NATIONAL EUROPEAN LAW REGARDING COMPETITION – PRESENTATION AND RELATIONSHIP –

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One of the main conditions for an operational market economy, besides the free movement of goods, persons, services and capital, is a non-distorted competitive environment. Thus, tradesmen, either at national or at community level, should interact freely as much as possible, without negative influences from powerful agents or privileged ones, associations of economic agents or the state. In an operational market economy, complying with norms ensures the economic progress, the defence of the consumers' interest and the competitiveness of products and services within such economy, but also for the products from other markets.

The competitive environment can be negatively affected by the anti-competitive activities representing the subject or the effects of the agreements or practices established between economic agents, by the abuse of dominant position of some powerful economic agents; also, competition can be distorted by the subsidies granted by the state to some economic agents which create an advantageous position for them, compared to the other competitors on the respective market.

Key words: market economy, goods, persons, services and capital, competitive environment.

Section I. Introductory notions

Considering the need to create a competitive environment, the Constitution stipulates that the *Romanian economy is a market economy, based on free initiative and competition*. Also, the state must ensure the freedom of commerce, *the protection of fair competition*, the creation of the favourable framework to market all production factors. The subsequent legislation develops these principles in Competition Law no. 21/1996 and in Law no. 143/1999 regarding state aid. Another important regulation regarding this is Law no. 11/1991 about unfair competition. We have to mention that the provisions of Law no. 11/1991 are not included in the area of application of the European law of competition, the respective legal relationships being freely established by the legislation of each Member State, and they are to be applied additionally with the normative established by laws 21/1996 and 143/1999 above-mentioned and, of course, with the normative of European law. These laws are enforced and detailed by means of many regulations, instructions and other acts issued by the Council of Competition, according to the European pattern, considering the accurate and coherent transposition of the European acquis.

As for the normative of European law, the Treaty establishing the European Community[1] (TCE) stipulates as main activity of the European Community the creation of

[1] Art. 3 (g) from the Treaty establishing the European Community (TCE), published in the Official Journal of the European Communities no. C 325/24.12.2002, as amended and completed by the Treaty of Nice O.J. no. C 80/10.03.2001. Generally, for European normative and policies, see the internet official address of the European Union www.europa.eu.int. The European acts published in the Official Journal of the European Communities are available also at http://europa.eu.int/eur-lex.

a system that should ensure a non-distorted competitive environment within the domestic market. Thus, articles 81 and 81 of the same Treaty forbid the agreements and established practices whose subject or effect is the restriction or distortion of competition on European market, as well as the abuses of dominant position. The common condition for these normative to be enforced is that such activities or non-activities *should affect the trade between the member states*. In case there is an agreement whose effect is the restriction of competition in a member state, but does not jeopardize the trade with other member states, then such situation will be settled by the national regulations thereof, without the application of article 81 TCE[2].

Articles 88 and 89 TCE regulates the state aid and article 86 provides regulations applicable to public economic agents (for ex., autonomous administrations, trade companies where the state is a major shareholder etc.) which should comply with the rules specific to the competitive environment, taking into account that they are in special privileged positions.

Pursuant to these provisions of the Treaty and to article 83 TCE, the Council of the European Union adopted the secondary legislation in order to enforce such regulations. Among the most important, there are: Regulation no. 17/62[3] to enforce articles 81 and 82, replaced by Regulation no. 1/2003[4], in force since May 2004. The main amendments brought by the new regulation, to be presented in the last section, concern the replacement of the centralized system, where the most important part was played by the European Commission, with a system based on the decentralized enforcement of the regulations regarding competition, the essential competences being transferred to the national authorities of competition, including the courts of law, according to the legal procedures of each member state.

A main feature of European law, as the European Court of Justice decided, is its supremacy[5]. The matter of competition is an area where the Community has „exclusive competence". Therefore, regarding competition, the member states can only enact if they transpose or apply the European law or in the area still not regulated at European level (for ex., unfair competition, activities not settled by articles 81-89 TCE). Once the Community acted, by means of its institutions, regulating some legal relationships, the member states should, according to the Treaty, refrain from any action that could jeopardize the accomplishment of the objectives established by the Treaty and also carry out the obligations established by it. Consequently, regarding competition, the regulations of national law of the member states and their ways of enforcement should not contravene the European ones and the way they are construed.

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[2] Nevertheless, the interpretation given by the European Court of Justice to articles 81 and 82 is extended, subject to these provisions being situations apparently regarding only a member state. For example, the Rotterdam harbour was considered as a geographically relevant market according to article 82 and therefore the abuse of dominant position in this area can affect the trade among member states.

[3] Council Regulation no. 17/1962 *regarding the enforcement of the competition provisions provided by Articles 85 and 86 TCEE (now art. 81 and 82 ale TCE), O.J.* P 013/21.02.1962.

[4] Council Regulation (EC) no. 1/2003 of 16th December 2002 *regarding the enforcement of the competition provisions provided by Articles 81 and 82 TCE*, O.J. no. L 1/04.01.2003.

[5] See the judgment issued in case no. 6/64 *Flaminio Costa v. ENEL*, ECR (1964) pg. 585 (reports of the European Court of Justice): *„By creating a Community with unlimited duration, with its own institutions, legal status, legal and representative capacity on international level and especially real powers born out of the limitation of sovereignty or the transfer of powers from the Member States to the Community, the Member States restricted their sovereign rights, thus creating a set of legal normative compulsory for both the citizens and the States as such"*.

The Romanian legislation transposes almost completely the provisions of the European acquis regarding competition and state aid, but the Romanian authorities should correctly enforce these provisions, according to the interpretation within the European Community, obligation compulsory for the courts of law, too. Practically, the actual enforcement has some difficulties, caused by the level of economic reforms and the insufficient degree of development of the operational economy, which makes it necessary, for example, to grant some state aids in the poor sector of economy. Although this principle is accepted at European level, the strict observance of the competition law and the compliant reduction of exceptions are essential. We should mention that the legislation of most member states, as well as the Romanian provisions, takes over completely the provisions of articles 81 and 82 TCE regarding the agreements and established practices, and the abuse of dominant position respectively. The harmonization of the two types of systems virtually represents a positive aspect, thus simplifying the task of the competent European and national authorities to enforce the respective provisions, as well as the situation of the agents checked by them; we should not leave out the possible conflicts of competence among the European authorities – the European Commission, and the national authorities of competition. Thus, Regulation EC 1/2003 includes regulations regarding the assignation of competence and the collaboration between the mentioned authorities.

Section II. Agreements between economic agents and the established practices

In the Treaty establishing the European Community, article 81[6], they defined as incompatible with the domestic market all agreements between economic agents, decisions of economic agents' associations and all established practices that could affect the trade between the member states and whose subject or effect is prevention, restriction or distortion of the competition on the common market. The same article provides a few examples of types of high risk anticompetitive practices for the competitive environment: establishing prices, limitation or control of production or distribution, division of commodity markets or of supply sources etc. These are only some examples, as the authorities of competition should sanction any anticompetitive practice which is included in the respective definition and that cannot be excepted. Paragraph 3 of article 81 provides the exceptions from the interdictions established by the first paragraph. Thus, the practices which, although are not subject to paragraph 1, fulfil cumulatively the following conditions, can be excepted:

*bring their contribution to improving the production or distribution of products or to promoting the technical or economic progress;

*ensure a reasonable benefit to consumers, compared to the one achieved by the parties to the respective agreement, decision or practice;

**do not* impose to the economic agents involved any restrictions which are not requisite to accomplish the respective objectives:

**do not* eliminate competition from a significant part of products or services to which they refer to.

[6] The former article 85 TCE in the actual numbering before the amendments introduces by the Treaty of Amsterdam (entered in force on 1st May 1999). Therefore, in the normative texts, law treaties, decisions of the European Court of Justice etc, previous to the Treaty of Amsterdam, the present article 81 is the equivalent of the former article 85, and article 82 (abuse of dominant position) – the former article 86.

The provisions of article 5 of Competition Law no. 21/1996, as modified by OUG no. 121/2003[7], are similar to article 81 TCE. The main difference, besides the condition of restricting intra-European trade mentioned above, is the market protected by European or national provisions, and the competent authorities to enforce such provisions[8]. Moreover, the Romanian law develops the four conditions above mentioned to except anticompetitive practices, but only within the limits of article 81. The modality of enforcement, as underlined, should be common.

Without insisting on the detailed presentation of these regulations, it is necessary to underline a few important concepts of enforcement in time, especially at the European Community level.

Article 81 TCE, article 5 from the Romanian law respectively, can be reduced to 4 basic cumulative notions:

- **agreements** between
- **economic agents** which affect
- **the competitive environment** and
- **the trade between member states** (a specified condition but necessary only for TCE).

The concept of „**economic agent**" or undertaking[9] is not defined by the lawmaker, but by the European Commission[10] and the European Court of Justice. Thus, considering the importance of enforcement of competition provisions to a larger part of the domestic market, in order to ensure the competitive climate, the Court established an extended definition of the notion of *economic agent*, including not only trade companies, but also natural person tradesmen[11]. An interesting case is that of the economic agents with very tight relationships, such as between a company and its subsidiary which, even if they are formally entities with distinct legal status, their unity of action can rule out the enforcement of article 81, being considered as only one economic agent – it is also the case of economic agents' groups where one of them holds the power over the others which makes the group to act as one agent, without an agreement or practice established[12].

Therefore, the notion of economic agent cannot be limited to only one legal entity; the only condition is *the involvement of such entity in economic activities.*[13]

As for the notion of „**agreement**", it represents any written or oral agreement between one or more economic agents, even if it can be or cannot be executed according to the law – it is not necessary that the parties' expression of will should constitute a valid or

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[7] The Emergency Government Ordinance (OUG) no. 121 of 4th December 2003 for modifying and completing the Competition Law no. 21/1996 was published in the official Gazette no. 875/10th December 2003, being approved with amendments by Law no.184 din 17th May 2004 published in Official Gazette no. 461/24th May 2004

[8] For the normative enforceable in case of competitive practices that jeopardize only one of these markets, or both markets at the same time, see below section „*Enforcement of competition provisions*". As for the competent authorities, articles 81 and 82 TCE *are directly enforceable*, as to be developed, also by the competition national authorities also.

[9] "*Undertaking*", in the English version of the Treaty, "*enterprise*" in the French one; the Romanian lawmaker uses the term "*economic agent*".

[10] As presented below, the European Commission is the European institution with the most important responsibilities in ensuring the observance of the competition provisions. According to article 230 TCE, the decisions of the Commission can be checked regarding their lawfulness by the European Court of Justice.

[11] Decision of Commission 79/86/EEC, *Vaessen/Morris*, 10th January 1979, O.J. no. L. 19/1979.

[12] Nevertheless, the anticompetitive practice of such group can be subject to article 82 TCE if the condition sof abuse of dominance are met.

[13] See paragraph 21, Decision of European Court of Justice in Case 41/90 *Hofner v. Macrotron*, (1991) ECR I – 1979.

bounding contract according to national law.[14] We notice the same tendency to establish a more thorough definition. The agreements can be „horizontal" – concluded between economic agents at the same level of economic circuit, usually competitors, or „vertical" – for example, between a producer and its distributor, between agents in the seller – buyer relationship. Nevertheless, the horizontal agreements are usually more harmful to the competitive environment than the others, its effect being the restriction of competition among competitor agents; the vertical ones can have positive effects for such market, for ex., by reducing the final price; at the same time, the parties to such an agreement are not competitors.

At the same time, some agreements can be disguised as a unilateral behaviour, for example in case of some independent agents who tacitly accept decisions with anticompetitive effect from a dominant partner.[15]

The decisions of economic agents' associations suppose the need of existence of some forms of organization, but their type is not important, and neither the way decisions are taken – formally or not. This extended interpretation generates the risk that members of such associations could be drawn by anticompetitive decisions; the presumption is against them, and they have to prove their non-involvement – they were not present at the meetings where such decisions were taken, they opposed, etc.

An interesting notion is **the established practices** – first due to the informal character and then to the difficulty of identification and probation. For established practices, the idea is that the economic agents should establish their economic policies and market strategies independently. In case they breach this principle and coordinate their activities on purpose, jeopardizing the competition, their behaviour can be sanctioned pursuant to article 81 TCE or article 5 from Law 21. The established practices should not be mistaken with similar (parallel) behaviours when, without coordinating their actions, several economic agents, according to market conditions, have the same attitude – for example, the price rise of an end product, at closed dates, with similar amounts, but as a result of a price rise for the raw material on the world market.[16]

As an example of established practices, which usually comes out of the position of the parties involved, we have the case of „dyeing materials" „ICI v. European Commission" settled in 1972 by the European Court of Justice.[17]

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[14] Decision of European Commission *Sandoz Prodotti Farmaceutici SpA*, 13th July 1987, O.F. no. L 222/1989.

[15] See Decision of European Court of Justice in Cases 25 & 26/84, *Ford – Werke AG* & *of Europe Inc. v. European Commission*, (1985) ECR 2725.

[16] According to the Court, a parallel behaviour cannot prove alone an established practice, unless this is the only explanation– Cases 89/85, 104/85, 114/85, 114/85, 116/85, 117/85 to 129/85 – *Wood pulp II*, (1988) ECR 5193.

[17] Case 48/69, *Imperial Chemical Industries Ltd. v. European Commission*, (1972) ECR 619. Essentially, the Court established that during January 1964 – October 1967 there were in several Member States three regular rises for paints: in January 1964, a regular 155 RISE FOR CERTAIN PAINTS IN Italy, Holland, Belgium and Luxembourg. At the beginning of 1965 Germany came. On 1st January 1965, most producers in the member states, except for France, introduced a 10% rise for other paints, not covered by the first increase. Until 1967, prices for all paints were raised by 8% in all member states, except for Italy, and France by 12% to compensate the previous price maintenance. Price rises were preceded by notification of one producer in this regard and then followed by the rises introduced by the other producers. An important element was the meeting in August 1967 from Basel where all producers participated, except the Italian one, where one of them announced an 8% rise. Regarded in that context, the three consecutive rises revealed the progressive cooperation between the economic agents involved: the 1964 rise, unlike the other two, was not precede by any notification from a producer, followed then by most of the producers; the notifications allowed the establishment of actions, i.e. the assessment of the operation method of competitors and the way of eliminating uncertainties, with major effects on an oligopoly market which excluded the possibility of a simple similar behaviour...

As for affecting the competition and trade among states, besides those mentioned before, not every agreement, decision of an association or established practice can have negative effects. Thus, the European Commission – taking into account the Court's case law which showed that if an anticompetitive practice has insignificant effects upon the market, considering for example the minor position of the parties in the respective domain – issued a notification called *„de minimus"*, amended several times, by which horizontal agreements are accepted if the market quota of the shares does not exceed 5% and the vertical agreements – 10%, provided it does not include forbidden clauses (for ex., price fixing).[18]

The agreements or practices which are not excepted from the enforcement of article 81 TCE can be subject to national law. As for the Romanian law, the provisions of Law 21/1996 is not enforced to economic agents or economic agent groups whose turnover for the financial year previous to the practices suspected as anticompetitive does not exceed the annual threshold[19] by the Council of Competition and the market share quota does not exceed 5% for the agreements between the competitive economic agents (horizontal) and 10% for vertical agreements.

Without further insisting on the modalities of breaching the provisions regulating the competitive environment, sanctioned according to article 81 TCE and article 5 Law 21/1996, we underline that anticompetitive practices are very different, only the most serious and frequently met being given as an example: agreements or established practices for the artificial price fixing, for market sharing**[20]**, unjustified conditions for supply, etc.

Nevertheless, both the European law and the national one allow, considering the principle of the general economic interest, as showed, exceptions in certain conditions which can be summarized by an opportunity test: the positive effects *surpass* the negative ones, and the negative ones *do not surpass what it is necessary* to reach the objective proposed**[21]**.

Pursuant to article 81 paragraph 3 TCE or article 5 paragraph 2 Law 21/1996, the agreements, decisions of economic agent associations and established practices which are included in one of the excepted categories, according to EC Regulation no. 1/2003 or in Romania according to the regulations issued by the Council of Competition, are considered legal, without the obligation of notifying or obtaining a decision in this regard from the European Commission, or the Council of Competition respectively, but such economic agents shall prove the accomplishment of the conditions provided by the competitive legislation.

Exceptions fall into two categories, according to the regulating way by the authorities of competition; individual exceptions and group exceptions. The group exceptions (the so-called „block exemptions") are established by regulations of the EU Council, of the European Commission or of the competition authorities from each member state for such member state. They include some categories of agreements that can bring high benefits compared to the reduced negative effects they have upon the competitive environment and cover vertical agreements: agreements regarding distribution or supply,

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[18] *Notification of the European Commission regarding minor agreements not subject to article 85 paragraph 1* , O.J. No. C 372/1997. As for forbidden clauses, see also article 8(2) from Competition law.

[19] At present 20 billion lei.

[20] See the Decision of the Commission 84/405/CEE of 6th August 1984, *Zinc producer group*, O.J. no. L 220/1984.

[21] Generally, the examples included in the Treaty and the Competition law refer to types of agreements that *can almost never be excepted*, considering the effects of upon the competitive environment and the trade on such market.

sea transport, car sale[22], and for horizontal agreements: agreements regarding technological transfer, research and development etc.[23]

The agreements not covered by the conditions established for group exceptions, that can be excepted individually, after analysing such clauses, should comply with the conditions established by article 81 paragraph 3 TCE or article 5 Law no. 21/1996 above mentioned. More, besides these exceptions, there are also those agreements which, although they are not covered by the conditions established for exceptions, do not exceed *de minimis* thresholds.

Section III. Abuse of dominant position

If an economic agent or an economic agents' group holds a dominant position on the market, the anticompetitive effects caused by its behaviour are very likely, the respective legislation being more strictly enforced. Thus, it is enforced article 82 TCE for the European market and article 6 Competition Law that forbid the abuse of dominant position, by exemplifying some anticompetitive practices, some of which similar to those provided by article 81 TCE, article 5 Competition Law respectively, and other specific to the unilateral behaviour of a dominant economic agent. More, article 82 TCE imposes the condition of jeopardizing the trade among member states.

The *per se* dominant position *is not forbidden* on the European or the Romanian market. The economic agents holding such position are subject to the provisions mentioned only if they abuse by anticompetitive actions.

In this regard, it is necessary to define the notion of *dominant position* – situation in which an economic agent is greatly capable to act independently from suppliers, competitors and clients, thus allowing him to affect the competitive environment on the *relevant market*.[24] Generally, the dominant position comes from a combination of several factors which, taken separately, are not determinant. Thus, in the Court case law, it was established that, when analysing a dominant position, they should check elements such as: how easy a new producer or seller can enter such market, the relations of the agents in positions of supplier or client, the degree of dependence of their businesses with the dominant agent, the absence of an economic equivalent solution, *the relevant market*.

This last element is essential to establish an abuse of dominant position because the dominant position is always established by comparing it to a market segment, limited by *the product market* and *the geographic market*.

The product market includes all products that buyers consider as interchangeable or replaceable due to features, price and given use. They have to be similar enough so that the consumer could choose among them. When deciding the relevant product market, we

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[22] *See for example the Regulation of the Council of Competition regarding the application of art. 5 paragraph (2) from Competition Law no. 21/1996 in case of vertical agreements from the vehicle sector*, O.G. no. 280 of 31/03/2004.

[23] By Decision 73/323, *Prym – Werke*, J. Of. L 296/24.10.1973, the European Commission excepted from the enforcement of art. 85 paragraph 3 (at present art. 81 paragraph 1) the agreement concluded between the German company Prym and the Belgian company Beka regarding: the concentration of the production of needles for domestic sewing machines into one factory, the ceasing of manufacturing the respective product at Prym, the latter's commitment to purchase the product only from Beka in pre-established conditions etc. Althought the Commission established that such agreement is subject to art. 81 paragraph 1, affecting the competitive environment on the market and the trade between member states, it can be individually excepted according to paragraph 3, considering the following effects: decrease of production and marketing costs, thus creating benefits to consumers by increasing the production and decreasing the price, rationalization of production and introduction of mass production etc.

[24] See the Decision of the European Court of Justice in case 85/76, *Hoffmann-La Roche v. European Commission*, (1979) ECR 461.

should consider elements such as: prices, degree of interchangeability, flexibility of product demand, variability/availability in time etc.[25]. Normally, the product market is limited by defining all these factors, but the European Commission maintains a balance when establishing them, accepted by the European Court of Justice. For this, in 1997, the Commission issued a notification regarding the definition of the relevant market[26].

The geographic market includes the area in which the economic agents are located, agents involved in distributing the products included on the product market, where the competitive conditions are homogenous enough and it can be distinguished from the neighbouring areas due to the different competitive conditions. Considering the condition of affecting the trade among member states, at the beginning, in practice, the anticompetitive practice had to involve at least two member states, but in time it was enough for one member state to be affected in order to enforce art. 82 TCE.[27]

Once the relevant market is established, we have to establish the position of the checked economic agent, and here the Court focuses on the agent's „economic power" factor; but we have to consider all factors affecting the agent's activity, in the end a dominant position coming from the agent's capacity to act independently from his competitors or even clients. The Court underlined in several decisions that the existence of some high market quotas (50% or more) represents by themselves some evidence of the dominant position, and the same if an agent holds al least a 40% quota, but higher than the sum of the next two competitors' sum. But to be subject to article 82 TCE and article 6 Competition Law, the agent should make use of its dominant position by the mentioned anticompetitive practices.

Unlike article 81 TCE and article 5 Competition Law, neither article 82 TCE, nor article 6 from Law no. 21/*1996 provide individual or group exceptions.*

Before analysing the procedural regulations, we have to underline one aspect: **the extraterritoriality of the effects of competition law**, assuming that the enforcement of competition provisions is made not considering firstly the nationality of the economic agents involved, but *the place where the anticompetitive effects are produced*, so the affected market. Thus, in Case *Wood Pulp*, the European Court of Justice maintained the decision of the Commission to sanction several economic agents registered outside the Community, but whose established practices regarding price fixing for timber affected the Community clients, rejecting the plaintiffs' arguments that such a decision would breach the regulations of public international law or of some states outside the Community.

Section IV. Enforcement of competition provisions

The EC Council Regulation no. 1/2003 is extremely important in this matter, as it establishes a new set of regulations for the enforcement of art. 81 and 82, including by the national authorities.

Starting with the date of Romania's adhesion, the regulations, according to art. 249 TCE, became directly enforceable and binding, producing rights and obligations just like a regulation from the domestic law. In this context, one of the most important principles established by Regulation 1/2003, following the previous decisions of the European Court of Justice, is that articles 81 and 82 TCE are directly enforceable not only by the European

[25] See the Decision of the European Court of Justice in Case 27/76, *United Brands Co v. European Commission*, (1978) ECR 207, for the interesting way of establishing a proper market of bananas, considering all these factors.
[26] The Notification of the Commission on 3rd October 1997 *regarding the definition of the relevant market, within the meaning of the European competition law*, O.J. no. 372/1997.
[27] See the Decision of the European Court of Justice in Case 322/81, *Nederlansche Banden Industrie Michelin v. European Commission*, (1983) ECR 3461.

Commission, but also by the national authorities of competition and by the national courts, according to domestic procedural provisions.

As for the relation between the national and the European law, especially taking into account that the national authorities have the possibility to enforce the domestic European law provisions, too, the Regulation establishes that the enforcement of the domestic law should not have to lead to the ban of agreements, decisions of economic agents' associations or established practices which are not subject to art. 81 paragraph 1 or that can be excepted according to art. 81 paragraph 3. Nevertheless, the national authorities can apply in the respective states stricter rules to sanction the unilateral behaviour of economic agents.

The Regulation introduces the commitment procedure, according to which in case the Commission identifies an agreement which is in breach of art. 81, it can accept some commitments from such economic agents in order to eliminate the anticompetitive aspects revealed by the preliminary assessment of the Commission. The Commission can re-open the procedure in case of non-compliance with the commitment, of change of circumstances, of discovering further information. This procedure does not jeopardize the competences of the national authorities of competition and of the courts in the member states. The national authorities, including the courts and the European Commission, are mutually bound to exchange information, also confidential, by maintaining the secrecy and using it only for the purpose it was requested. As for the national courts settling competition cases, the member states are bound to send copies of the judgments delivered, following their communication to the parties. The national authorities from the member states, and the European Commission, too, can send written opinions and, subject to the courts approval, they can intervene orally. Also, the courts can request information, as well as the opinion of the European Commission. Considering the case law of the European Court of Justice, article 16 from the Regulation provides that the national courts cannot deliver judgments contrary to the decisions of the European Commission, when applying art. 81 and 82 TCE. In case of ongoing investigations within the Commission, the courts can decide to adjourn the settlement of some cases whose settlement could involve the risk of delivering a contrary judgment.

As for the relation with the national authorities of competition, the prerogatives of the European Commission are more definite. Thus, the national authorities should inform the European Commission no later than 30 days before the enactment date of a decision when enforcing art. 81 or 82. We have to mention that the beginning of the procedures by the Commission, in order to enact a decision when enforcing art. 81 or 82, leads to the loss of competence of the national authorities to enforce the European law for such case; if the case is on the docks of the national authorities, the Commission can take over the case only after consulting the respective authorities.

By summarizing these essential aspects of Regulation no. 1/2003, we have to say that all these provisions were established in order to ensure a unitary interpretation of the European law at EC level, considering that, through the provisions previous to the Regulation, the European Commission used to hold the monopoly of enforcing art. 81 and 82. More, the European Commission, the national authorities of competition and the competent national courts form, according to Regulation, a European network for the enforcement of competition law which should function unitarily to create a new competitive environment and a competitive domestic market, according to the objectives provided and assumed by the EC Treaty.