party, and the numbering and signing on each page is a safety measure so that some pages are not changed later. The inspection report does not represent an individual administrative act, unfavorable or favorable.

After accumulating all the necessary evidence, the Rapporteur designated through the Order initiating the investigation prepares the Investigation Report, which must contain the subject of the investigation, the facts found, the evidence, the conclusions and the proposals of the rapporteur following the completion of the investigation. After preparation, it is submitted to all parties involved, granting 30 working days to present themselves on what the Rapporteur found and mentioned in the Report. Thus, according to the provisions of the Competition Law and the Administrative Code, the Investigation Report cannot be contested separately in court, the objections to it are to be submitted directly to the Competition Council within 30 working days. Moreover, the parties may also request hearings until the adoption of the Decision, in which they can present and defend once again their position on what was found in the Investigation Report.

Subchapter 2.3. The evidentiary value of the inspection report and the documents seized

From the analysis of all decisions issued by the competition authority through which sanctions were applied to enterprises for concluding anti-competitive agreements, it is found that in almost all cases the Competition Council carried out inspections of the enterprises participating in the anti-competitive agreement. Likewise, in most cases the decisions issued by the Competition Council are motivated/based on the evidence seized during the inspections. This practice is in most competition authorities, even in cases where leniency applications are submitted, the competition authorities carry out inspections of the enterprises participating in the anti-competitive agreement.

Thus, the minutes and documents collected during an inspection represent essential elements in an investigation into anti-competitive agreements, in establishing the facts and in demonstrating the violation of legal norms regarding the protection of competition. They have significant probative value, not only in the competition investigation, but also in the examination of legal disputes resulting from the anti-competitive agreement.

In a dispute, the inspection report and the seized documents have a decisive impact because they can be:

- direct evidence – in cases where the seized documents clearly prove the existence of an anti-competitive agreement, such as, for example, correspondence between undertakings through which prices are set. In fact, from the analysis of the Competition Council's decisions, online correspondence through which undertakings agree with each other regarding the sale price,

production quantity, establishment of geographic markets, participation with rigged bids in tenders, is the most frequently used evidence to prove an anti-competitive agreement;

- indirect evidence – in situations where the seized documents contain indications that support a reasonable presumption of a violation of the legal provisions, such as, for example, evidence of meetings between competitors or telephone conversations. Separately, this evidence does not prove the presence of a cartel, but if examined as a whole, it can be very important indirect evidence, especially if after such meetings/conversations the behavior of competitors on the market changes;
- as evidence to demonstrate the absence of violation of legal provisions by the enterprises subject to inspections.

Chapter 3. Disputes arising from anti-competitive agreements contains an analysis of legal disputes that may arise as a result of the detection of an anti-competitive agreement and their procedural aspects. In this regard, we refer to civil disputes regarding the compensation of damage caused by an anti-competitive agreement, administrative disputes regarding the contestation of decisions of the Competition Council by which undertakings were sanctioned for participating in anti-competitive agreements and criminal disputes regarding cartels.

Subchapter 3.1. The particularities of initiating civil litigation as a result of anti-competitive agreements.

This subchapter of the thesis is composed of three sections focused on: the analysis of the parties in the civil process regarding the recovery of damage caused by an anti-competitive agreement; evidence and probation; and *Actio popularis.*

At the European Union level, there are several acts that regulate the application of tortious civil liability in relation to anti-competitive agreements, but also other violations of competition law. In the Republic of Moldova, the Competition Law in art. 79^{22} provides that regardless of the sanctions applied by the Competition Council, the right of action of natural and/or legal persons for full compensation for the damage caused to them by an anti-competitive practice prohibited by law remains reserved.

Thus, any person who considers himself/herself harmed by an anti-competitive practice prohibited by law will be able to submit a claim for compensation within one year from the date on which the decision of the Competition Council on which the action is based has become final or has been upheld, in whole or in part, by a final and irrevocable court decision. At the same time,

[22] Ibidem.

the general rules on the basis of which an action may be brought in court regarding tortious civil liability are provided for in Chapter XXXIII of the Civil Code[23] and according to art. 1998 par. (1) Civil Code, the one who acts towards another unlawfully, with guilt is obliged to repair the patrimonial damage, and in the cases provided for by law, also the moral damage caused by the action or omission.

Civil actions for compensation of damage suffered before the courts must contain the following mandatory elements: the damage, the unlawful act (in our case the presence of the anti-competitive agreement), the causal relationship between the anti-competitive agreement and the damage, and the guilt. In this subchapter, each element mentioned above is analyzed both from a doctrinal and judicial practice perspective.

Civil litigation on the recovery of damages resulting from an anti-competitive agreement is very complex, because almost in all the conditions mentioned above, there are many issues to be examined by the court and the other participants in the process. For example, the difficulty of establishing the amount of damage caused by an anti-competitive agreement is also recognised by the European Commission, which has adopted several acts in order to provide guidance in this regard to all participants. In its Communication,[24] the Commission recognises that a particular difficulty faced by courts and parties to actions for damages is the quantification of the damage suffered. The quantification is based on comparing the actual position of the claimant with the one in which he would have been if the infringement had not occurred. This cannot be ascertained in reality, as it is impossible to know with certainty how market conditions and interactions between market participants would have evolved in the absence of the infringement. All that can be done is to estimate the scenario that is likely to have existed in the absence of the breach.

In civil litigation regarding the recovery of damages caused by an anti-competitive agreement, evidence plays a crucial role in establishing the fact, the damage and the causal link between the anti-competitive agreement and the damage suffered by the plaintiff. The concept of evidence refers to the process by which the parties to a lawsuit (the plaintiff and the defendant) bring evidence to support or reject the claims made. The circumstances important for the resolution of the case can be demonstrated by means of evidence provided by law. Thus, in litigation regarding the recovery of damages caused by an anti-competitive agreement, the following means of evidence can be used: explanations of the parties and third parties; witness statements;

[23] Codul civil nr. 1107 din 06.06.2002. În: Monitorul Oficial nr. 66-75 din 01.03.2019.
[24] Comunicarea Comisiei privind cuantificarea prejudiciilor în acțiunile în despăgubire întemeiate pe încălcarea articolului 101 sau 102 din Tratatul privind funcționarea Uniunii Europene. În Jurnalul Oficial al Uniunii Europene nr. C167/19 din 13.06.2013. [citat 16.07.2025]. Disponibil: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A52013XC0613%2804%29

documents; material evidence; audio and video recordings; expert conclusions. Obviously, all evidence presented by the parties is to be collected, presented and administered in compliance with the legal provisions, otherwise the evidence will be considered inadmissible.

One of the most obvious negative effects of anti-competitive agreements is price gouging. If several companies agree to set a common price for a product or service, this means that consumers will not benefit from normal competition that could lead to lower prices. Instead, prices will be higher than normal. For example, if food manufacturers or supermarkets agree to fix/or increase prices, consumers will pay higher prices for those products, whereas in the absence of the agreement, competition would have led to lower prices.

In such cases, the consumer can file a civil action for the recovery of the damage caused by the anti-competitive agreement, but in practice such an individual action is unlikely to be filed. If we analyze for example the oil cartel, an estimated calculation shows that filing such an action is not profitable for the consumer. For these reasons, even if the companies participating in the cartel are sanctioned by the competition authority, consumers are left with the damage suffered unrecovered. This inevitably leads to dissatisfaction/lack of trust on the part of society towards the competition authorities/the justice system and towards the state authorities in general, by accentuating the feeling of social injustice.

We believe that in cases of anti-competitive cartel agreements, and especially when they involve companies that sell products directly to consumers, it is possible for consumers to file an *actio popularis* (popular/collective civil action) by a public authority, such as in the United States of America. Thus, in the respective subchapter, the *actio popularis* is analyzed in light of regulations from other states and the need for national regulations that would allow for such a mechanism to repair consumer damage caused by an anti-competitive agreement.

Subchapter 3.2. Examination of administrative disputes arising from the finding of the presence of an anti-competitive agreement on the market.

Any competition investigation initiated by the Competition Council is concluded with the issuance of a Decision by the Plenum of the Competition Council by which either the investigation is finished due to the lack of evidence demonstrating the violation of competition law, or the violation of the Competition Law is found and the appropriate sanctions are applied to the enterprises that have violated the law. Thus, the Competition Council Decision taken as a result of a competition investigation is certainly a favorable or unfavorable individual administrative act. Accordingly, the conditions of form and content must correspond to the provisions of the Competition Law and the Administrative Code.

When the Competition Council takes a Decision on the application of pecuniary sanctions for anti-competitive agreements that restrict competition by object, the presentation of economic evidence in the motivation of the decision is not mandatory, but in the case of anti-competitive agreements that restrict competition by effect, the economic evidence must be present in the motivation of the Decision.

The requirement is that the Competition Council Decisions must state the reasons on which they are based and set out in detail the factual and legal grounds that the competition authority took into account when adopting them. As an example of a very complex reason, we will probably mention the most notable one: anti-competitive agreement detected by the Competition Council between 2015 and 2020, refers to a case where the participation of nine companies in horizontal anti-competitive agreements was established, which directly or indirectly established sales prices and other terms of trade for the marketing of a certain brand of phytosanitary products and fertilizers to third parties on the territory of the Republic of Moldova.

For this cartel, the targeted companies were sanctioned by the Decisions of 26.03.2021[25] and 18.11.2021[26] during 2021 with a fine in the total amount of approximately 130 million lei. This was the largest fine imposed by the Competition Council for anti-competitive agreements up to that stage.

Analyzing the Decisions in question, we can say with certainty that they are the most voluminous, the first has 106 pages and the second 86 pages plus annexes 26 pages. Obviously, the large volume does not always represent quality, but not in this case, because these Decisions are consistent, full of factual circumstances with the insertion of electronic conversations through which sensitive information was exchanged, such as price lists, commercial mark-up, average gross profitability etc. Also within the investigation, the Competition Council made an analysis of prices in the region and found that the anti-competitive agreement led to the establishment of higher prices on average by 28% and 43% for products in the relevant market, compared to the prices for the same products in Romania and Ukraine, respectively. Obviously, these Decisions of the Competition Council were contested in part by each company, and at the current stage, it is not a final and irrevocable decision on these cases.

Another obligation relating to the content of the Competition Council Decision on the finding of an anti-competitive agreement is the establishment of the relevant market, which is defined as the market within which a certain competition issue must be assessed and which is

[25] Decizia Plenului Consiliului Concurenței nr. DA-22/20-09 din 26.03.2021. [citat 28.07.2025]. Disponibil: https://www.competition.md/decizii/decizia-plenului-consiliului-concurene-ei-nr-da-22-20-09-din-26-03-2021/

[26] Decizia Plenului Consiliului Concurenței nr. DA-22/20-64 din 18.11.2021. [citat 28.07.2025]. Disponibil: https://www.competition.md/decizii/decizia-plenului-consiliului-concurentei-nr-da-22-20-64-din-18-11-2021/

determined by relating the relevant product market to the relevant geographic market. The correct determination of the relevant market is necessary to establish the existence of significant restrictions of competition, to analyze the restrictive effects of an agreement or to verify the fulfillment of the exemption conditions, to establish agreements of minor importance and, last but not least, contributes significantly to the filing of civil actions for the recovery of damage caused by an anti-competitive agreement.

The decisions of the Competition Council may be appealed, within 30 calendar days from their receipt by the parties, directly to the Chisinau Court, Râșcani office, without the need to submit a prior application. The courts may reduce or increase the fines or periodic penalty payments applied, and if they find that the decision regarding the finding of the violation and/or the application of the fine or penalty is unfounded and/or is adopted in violation of the procedure, they may annul the decisions of the Competition Council.

The national jurisprudence on anti-competitive agreements is not rich. No criminal litigation has been identified regarding the liability of persons involved in a cartel, nor have civil cases been identified regarding the recovery of damage caused by an anti-competitive agreement. Accordingly, the existing jurisprudence is in the field of administrative litigation. Following an analysis of the Decisions published on the website by the Competition Council starting with 2012 when the Competition Law was adopted until January 1, 2024 and of the Activity Cancellation Reports for this period, we have the following situation regarding the cases initiated and the decisions taken regarding anti-competitive agreements, as shown in the diagram below.

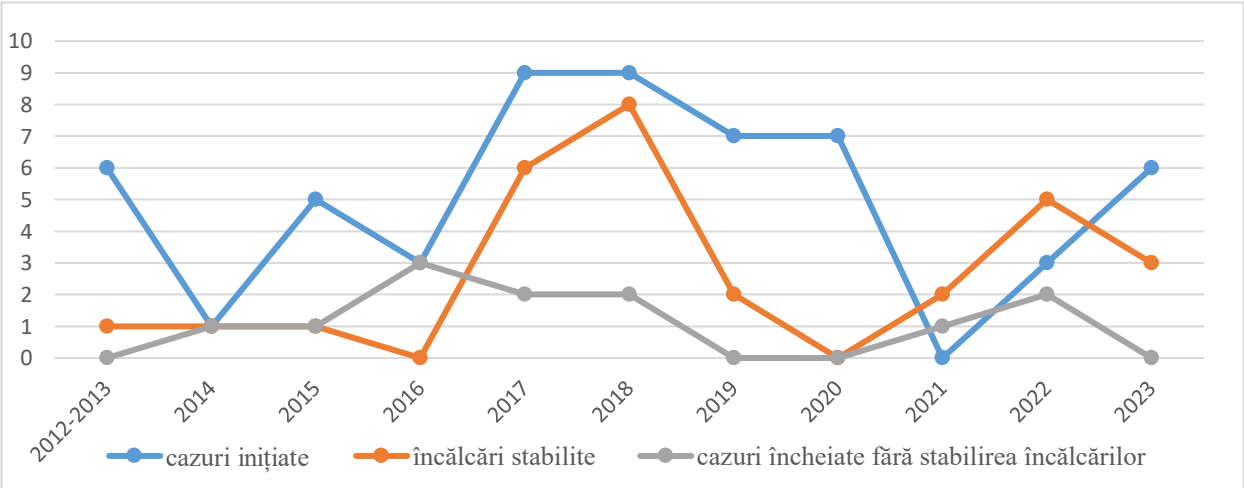

Figure no. 3.1. Diagram of cases and decisions adopted by the Competition Council concerning anti-competitive agreements.

Analyzing the diagram above, it is difficult to assess whether there are many or few Decisions of the Competition Council through which anti-competitive agreements have been found. The fact is that compared to Romania, there are very few decisions and, respectively, few

litigations in the courts. Another aspect is that the Competition Council focused on anti-competitive agreements regarding participation with rigged bids in auctions, with 25 cases of violation being detected and only 4 cases referring to other types of anti-competitive agreements, namely price fixing.

According to the Activity Report of the Competition Council, during 2023[27], 59 cases were under examination in the administrative litigation procedure, of which 10 cases were finalized. In comparison, in Romania in 2022, according to the Activity Report,[28] 221 cases were under examination. In contrast, in Latvia during 2023,[29] there were 26 active court cases. Obviously, the more litigation there are, the richer the case law, but the quality (motivation) of both the Decisions of the competition authority and the Decisions of the courts taken should not be neglected.

During the reference period, the Supreme Court of Justice resolved 17 court cases in which the decisions of the competition authority were contested, by which anti-competitive agreements were found, out of which:

- 15 cases when the decisions of the Competition Council were upheld;
- 2 cases when the decisions of the Competition Council were annulled.

Judicial review is fundamental, as the Court of First Instance has the final say, fully reviewing the findings of fact and the application of the law by the Competition Council, granting the latter a considerable margin of appreciation in the assessment of the evidence and a certain margin of appreciation in the complexity of the economic analysis. The Court carries out a review of all the factual and legal circumstances, including the examination of the evidence, the findings of fact derived from them, the legal qualification of the evidence and the procedural accuracy carried out by the Competition Council.

Economic evidence must also be assessed by the court, the extent of the review depending on the complexity of the issues brought before the court. In order to ensure understanding of the complex economic analysis, the courts may appoint independent economic experts. In the case of decisions imposing fines, the court also examines the proportionality of the sanctioning measures applied by the Competition Council.

Unfortunately, from the analysis of the Court Decisions, it is not found that they would make an in-depth economic analysis, or from the arguments invoked by the court, it is not found

[27] Raportul privind activitatea Consiliului Concurenței pentru anul 2023. [citat 30.07.2025]. Disponibil: https://www.competition.md/rapoarte-anuale/raport-privind-activitatea-consiliului-concurentei-in-anul-2023/

[28] Consiliul Concurenței România, Raport anual 2022. [citat 19.07.2025]. Disponibil: https://www.consiliulconcurentei.ro/documente-oficiale/rapoarte/rapoarte-anuale/

[29] Consiliul Concurenței Republica Letonia, Raport anual 2023. [citat 19.07.2025]. Disponibil: https://www.kp.gov.lv/en/2021-2026

that they would make their own detailed control, but they rely on the positions of the parties without investigating all the evidence on their own and coming to their own conclusion. However, this control is now facing new challenges, which arise in particular from the new provisions of the Administrative Code and the lack of judges specialized in competition matters. We believe that specialized judges are essential to ensure an efficient review of the decisions of the Competition Council. For example, in France, the control over the decisions issued by the competition authority is exercised by specialized judges who are assisted by a body of advisors recruited from among professionals (lawyers, economists) or lecturers specialized in the field of competition, law and economics.

In this context, a possible improvement that needs to be considered today concerns the means granted to the courts in this area. Obviously, we consider that the specialization of some judges in competition matters would be very beneficial, but in the absence of specialization, it would be good to introduce mandatory training in this area for judges and another positive aspect would be the recruitment of competent judicial assistants who would also be trained in the field of competition.

Subchapter 3.3. Examination of criminal litigation regarding cartels and their procedural aspects.

Taking into account the extremely harmful effect of cartels, several states, in order to discourage such practices, have resorted to criminal legal liability, applying in addition to pecuniary sanctions and imprisonment for individuals.

In the opinion of Judge Ungureanu D.,[30] criminal procedure implies, at the same time, a series of disadvantages, such as a high standard of probation, numerous procedural guarantees, the long duration of investigations and difficulties in institutional cooperation, which has led several states to consider that an administrative procedure is more suitable to defend the principle of free competition.

In the Republic of Moldova, according to Art. 246-from the Criminal Code,[31] „limiting free competition by concluding a horizontal anti-competitive agreement that constitutes a hard-line cartel prohibited by competition law, which has as its object the fixing of sales prices of products to third parties, the limitation of production or sales, the division of markets or customers or the participation with rigged offers in auctions or other forms of bidding competitions, if thereby a profit in particularly large proportions was obtained or damages in particularly large proportions

[30] Ungureanu D. *Infracțiunea de limitare a concurenței libere. O perspectivă de drept comparat.* Revista Institutului Național al Justiției nr. 1 (28), 2014. [citat 17.07.2025]. Disponibil: https://ibn.idsi.md/sites/default/files/j_nr_file/INJ_2014_1.pdf

[31] Codul Penal al Republicii Moldova nr. 985 din 18.04.2002. În: Monitorul Oficial nr. 72-74 din 14.04.2009.

were caused to a third person, is punishable by a fine in the amount of 3000 to 4000 conventional units or by imprisonment for up to 3 years."

The lack of application of art. 246 of the Criminal Code, we believe is due to the fact that it is very difficult to establish the volume of damage or profit, or a condition for criminal liability is that the cartel led to obtaining a profit in particularly large proportions or caused damage in particularly large proportions to a third party. According to the provisions of the Competition Law,[32] the Competition Council is not obliged to demonstrate the anti-competitive effects of hard cartels, they are null and void, respectively, to demonstrate and calculate the effect on the market of a hard cartel is the responsibility of the prosecutor in criminal cases. For these reasons, in order to make the provisions of the Criminal Code mentioned above applicable, it is necessary for the Competition Council to collaborate closely with the prosecutor's office and to try to establish in its own decisions the effects on the market of hard cartels, and the legislator to review this conditionality, or hard cartels are in fact the most serious violations of competition law.

Analyzing the provisions of art. 246 paragraph (2) from the Criminal Code and the provisions from the Competition Law referring to the leniency policy, we find that the application of paragraph (2) art. 246 of the Criminal Code is impossible, or it is certain that the Competition Law provides for the granting of leniency only to legal entities. In this context, it is necessary to adjust the legal framework in order to grant guarantors and natural persons who disclose, for example, the information provided for the granting of leniency to enterprises.

[32] Legea concurenței nr. 183 din 11.07.2012. În: Monitorul Oficial nr. 193-197 din 14.09.2012.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Based on the analysis carried out in the doctoral thesis focusing on identifying problems and gaps in the process of examining and resolving the aforementioned disputes, 16 conclusions and 8 proposals of lege ferenda were formulated. Below we will present only some of the main conclusions and proposals of lex ferenda:

1. Inspections by competition authorities are the most effective mechanisms for detecting anti-competitive agreements, as they allow the authorities to collect the necessary evidence directly from the undertakings. In the absence of such a mechanism, it would be impossible to collect evidence, or this evidence cannot be collected through requests for information because the undertakings would never present the evidence against them. An anti-competitive agreement of the cartel type has its own specifics and requires a particular approach, just like the other types, each of which has its own distinctive features. To effectively combat this anti-competitive practice, it is necessary to correctly implement the existing rules in the practice of the Competition Council and study the European community practice that formed the basis of national legislation, but also to strengthen the detection mechanisms by giving the Competition Council the right to use special investigative measures similar to those used by the criminal prosecution body provided for in the Criminal Procedure Code, taking into account that companies resort to increasingly sophisticated methods to hide anti-competitive agreements.

2. Another very important mechanism is the leniency policy. And the strengthening of this mechanism to the maximum by the competition authority allows the issuance of a well-argued decision and ultimately in most cases the recognition of the cartel by all participants. Respectively, this mechanism can lead to the identification of anti-competitive agreements that would not have been discovered because they were not in the sights of the competition authorities, to the lack of the need to carry out inspections because the enterprise applying for the leniency policy presents indisputable and sufficient evidence for making a decision. Even though in August 2018, art. 246 ~~of~~ from the Criminal Code of the Republic of Moldova was supplemented with a provision that would exempt from criminal liability persons who benefit from leniency according to the competition legislation, the competition law provides for the granting of leniency only to the enterprise and not to individuals. In this context, the competition law should be amended so that individuals can also benefit from leniency, in order to facilitate this mechanism. In this context, we believe that the Competition Law must provide that when applying to the leniency policy, the Competition Council will also establish the circle of individuals benefiting from leniency.

3. From the analysis of the disputes that have as their object the acts issued by the competition authority issued in the procedure for detecting anti-competitive agreements but also the legal provisions that regulate their form and content, we have come to the conclusion that the legislator is going to intervene and eliminate some legal gaps/ambiguities described in the doctoral thesis. Such as, for example, the provision to initiate the investigation, taking into account that it represents a written administrative operation, according to the provisions of the Administrative Code it is going to be motivated. Obviously, its motivation must not be similar to the motivation of an unfavorable individual administrative act. Thus, the law is going to specify the minimum requirements that the complete motivation of a Provision to initiate the investigation must meet.

4. Regarding the Inspection Delegation, we consider that it is not necessary, and it would be correct to eliminate it, and the information regarding the delegated persons and their powers can be included in the Inspection Order. And regarding the Inspection Order, the legislation currently does not contain clear provisions regarding the grounds for annulment or suspension of this act, and in general we consider that the legislator is to introduce in the Administrative Code in art. 214 the impossibility of the court suspending the execution of the Inspection Order.

5. Another conclusion is the lack of provisions in the Competition Law regarding the procedure for adopting, and challenging, the court mandate regarding the authorization of the Competition Council to conduct an inspection on the premises or means of transport belonging to natural persons, which makes this mechanism inapplicable. Accordingly, it is necessary to supplement the Competition Law in order to make this mechanism viable.

6. The mechanism for holding individuals participating in a cartel to criminal liability is ineffective, in the context of the fact that in the period 2012-2023, 29 decisions of the Competition Council were identified by which cartel agreements were found, but from the analysis of statistical reports on criminal cases examined by the first instance, no criminal case was identified under art. 246 of the Criminal Code. However, in order to implement the provisions of the mentioned article, we believe that the legislator must intervene in its wording and eliminate the conditions of profit and damages and reduce the penalty of imprisonment to 2 years.

7. From the analysis of civil litigation regarding the recovery of damage caused by an anti-competitive agreement, initiated in other states, we find that the lack of such litigation in the Republic of Moldova is due to the fact that the process of preparing such a lawsuit and having a real chance of success is very complicated. Because proving damage resulting from an anti-competitive agreement requires highly qualified human resources in the competitive-economic field, but also quite large financial and time resources for carrying out an economic analysis.

8. Another conclusion is the lack in national legislation of the possibility of filing a claim for the recovery of damage caused by a cartel for an undetermined number of consumers, as is the case, for example, in the United States of America.

In this context, we believe that the legislator should identify the responsible authority and create the necessary mechanism for filing such claims and the process of identifying consumers and redistributing financial means. We believe that the institution responsible for filing such actions may be: the People's Advocate or the State Inspectorate for Supervision of Non-Food Products and Consumer Protection.

9. Analyzing the disputes arising from an anti-competitive agreement examined and which are under examination in the courts, we find that the Decision of the Competition Council by which an anti-competitive agreement was established is contested separately by each enterprise. Accordingly, there are at least two court files in which the legality of an individual administrative act is examined. We consider that these files should be joined for an objective and fair examination, or in the case where the first court examining the case decides that there was an anti-competitive agreement and the decision is legal, in the second case the court is practically bound to also establish the presence of the agreement and the legality of the decision.

In order to solve the problems and gaps identified in this paper, we come up with the following proposals and recommendations de lege ferenda:

1. Supplementing the Competition Law with art. 55^1 with the following content: *„55^1.Special investigative measures.*

(1) Within the framework of investigations, the Competition Council may carry out the following special investigative measures with the authorization of the investigating judge:

a) interception and recording of communications and/or images;

b) collection of information from electronic communications service providers;

c) accessing, intercepting and recording of computer data;

d) visual surveillance;

e) collection of information.

(2) The provisions of the Code of Criminal Procedure relating to the ordering, authorization, performance, extension, termination and recording of special investigative measures shall apply accordingly.

2. With reference to strengthening the leniency policy mechanism, the following amendments to the Competition Law are required:

2.1 Art.84 to be supplemented with paragraph (8) with the following content: *„(8) If the leniency application is submitted by an undertaking, it shall contain the name of each natural*

person who directly participated in the anti-competitive agreement on behalf of the undertaking in question.";

2.2 Supplement with a new art. 84^1 with the following content: *„84^1 Immunity from criminal liability of natural persons.*

(1) Immunity from criminal liability represents the exemption from the application of criminal liability for the violation of the provisions of art. 246 of the Criminal Code."

(2) The natural person who submitted the leniency application and was accepted by the Competition Council benefits from this immunity.

(3) If the leniency application is submitted by an undertaking, the Competition Council in the decision granting leniency shall indicate only those natural persons mentioned by the undertaking in the leniency application, who have directly collaborated with the authority in the investigation process.

(4) If the natural persons indicated in the leniency application submitted by an undertaking refuse the request of the Competition Council to make statements, present information, or collaborate, they shall not benefit from immunity from criminal liability.

2.3 Art. 90 para. (1) and (2) shall be supplemented after the text *„Any undertaking or association of undertakings" with the phrase "or natural person"*, and further after the text.

3. With reference to the documents issued in the procedure for detecting an anti-competitive agreement, the following amendments are necessary to the Competition Law:

3.1 We propose to supplement paragraph (2) of art. 47 with the following text*: „If several cases are pending before the same court in which the same decision by which the investigation was completed is contested and in at least one case the order to initiate the investigation is also contested, then the cases shall be joined".*

3.2 We propose that Art. 47 paragraph (5) should have the following wording: *„The orders issued by the President of the Competition Council pursuant to art. 56 paragraph (3) and art. 57 shall be contested only together with the decision by which the investigation is completed."*

3.3 Art. 55 should be supplemented with a new paragraph (4^2) with the following content: *„(4^2) The order to initiate the investigation is a written administrative operation. Its motivation shall contain the reasonable grounds that formed the basis for the suspicion of a violation of competition law and, where applicable, the materials available to the Council that formed the basis for issuing the Order."*

3.4 Art. 56 shall be amended as follows: in par. (3) after the text *„indicating the purpose and object of the inspection," it shall be supplemented with the text „the persons delegated to carry out the inspection and their powers"*;

➢ in par. (5) the phrase *„the inspection delegation" shall be substituted with the phrase* "the order referred to in para. (3)";

➢ in par. (7) the text *„and the inspection delegation in which their powers are indicated"* shall be excluded.

3.5 Art. 56^1 par. (2) let. a) is to be amended by excluding the phrase *„inspection delegation"*.

4. With reference to the judicial warrant, the Competition Law must be amended as follows: art.57 shall be supplemented with paragraphs (6^1), (6^2) and (6^3) which shall have the following content:

„(6^1) The judicial warrant shall be issued by the president of the Chisinau Court of Appeal or by a judge delegated by him. (6^2) The request for the issuance of the judicial warrant shall be examined without summoning the parties. The judge shall rule on the request within 48 hours from the date of registration of the request. The decision shall be motivated and communicated to the Competition Council within 48 hours from the date of the decision. (6^3) If the inspection must be carried out simultaneously in several rooms, lands and means of transport, the Competition Council shall submit a single request, the court ruling in a decision indicating the premises in which the inspection is to be carried out."

We propose a new wording of paragraph (7) of art. 57 as follows: *„(7) The conclusion provided for in paragraph (6^2) may be appealed to the Supreme Court of Justice, within 72 hours from the moment of its communication. The appeal does not have suspensive effect on execution."*

5. With reference to granting access to the file to persons wishing to file a civil action for the recovery of damages, it is necessary to supplement art. 60 of the Competition Law with a new paragraph that will have the following content: *„(7) After the Decision of the Competition Council has been adopted and published, access to the file may also be granted to other persons wishing to file a lawsuit for the recovery of damages caused by an anti-competitive practice prohibited by this law. In this case, the person shall submit a written request, in which he must demonstrate that he could have been affected by the anti-competitive practice found by the Competition Council."*

6. The Administrative Code at art. 214 shall be supplemented with a new paragraph (12) with the following content: *„(12) The acts of the Competition Council issued within the investigation procedure (the order to initiate the investigation, the order to carry out the inspection, the inspection report, the decision to carry out the inspection in other premises, the investigation report) cannot be suspended."*

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ADNOTARE

Chițanu Grigore, „Examinarea și soluționarea litigiilor ce decurg din acordurile anticoncurențiale (înțelegerile de cartel)". Teză de doctor în drept. Chișinău, 2025

Structura tezei: introducere, trei capitole, concluzii și recomandări, bibliografie din 244 titluri, 6 anexe, 237 pagini de text de bază. Rezultatele obținute sunt publicate în 11 lucrări științifice.

Cuvinte-cheie: acord anticoncurențial, cartel, concurență, contestare, litigii, răspundere civilă, inspecție.

Scopul lucrării: Scopul principal al prezentei lucrări este cercetarea complexă a litigiilor ce decurg din acordurile anticoncurențiale, analizându-le prin prisma legislației naționale și internaționale, a literaturii juridice și a practicii judiciare, în vederea evidențierii instrumentelor juridice eficiente dar și a lacunelor/problemelor de interpretare și aplicare a cadrului legal, precum și elaborarea propunerilor de îmbunătățire a legislației naționale și perfecționarea practicii judiciare în conformitate cu standardele europene.

Obiectivele cercetării: Printre obiectivele importante sunt: identificarea problemelor ce pot apărea în procesul de soluționare a litigiilor ce decurg din acordurile anticoncurențiale și soluțiile ce se impun; elaborarea propunerilor de aplicare a legislației naționale și formularea unor recomandări de *lege ferenda* în vederea îmbunătățirii legislației, precum și eficientizarea mecanismelor de combatere a acordurilor anticoncurențiale.

Noutatea și originalitatea științifică: prezenta lucrare reprezintă un studiu complex și în plan comparat al modului de examinare și soluționare a litigiilor ce decurg din acorduri anticoncurențiale, ce a permis identificarea principalelor probleme și lacune în procesul de examinare și soluționare a litigiilor, precum și înaintarea propunerilor de modificare a legislației, fapt care va permite unificarea abordărilor teoretice și practice referitoare la acordurile anticoncurențiale.

Rezultatul/rezultatele obținute care contribuie la soluționarea unor probleme științifice importante: rezidă în identificarea principalelor lacune normative și de interpretare, apărute în cadrul procedurilor de examinare și soluționare a litigiilor ce decurg din acordurile anticoncurențiale, fapt care a condus la elaborarea propunerilor de lege ferenda în vederea perfecționării cadrului normativ național și evidențierea unor practici judiciare importante din UE în vederea valorificării acesteia în sistemul jurisprudențial național.

Semnificația teoretică: ideile și rezultatele obținute pot fi utilizate în activitatea științifică și didactică ce ține de domeniul dreptului concurenței, dar și a dreptului procesual civil, inclusiv de practicieni la examinarea dosarelor în instanțele de judecată.

Valoarea aplicativă a lucrării: concluziile și propunerile de *lege ferenda* prezentate pot fi utilizate de legiuitor în procesul de perfecționare a cadrului legal; de către Consiliul Concurenței în vederea fortificării mecanismelor de contracarare a acordurilor anticoncurențiale și de către instanțele de judecată care vor examina litigiile ce decurg din acordurile anticoncurențiale la argumentarea hotărârilor luate.

Implementarea rezultatelor științifice: Rezultatele științifice ale tezei de doctorat au prezentate la conferințele naționale și internaționale, fiind utile atât pentru cercetătorii științifici, cât și pentru specialiștii din domeniu.

АННОТАЦИЯ

Кицану Григоре, «Рассмотрение и разрешение споров, возникающих из антиконкурентных соглашений (картельных соглашений)». Докторская диссертация по юриспруденции. Кишинев, 2025 г.

Структура диссертации: введение, три главы, выводы и рекомендации, библиография из 244 наименований, 6 приложения, 237 страниц основного текста. Полученные результаты опубликованы в 11 научных работах.

Ключевые слова: антиконкурентное соглашение, картель, конкуренция, опровержение, судебное разбирательство, гражданская ответственность, проверка/инспекция.

Цель работы: Основной целью данной работы является комплексное исследование споров, возникающих из антиконкурентных соглашений, их анализ через призму национального и международного законодательства, юридической литературы и судебной практики с целью выявления эффективных правовых инструментов, а также пробелов/проблем в толковании и применении правовой базы, а также разработка предложений по совершенствованию национального законодательства и улучшению судебной практики в соответствии с европейскими стандартами.

Задачи исследования: К числу важных задач относятся: выявление проблем, которые могут возникнуть в процессе разрешения споров, вытекающих из антиконкурентных соглашений, и необходимых решений; разработка предложений по применению национального законодательства и формулирование рекомендаций *de lege ferenda* в целях совершенствования законодательства, а также повышения эффективности механизмов борьбы с антиконкурентными соглашениями.

Научная новизна и оригинальность: данная диссертация представляет собой комплексное и сравнительное исследование способов рассмотрения и разрешения споров, возникающих из антиконкурентных соглашений, что позволило выявить основные проблемы и пробелы в процессе рассмотрения и разрешения споров, а также предоставить некоторые предложения по внесению изменений в законодательство.

Полученный результат(ы), способствующий решению научной проблемы: заключаются в выявлении основных нормативных и интерпретационных пробелов, возникших в ходе рассмотрения и разрешения споров, вытекающих из антиконкурентных соглашений, что привело к разработке предложений *de lege ferenda* в целях совершенствования национальной нормативно-правовой базы и выявления важной судебной практики ЕС с целью ее использования в национальной правовой системе.

Теоретическая значимость: полученные идеи и результаты могут быть использованы в научной и дидактической деятельности, связанной с областью конкурентного права, а также гражданского процессуального права, в том числе практиками при рассмотрении дел в судебных инстанциях.

Практическая ценность работы: представленные выводы и предложения de *lege ferenda* могут быть использованы законодателем в процессе совершенствования нормативно-правовой базы, Советом по конкуренции в целях усиления механизмов противодействия антиконкурентным соглашениям, а также судебными инстанциями, которые будут рассматривать споры, возникающие из антиконкурентных соглашений, для обоснования принятых решений.

Внедрение научных результатов: Научные результаты докторской диссертации были представлены на национальных и международных конференциях и представляют интерес как для научных исследователей, так и для специалистов в данной области.

ANNOTATION

Chițanu Grigore, „Examination and settlement of disputes arising from anti-competitive agreements (cartel agreements)". PhD thesis in law. Chisinau, 2025

Structure of the thesis: introduction, three chapters, conclusions and recommendations, bibliography of 244 titles, 6 appendices, 237 basic text pages. The achieved results are published in 11 scientific publications.

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

The scope of the research paper: The main scope of this paper is the complex research of disputes arising from anti-competitive agreements, analyzing them through the lens of national and international legislation, legal literature and judicial practice, in order to highlight effective legal instruments, but also gaps/problems in the interpretation and application of the legal framework, as well as to develop proposals to improve national legislation and to align judicial practice with European standards.

The objectives of the research paper: Among the important objectives are: identifying problems that may appear in the process of resolving disputes arising from anti-competitive agreements and the necessary solutions; developing proposals for the application of national legislation and formulating *de lege ferenda* recommendations, in order to improve the legislation as well as to make the mechanisms for combating anti-competitive agreements more efficient.

The novelty and scientific uniqueness of the paper: this work represents a complex and comparative study of the examination and settlement of disputes arising from anti-competitive agreements, which allowed the identification of the main problems and gaps in the process of examination and settlement of disputes, as well as the submission of proposals to amend/improve the legislation.

The result/results obtained that contribute to the solution of important scientific issues: reside in the identification of the main normative and interpretative gaps that appeared in the procedures for examining and resolving disputes arising from anti-competitive agreements, which led to the development of *lege ferenda* proposals in order to improve the national regulatory framework and highlight important judicial practices from the EU, so as to capitalize on it in the national jurisprudential system.

The theoretical significance: the ideas and results obtained can be used in scientific and didactic activity related to the field of competition law, also in civil procedural law, as well by practitioners when examining files in courts of law.

The practical value of the paper: the conclusions and *de lege ferenda* recommendations can be used by the legislator in the process of legal framework improvement, by the Competition Council in order to strengthen the mechanisms for counteracting anti-competitive agreements, also by the courts that will examine the disputes arising from anti-competitive agreements in order to provide arguments to the taken decisions.

Implementation of scientific results: The scientific results of the PhD thesis were presented at national and international conferences, being useful for both scientific researchers and specialists in the field.

CHIȚANU GRIGORE

EXAMINATION AND SETTLEMENT OF DISPUTES ARISING FROM ANTI-COMPETITIVE AGREEMENTS (CARTEL AGREEMENTS)

553.03 CIVIL PROCEDURAL LAW

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