

THE REPUBLIC OF MACEDONIA AND COMPETITION LAW: THE REASONS TO ADVOCATE FOR "YES"

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Among the fundamental features of transformation process in the Republic of Macedonia is the creation of the basic principles of market economy. Besides creating preconditions for full respect of the freedom of market and entrepreneurship, it is necessary to build a consistent legal framework of competitive behavior, which will prevent and sanction abuses that can occur in a situation of absolutely free market competition. The Republic of Macedonia has not only to have, but it also need successfully to implement its competition policy (reflected mainly in the competition law, as set forth in the Law Against restraints of Competition; the Law on State Aid; and through liberalizing certain activities), as pillar in building a just competitive framework where all market players act. The economic development and competitiveness of Macedonia at world market depend on having a good and functioning system.

At the beginning, I shall very briefly pay attention to the general advantages and effects the antimonopoly policy generates. This is necessary in order to link the benefits that competition produces in general, on one side, and the specific benefits that the Republic of Macedonia would have, on the other.

Competition itself produces initiative, stimulates the growth, initiates creativity and produces preconditions for better quality, lower prices, satisfied and financially happy consumers and stronger national economy. Consumers are the first ones who feel the benefits that competition bring, since they can satisfy their demands for lower prices. Generally speaking, the advantages of this policy for the economy are:

- increased efficiency in using the available resources (allocative efficiency);
- higher level of research and development;
- inventing and use of new and modern technology, which increase the volume and the quality of production;
- cost reduction;
- production stability;
- lower prices;
- new jobs (employment opportunities), etc;

One of the novelties proposed with the draft Law Against Restraints of Competition, is the explicit emphasize of consumers welfare as one of the fundamental aims of the Law. Besides economic efficiency, consumers are in the center of attention. If it is accepted that price, quality and choice of products (or services) are of primary concern for consumers, than it is clear that competition is the right mechanism that can provide their attainment. In competitive environment, in order to attract consumers, companies compete at the market and try to provide better quality, greater choice of products and services under lower prices.

Competition law aims to eliminate negative consequences produced by anti-competitive forms of behavior of business entities on the market. Competition law proscribes such forms of behavior that create private blocks erected by companies that could restrict free flows of economy. Undertakings must not be left on their own and must not be allowed with their behavior to distort the "normal" flows of market economy.

The Law Against Restraints of Competition proscribes the following activities:

- 1) monopolistic agreements (horizontal and vertical). For example, agreements fixing buying and selling prices or trade conditions; market sharing agreements; agreements restricting the production, etc.
- 2) abuse of dominant market position (for example, by imposing unfair selling or buying prices or other trade conditions, discrimination, refusal to deal, refusal of granting access to networks and infrastructures that are indispensable for performing particular activity);
- 3) business concentrations (merger, acquisition, specific forms of joint ventures), which significantly lessen competition by creating or strengthening dominant position on the market.

The body vested to protect the competition (Monopoly Authority, as body within the Ministry of Economy. The draft Law proposes creation of a Commission for protection of the competition, as autonomous, independent and collective body consisted of 5 members elected by the Parliament of the Republic of Macedonia with mandate of 5 years) has the authority to ban all kinds of behavior that have negative impact over competition on the market. The companies must not enter into arrangements, which will unfairly hinder competitive possibilities of other undertakings, or of ultimate consumers. Thus,

- undertakings must not agree or adjust prices or price elements;
- undertakings must not agree to divide the market or consumers in a way that they assign exclusive geographic sphere of activity or exclusive category of consumers, wherein the other competitor must not act;
- undertakings must not bind purchase of particular product or service with purchasing another one that is not related to the principal transaction (tying arrangement), etc.

These are only some of the so-called restrictive arrangements, which are not necessarily have to be done in written. Equally unacceptable are decisions by associations of undertakings, as well as concerted practices that have equal object or produce the same effect. Important fact to emphasize is that competition law does not select undertakings on the basis of ownership rights, thus putting ones in advantageous and others in disadvantageous position. Subject to monitoring are the public and private undertakings, on equal basis. The term "public undertakings" refers to all undertakings where the state or local government has the final word, directly or indirectly. It includes all undertakings in which the public authority has decisive control, expressed through ownership or voting rights, by appointment of the managing structure, or through possibility significantly to influence strategic business decisions of the undertaking. This means that even undertakings performing economic

activity of public interest, which is indispensable condition for life and work of citizens and legal entities, are obliged to comply with competition rules. These undertakings and their behavior are not exempted neither are immune to competition principles. Therefore, the body that protects competition on the market is entitled and authorized to intervene and prohibit all types of behavior that are harmful for competition. As confirmation of the equal treatment of private and public undertakings in competition law are several decisions of the Monopoly Authority, wherein it found abuse of dominant position by some municipal public enterprises in the sphere of funeral services.

Even more important is the fact that competition law goes "hand in hand" with the implementation of other state policies towards establishing market economy. Here, above all, we refer to the privatization process, deregulation and liberalization of the activities of general economic interest. Here are some examples:

- In the telecommunication sector: the state has liberalized the mobile telephony market and we can see that some benefits are already obvious for the consumers: new service packets, lower prices, some new options that were previously unavailable or were available but with higher prices. The entry of the second mobile operator created new jobs, etc. In the fixed telephony sector, liberalization would necessitate creation of legal and economic conditions in order to open the market for new entry and regulation of prices;
- In the energy sector: a recently adopted Law on transformation of the incumbent has created legal framework for liberalization of the electricity market. It unbundled - legally, financially and functionally the incumbent "Elektrostopanstvo na Makedonija". This gradually opens the opportunity for entry of new "players" on the electricity market in the field of production and distribution.

Competition law refers also to undertaking that have special or exclusive rights in performing activity of general economic interest, insofar the application of the rules of competitive behavior disrupts the performance of the activity. As an example, we take the "Macedonian Telecommunications", as undertaking, monopolistic position of which is granted by the Law on Telecommunications. The behavior of this undertaking was subject of review by the Monopoly Authority, which found it as abusive in several occasions. The exclusivity cannot be used as argument in defense of eventual illegal anticompetitive restrictions of the market (for example, imposing excessive prices; making market entry of another undertaking impossible by restricting the access to existing infrastructure, which is essential element in performing the business activity; discrimination of clients that are competitors of the subsidiary of dominant undertaking; imposing unfair and non-trade conditions with object to eliminate the competitors from the market or to bring them into unfavorable position etc.). In these sectors, it is necessary to balance between the public interest and competition law principles. In any case, the principle of proportionality is the key mechanism to determine the level of insisting on the application of competition law in these sectors. However, it has to be noted that the character of the activity enforced by these companies does not release them from the obligation to respect the rules of competitive behavior. To put it in simple words, they must not abuse their dominant position (which is a lower level of monopoly) to the prejudice of consumers or

competitors on upper or lower markets. Thus, they would be stimulated to make initiative and to seek for ways that would make their product or service more attractive to consumers. That would increase their efficiency and improve their work (better quality, reduced production costs, which in turn produces lower prices, greater variety of additional services in relation to the main product, etc.).

If we take into account these principles of the antimonopoly law, the question being asked is: do these principles match the interests of the Macedonian economy? But before that, what are our interests and whether competition policy has positive reflection over attainment of these interests?

Having in mind the current state of economy in Macedonia we utmost need economic development and growth. The attainment of this goal requires attainment of some other preconditions. Increased economic growth is possible only if, among other things, Republic of Macedonia manages to create favorable climate in which:

- 1) It shall increase the efficiency of domestic undertakings, and
- 2) It shall make the Macedonian market attractive for foreign capital

From the above mentioned, we can reveal the influence of competition over increasing the economic efficiency of domestic undertakings and towards what competition leads. In simple words - competition is the driving force, the engine of the economic growth and improvement. Taking into account the universal advantages of competition law, we can not accept the idea that the Macedonian market is too small and that very strict antimonopoly policy would hamper domestic undertakings' efforts to accumulate economic power and their possibilities to enter foreign markets. Namely, it is wrong to think that competition law is directed towards controlling the undertakings and preventing them from achieving the best possible position on the market. On the contrary - undertakings are completely free in taking activities for their own economic development. However, this economic upgrade can be achieved only on the basis of their own economic performances and investments, but not in unfair way on the prejudice of the interests of consumers and other competitors. And here we come to the true role of the competition law - to prevent the undertakings, whether unilaterally or in concert with other undertakings to build their economic success by exploiting consumers and other competitors, which are out of the "scheme". By implementing competition law, domestic undertakings shall realize that their own development and improvement run in line with competition law principles, will make them being capable of competing foreign companies. Moreover that all developed countries worldwide have competition law.

Foreign investments bring not only capital, but their presence also increases employment opportunities, technology and know-how transfer, as well as the opportunity to establish cooperation links with domestic companies. The importance of antimonopoly policy, when speaking about its role in attracting foreign companies on the Macedonian market is that its implementation would increase the confidence of foreign entrepreneurs. This confidence refers to stability of the Macedonian market and the readiness to cope with challenges in protecting competition on the market. In other words, serious implementation of this policy shall be a signal for foreign investor that unfair restrictions of competition are not allowed and that generally accepted principles of competitive behavior are valid on the Macedonian market. This

shall increase the stability of these companies that they can invest in our country, confident that deviant activities of anti-competitive nature would be prevented.

Another argument on how important this legislation is the fact that the establishment and existence of efficient market economy, as well as the capacity of the country to cope with competitive pressure and market forces on EU's internal market, is among the main criteria (known as Copenhagen criteria) for accession of Macedonia into the European Union. The Republic of Macedonia is currently in the process of approximation of its legislation with that of the EU. In accordance with the Stabilization and Association Agreement that the Republic of Macedonia has with the EU, competition law is emphasized as one of primary fields that are supposed to bring Macedonia closer to standards of EU's internal market. It is to be expected that the Euro-integrative strategy of the Republic of Macedonia shall result in establishing new and strengthening the existing trade and economic relations with the EU. Therefore, by implementing the national competition law, adapted and approximated to the EU standards, Macedonian undertakings shall adjust themselves and will become capable to face the competitive pressure when entering EU's internal market.

As a conclusion, I would emphasize that we all have to be aware of the importance and the role that competition law has in establishing efficient framework of competitive behavior. Efforts are needed in order to increase awareness in the general public and to familiarize it with this law, so that consumers and business community can get acquainted with their rights and obligations deriving therefrom. Although we lack experience in this field (the United States has enacted the antitrust law in 1890, while the EU inaugurated it in 1957), we can use the experiences of other countries. This refers to EU competition law (towards which we incline), but also to other development countries that are more advanced in this respect. The adoption of the Law Against Restraints of Competition marked the start of Macedonia's initial development in this field. A number of decisions ascertaining breach of certain statutory provisions have also been delivered. We need to be aware of the challenges that the implementation of antimonopoly policy brings. However, what is important is that without competition law we can not build our economic system. Competition and freedom of market and entrepreneurship are fundamentals of our economy and protection of all undertakings-competitors, consumers and the market in general, from all possible types of its distortion, should be safeguarded.