

STUDY

**ON THE IMPLEMENTATION OF THE KEY PROVISIONS OF THE EU-
MOLDOVA ASSOCIATION AGREEMENT ON COMPETITION
(CHAPTER 10, TITLE V – TRADE AND TRADE RELATED MATTERS)
IN LINE WITH THE EU-MOLDOVA ASSOCIATION AGENDA**

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EXECUTIVE SUMMARY

There are two major components of the Competition Policy under the Association Agreement – Antitrust & Mergers and State Aid. Both elements are regulated in Chapter 10 of title V of the Association Agreement. The main aspects of the Antitrust & Mergers component is the *applicable legislation, the responsible institution and the procedural rules applicable to anticompetitive agreements, abuse of dominance and economic concentrations*. The State aid component also has three key aspects: *applicable legislation, responsible institution, and transparency and reporting*.

Antitrust & Mergers

Moldova must maintain effective competition legislation to fight anticompetitive agreements, abuse of dominance, and regulate effectively economic concentrations. The domestic competition law prohibits the anticompetitive agreements, including hard-core cartels and abuse of dominance, as well as controls concentrations between undertakings. However, the national legal framework does not currently address effectively the issue of:

Applicable legislation

- a) Automatic exemption for agreements concluded as part of enforcement of a legislative or normative act (article 6(7) of the Competition Law)
- b) Lack of specific block exemption regulations in specific industries: insurance, motor vehicles and transport
- c) Outdates Regulations on the block exemption of agreements involving transfer of technologies
- d) Lack of clarity on the competence of the Competition Council as opposed other regulators on who holds the competence to regulate competition issues in particular sectors
- e) The legal test on establishment of abuse of dominance includes *effect on competition* or *damage of collective interests of final consumers*. The second alternative condition is hard to evaluate under current legislation and practices and cannot be found in the EU Competition Acquis
- f) Merger regulations are not applicable to stocks transactions on a stocks market and significantly diminishes the effects of economic concentration regulatory framework

Institution

- g) The Competition Council is not using efficiently its human and financial resources to address competition issues
- h) There is no steady increase in the financing of the Competition Council
- i) The fines applicable under Moldovan law are five times less the EU equivalent
- j) There is reluctance to use the available leniency policy for cartel members because of low fines and ineffective investigations of the Competition Council

Procedural rules

- k) The rules of procedure may not be found in one document, rather in separate legislative and normative acts
- l) There is an increasing risk that the investigations, including inspections conducted by the Competition Council may generate subsequent loss of cases in courts due to procedural and not substantive reasons

The Competition Council must remedy both the legislative drawbacks of the antitrust & merger procedures, as highlighted above, including amendments of the Competition Law to increase fines, eliminate the automatic exemption from the general prohibition of anticompetitive agreements and for mergers, approved additional regulatory framework for particular types of industries when it comes to block exemptions.

State Aid

The Competition Council is responsible for the implementation of the state aid policy in Moldova, including transposition of EU State Aid Acquis into national legal framework. The Association Agreement sets very ambitious commitments for Moldova, including:

- a) full transposition of the EU State Aid Acquis within five years from the entry in force of the Association Agreement
- b) Ensure the functions of authorisation and recovery of the illegal state aid by the Competition Council within 2 years from the entry in force of the Association Agreement
- c) Publish according to EU standards the state aid offered, on a biannual basis, starting 1 January 2016.

The Competition Council has registered significant progress in regulating the state aid, with the adoption of sectorial regulations for various forms of state aid. There are seven industries, which have draft Regulations and are pending publication. The Competition Council has also promoted the integrated information system of state aid registry, which is pending implementation.

The state aid component of the competition policy still lacks some important elements:

- a) The Competition Council cannot based on the current law order directly the recovery of illegally offered state aid and can do that only via its decision, which is subsequently addressed to the source institution and only that latter does not comply with the request, the Competition Council may address the issue in court.
- b) The Competition Council must have harmonised all its internal reporting mechanisms to provide to the EU via public means information on the state aid granted under the national state aid schemes and individual aid.

INTRODUCTION

Moldova has negotiated with the European Union, and signed and ratified the Association Agreement, including the Deep and Comprehensive Free Trade Area on 28th of November 2013 and, 2nd of July 2014 respectively. Starting 1st of September 2014 the Association Agreement started its provisional application with respect to the Trade and Trade related issues.

Chapter 10 (Competition) of Title V of the Association Agreement regulates the competition policy and the commitments Moldova and the European Union undertake to implement the provisions of the Agreement.

Competition policy is considered one of the key areas of state policy, as its effects are horizontal and touch on the efficiency of all industries and sectors of national economy. An effective competition policy in Moldova may increase the effectiveness of use of resources and ensure a levelled playing field for all enterprises, ensuring both higher quality and lower prices for consumers and efficient undertakings and industries strong enough to compete on international markets.

Aligning the national competition policy to the EU standards is key in this respect, as it transposes instruments, which effectively fight anticompetitive agreements and abuse of dominance, as well as prevent dominant undertakings from appearing via strong economic concentrations regulations. A strong competition policy also must focus on national state aid rules, which, if properly applied, will avoid any distortion of competition via support of inefficient undertakings to the detriment of the public and acts against the more efficient enterprises.

This study aims at tackling the progress of implementation of competition policy commitments under the Association Agreement and the Association Agenda between Moldova and the EU, flag concerns with respect to the approaching and passed deadlines on specific commitments, underline the quality of transposition of certain provisions, as well as underline the remaining actions to be taken in the future to comply with the Association Agreement provisions.

The results of this study will consist of a list of conclusions and recommendations on better implementation of the competition policy in Moldova and which key changes require amendment and improvement.

KEY PROVISIONS OF THE ASSOCIATION AGENDA AND THE ASSOCIATION AGREEMENT ON COMPETITION POLICY

The EU-Moldova Association Agenda sets general goals with respect to competition – “work together to prepare the implementation of the competition chapter of the future Association Agreement and the related reforms”. The cooperation shall focus on:

- a) An institutional framework in Moldova, including administrative capacity to guarantee the effective implementation of the competition legislation
- b) Strengthened dialogue on experience in enforcing legislation in the competition area and related matters, including training on general enforcement of state aid rules.¹

Provisions on Competition Policy may be found in Chapter 10, Title V of the EU-Moldova Association Agreement. There are two aspects of the competition policy under Chapter 10 – antitrust & mergers, and state aid rules.

ANTITRUST & MERGERS

Chapter 10² regulates the following aspects of the antitrust and mergers:

Applicable legislation

Comprehensive competition laws, which:

- a) effectively address anti-competitive agreements and concerted practices and
- b) anticompetitive unilateral conduct of undertakings with dominant market power;
- c) provide effective control of concentrations³

Institution

An operationally independent authority:

- a) With adequate human and financial resources
- b) That effectively enforces competition legislation⁴

¹ The Association Agenda between the European Union and the Republic of Moldova, signed at Brussels, 26 June 2014, available at http://eeas.europa.eu/moldova/pdf/eu-moldova-association-agenda-26_06_en.pdf

² Articles 333-344 of the EU-Moldova Association Agreement

³ Article 335 (1) of the EU-Moldova Association Agreement

⁴ Article 335 (2) of the EU-Moldova Association Agreement

Procedural rules

Transparent and non-discriminatory application of competition legislation:

- a) With respect to the procedural fairness
- b) And the right to defence of undertakings concerned⁵

Enterprises of a general economic interest

Application of competition policies to state monopolies of a commercial character in so far as that does not limit the performance of the particular tasks assigned to them⁶

Transparency

Exchange of non-confidential information between competition authorities⁷.

STATE AID RULES

Additionally to the antitrust and merger aspects of the competition policy, the Association Agreement sets ambitious goals in the area of state aid rules. Thus, any state aid granted by Moldova or the EU, or through resources of any party and in any form, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and services and affects trade between the parties is prohibited under the Association Agreement.⁸

The state aid rules not apply to state aid issued to fisheries and to agricultural products under Annex no. 1 of the WTO Agreement on Agriculture.

Applicable legislation & institutions

The state aid issued in Moldova should be assessed on compliance under EU applicable law, i.e. article 107 of the TFEU and the relevant secondary legislation, including the relevant case-law of the Court of Justice of the European Union. This obligation must be fully complied within **five years** since the entry in force of the Association Agreement.⁹

Moldova must maintain:

- a) Appropriate state aid legislation
- b) An operationally independent authority entrusted with necessary powers to:

⁵ Article 335 (3) of the EU-Moldova Association Agreement

⁶ Article 336 of the EU-Moldova Association Agreement

⁷ Article 337 of the EU-Moldova Association Agreement

⁸ Article 339 of the EU-Moldova Association Agreement

⁹ Article 340 of the EU-Moldova Association Agreement

- a. Authorise state aid
- b. Order the recovery of state aid that has been unlawfully granted

This obligation should be complied within **2 years** from the entry in force of the Association Agreement.¹⁰

Specific transitional measures

As a transitional measure, the state aid schemes instituted before the establishment of the state aid authority shall be aligned within a period of **8 years** from the entry in force of the Association Agreement. The transitional period for the state aid schemes instituted under the Free Economic Zones law no. 440-XV of 27 July 2001 may be extended to a maximum of **10 years**.

Transparency and reporting

The Moldovan state aid authority will have to report every two years on the state aid granted in Moldova starting **1st of January 2016**, following the EU annual survey on state aid.¹¹ The first report on the stated aid granted in Moldova should be available to the public on the **1st of January 2018**.

Dispute settlement mechanism

Under Chapter 14, title V of the Association Agreement, in particular article 403, the parties may refer any potential disputes with respect to the interpretation and application of certain provisions of the Association Agreement, including those chapter 10 of title V, to the Court of Justice of the European Union. The provisions relevant to the antitrust and mergers have been expressly excluded from the competence of the Court of Justice of the European Union. The provisions of state aid however may be subject to the Court's scrutiny. It is thus of outmost importance for the Republic of Moldova to comply with the deadlines related to the approximation process and the application of state aid rules as mentioned above. Otherwise, the Court may issue decisions on failure to comply with the implementation of state aid legislation.

¹⁰ Article 341 of the EU-Moldova Association Agreement

¹¹ Article 342 (1) of the EU-Moldova Association Agreement

LEVEL OF IMPLEMENTATION IN MOLDOVA OF THE ASSOCIATION AGREEMENT PROVISIONS IN THE AREA OF COMPETITION POLICY

Under this Chapter we shall present the main developments in areas of concern as highlighted in the previous chapter with respect to the Moldovan competition policy. We shall first present the developments under the antitrust and mergers component and, subsequently, elaborate on the state aid legislation and practice developments.

ANTITRUST & MERGERS

The antitrust & mergers subchapter, as provided above, deals with three components: *applicable legislation, institution and procedural rules.*

APPLICABLE LEGISLATION

The main legislative act in the area of antitrust & mergers is the Competition Law¹². This legislative act largely transposes the EU competition Acquis, by prohibiting the anticompetitive agreements of undertakings and associations of undertakings, decisions of undertakings and concerted practices (hereinafter as *anticompetitive agreements*) which have as object or effect the prevention, restriction or distortion of competition on the market of the Republic of Moldova or on a substantial part of it.¹³

Anticompetitive agreements

On the other hand, if the agreements between undertakings: a) contribute to the improvement of production or distribution, or towards technological or economic progress; b) ensure consumers with a fair share of the obtained benefit; and c) do not impose restrictions to enterprises which are not indispensable to the attainment of the objectives mentioned above under a) and b) and; d) do not offer the undertakings the possible to eliminate competition on a significant part of the market¹⁴, they are considered compatible with competition legislation.

The provisions of articles 5 and 6 of the Competition Law reflects the EU Competition policy approach towards anticompetitive agreements as set out in article 101 of the TFUE – general prohibition, followed by a list of conditions on the exemption from the general prohibition. The burden of proof for individual exemptions is on the undertakings who consider that the concluded agreements comply cumulatively with the above four conditions.¹⁵ If qualified under one of the

¹² Competition Law no. 183 from 11.07.2012

¹³ Article 5 of the Competition Law

¹⁴ Article 6 of the Competition Law

¹⁵ Article 6 (4) of the Competition Law

block exemptions, the Competition Council must prove the anticompetitive effect of the agreement under debate.¹⁶

Apart from the general exemptions, the Competition Law also grants an automatic exemption for agreements concluded as part of the enforcement of a legislative or normative act.¹⁷ **This provision does not reconcile with the EU Competition Law provisions and is an additional exception, which raises concerns of compliance of national legislation to the EU Competition Acquis.**

It is true that the European Commission, in its capacity as the EU body supervising the proper implementation of the competition policy, has at its disposal supranational competences to enforce the competition legislation, including challenge in the EU Courts the legality of specific national provisions which do not comply with the EU Acquis and pursuant to which Member States may be considered to have infringed their obligations deriving out of the TFEU and TEU. However, this particular provision in national legislation on automatic recognition as compatible with competition law requires reconsideration to ensure that the Competition Council is **effectively implementing competition legislation**. Otherwise, the national legal framework which touches upon the competition climate may well act in parallel with the competition legislation, with two sets of legal provisions being applied and the Parliament and Government being open to approved each time it is considered necessary, without considering proper competition legislation, exemptions which would jeopardise the efficient implementation of national competition legislation, particularly the prohibition of anticompetitive agreements.

The Competition Council has approved, pursuant to the competence offered to it by the Law, a number of Regulations, which provide for the details on the application of exemptions on categories of agreements:

- a) Competition Council Decision no. 13 from 30 August 2013 on the approval of the Regulations on the evaluation of anticompetitive vertical agreements¹⁸
- b) Competition Council Decision no. 14 from 30 August 2013 on the approval of the Regulations on the evaluation of anticompetitive horizontal agreements¹⁹
- c) Competition Council Decision no. 15 from 30 August 2013 on the approval of the Regulations on the evaluation of anticompetitive agreements involving transfer of technologies²⁰

¹⁶ Article 6 (6) of the Competition Law

¹⁷ Article 6(7) of the Competition Law

¹⁸ Published in the Official Journal no. 206-211 from 20.09.2013

¹⁹ Published in the Official Journal no. 198-204 from 13.09.2013

²⁰ Published in the Official Journal no. 213-2015 from 27.09.2013

These three documents are approved pursuant to the competences deriving out of article 6 (3) of the Competition Law and to a large extent transpose the provisions of EU Regulations on exemption of vertical²¹, horizontal²² and technology transfer²³ agreements.

There has been an update on the technology transfer agreements with the adoption by the European Commission Regulation no. 316/2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements²⁴. This new piece of legislation offers additional clarifications, including via the European Commission Guidelines, on technology transfer agreements and the conditions to be complied with to obtain the block-exemption. **It is recommended to adjust the Competition Council Regulation on the approval of the Regulations on the evaluation of anticompetitive agreements involving transfer of technologies to ensure compliance with the EU Competition Acquis and ensure effective implementation of competition legislation.**

Additionally to the general block exemption regulations, the EU has approved a series of block exemption Regulations relevant for particular sectors: *insurance, motor vehicles* and *transport*. Although the Competition Council holds the competence to regulate block exemption by means of Regulations to be approved under article 6 (3) of the Competition Law, currently it is not clear under the competence of other institutions involved in the regulatory process who holds the competence to issue such regulations – the specific regulator or the Competition Council. In this respect, **additional clarification to the competence to regulate the sector for various agencies (for instance the National Financial Markets Agency, the National Energy Regulator etc.) must be reconciled with the general competence of the Competition Council to issue both general and specific block exemption regulations for both vertical and horizontal agreements.** *It is the author's position that the competence to Regulate the specific sectors from the antitrust & mergers perspective must remain with the Competition Council. However, when pursuing this competence, the Competition*

²¹ European Commission Regulation no. 330/2010/EU of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices; European Commission Guidelines of Vertical Restraints no. 2010/C 130/1

²² European Commission Regulation no. 1217/2010/EU of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements; European Commission Regulation no. 1218/2010/EU of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements; European Commission Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal cooperation agreements

²³ European Commission Regulation no. 772/2004/EU of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements; European Commission Guidelines on the application of Article 81 of the EC Treaty to technology transfer agreements

²⁴ European Commission Regulation no. 316/2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements and European Commission Guidelines on the application of Article 101 of the Treaty on the Functioning of the European Union to technology transfer agreements

Council must be assisted by the specialised regulators, who should be obliged by law to assist the former.

The full compliance with the obligation to **maintain effective competition legislation** should come with the transposition of the specialised block exemption regulations as currently available under the EU Competition Acquis.

These acts are the following:

Insurance

- a) European Commission Regulation no. 267/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector
- b) Council Regulation no. 1534/91/EEC on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector

These two EU Regulations provide for:

- i. A list of agreements, which are not subject to the prohibition of article 101(1) of the TFUE²⁵
- ii. The conditions under which the sharing of information among the participants and the nature of the shared data for the participants – i.e. non-mandatory, without disclosing the identification of the undertaking and the level of commercial premiums, with respect to past information, for new risks data for up to three previous years etc.
- iii. The maximum market share thresholds for exemption – up to 20% in case of co-insurance on any of the relevant markets and up to 25% in case of co-reinsurance on any of the relevant markets²⁶

Due to the specific nature of the insurance market, sharing of information under certain circumstances may prove procompetitive and transfer an important part of the share of benefits to the final consumer. Under current national legislation, either the vertical or the horizontal exemption Regulations shall apply. However, these Competition Council Regulations do not take into account the specific nature of the insurance market and may limit the application of procompetitive agreements as well as miss the prohibition of agreements, which are anticompetitive by their nature.

²⁵ Article 1 of the Council Regulation 1534/91/EEC offer exemption from the application of the prohibition on anticompetitive agreements for those establishing common risk premium tariffs based on collectively ascertained statistics or the number of claims; establishment of common standard policy conditions; common coverage of certain types of risks, settlement of claims; testing and acceptance of security devices; registers of, and information on, aggravating risks, provided that the keeping of these registers and the handling of this information is carried out subject to proper protection of confidentiality;

²⁶ Article 5 and 6 of the a) European Commission Regulation no. 267/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector

Motor vehicles

- a) European Commission Regulation no. 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicles sector

This EU Regulation provides for similar conditions for vertical agreements relating to the conditions under which the parties may purchase, sell or resell spare parts for motor vehicles or provide repair and maintenance services for motor vehicles.²⁷ These must comply with the requirements of the exemptions provided under the general Regulation 330/2010 and must not aim at:

- c) Restrictions of the sales of spare parts for motor vehicles by members of a selective distribution system to independent repairers which use those parts for the repair and maintenance of a motor vehicle;
- d) Restrictions, agreed between a supplier of spare parts, repair tools or diagnostic or other equipment and manufacturer of motor vehicles, of the supplier's ability to sell those goods to authorised or independent distributors or to authorised or independent repairers or end users;
- e) Restrictions, agreed between a manufacturer of motor vehicles, which uses components for the initial assembly of motor vehicles, and the supplier of such components, of the supplier's ability to place its trademark or logo effectively and in an easily visible manner on the components supplied or on spare parts.²⁸

Transport

- a) Council Regulation no. 169/2009 applying rules of competition to transport by rail, road and inland waterway

This Regulation exempts from the prohibition of article 101(1) the agreements, decisions or concerted practices the object and effect of which is to apply technical improvements or to achieve technical cooperation by means of:

- i. The standardisation of equipment, transport supplies, vehicles or fixed installations;
- ii. The exchange or pooling, for the purpose of operating transport services, of staff, equipment, vehicles or fixed installations;
- iii. The organisation and execution of successive, complementary, substitute or combined transport operations, and fixing and application of inclusive rates and conditions for such operations, including special competitive rates
- iv. The use, for journeys by a single mode of transport, of the routes which are most rational from the operational point of view

²⁷ Article 4 of the European Commission Regulation no. 461/2010

²⁸ Article 5 of the European Commission Regulation no. 461/2010

- v. The coordination of transport timetables for connecting routes
- vi. The grouping of single consignments
- vii. The establishment of uniform rules as to the structure of tariffs and their conditions of application, provided such rules do not lay down transport rates and conditions.²⁹

These exemptions cannot be found in the general Competition Council Regulations on the evaluation of vertical or horizontal anticompetitive agreements. On the other hand, these exemptions may stimulate the provision of transport services and contribute to the better and faster transportation services, including infrastructure for final consumers. **To ensure a proper competition regulatory framework, compatible with the EU Competition Acquis in the transport sector, the Competition Council must transpose these provisions as well. Otherwise, the transport sector may not benefit at its fullest, provided a fair share to consumers is offered, with the investment environment in Moldova and is a significant disincentive for FDI in this industry, particularly from the EU Member States.**

Abuse of dominance

The Competition Law establishes a general prohibition on the abuse of dominance. Thus, it is prohibited to use the dominant position on a relevant market if this abuse may affect competition or damage the collective interests of the final consumers.³⁰

The difference between the prohibition under the national Competition Law and article 102 of the TFEU is that the national legislation operates with the terminology *relevant market* whilst article 102 of the TFEU uses the term *internal market* or *substantial part of it*. Additionally, the Competition Law states a lower level of burden of proof by using either, the condition of *affect competition*, or *damage the collective interests of final consumers*, whilst article 102 of the TFEU uses the condition of *affect trade between Member States*. These differences in establishing an abuse of dominance may trigger additional differences in establishing and abuse of dominance case.

Indeed, the issue of *relevant market* versus *internal market* or *a substantial part of it* may generate questions of interpretation and transposition of EU law in national legislation. In this respect, the Competition Law offers a definition of the *relevant market* – market on which a certain issue of competition must be evaluated and which is established via considering the relevant market of the product with the relevant geographical market.³¹ As a result, contrary to the burden of proof available under EU Competition Acquis, the Competition Council just needs to

²⁹ Article 2 of the Council Regulation no. 169/2009

³⁰ Article 11 (1) of the Competition Law

³¹ Article 4 of the Competition Law

address the issue of relevant market, which is not confined to a substantial part of the market of the Republic of Moldova, and may have a much smaller geographical implication. However, three key factors shall be taken into account when assessing dominance on a particular market: *market power*, *barriers to entry on the market* and *buyer power*.³² As long as the relevant market is correctly identified, i.e. the geographical market and the substitutability of the products are identified, there is a large degree of compliance with the EU competition rules.³³

The other aspect of the terminology used by the Competition Law relates to the effect of the abuse of dominance – *affects competition or damages the collective interests of final consumers*, which is different from the EU Competition Acquis - *affect trade between Member States*. These differences are however justified with respect to the *affect competition* as opposed to *affect trade between Member States*, as the national legislation is currently confined to the jurisdiction of the Republic of Moldova. The alternative effect of *damage of the collective interests of final consumers* is however not defined under the EU Competition Acquis, nor the EU Court case-law. The Competition Council does not have at its disposal any definitions or instruments to identify the ambit of this effect. Thus, a series of open questions arise out of the application of this provision:

- a) What is collective interest?
- b) How the collective interest is damaged?
- c) How does the collective damage reconcile with no effects to competition?

The Competition Council Regulation on the establishment of dominance on the market and evaluation of the abuse of dominant position³⁴ does not establish any links between the damage caused to the collective interests of consumers and the abuse of dominance. It makes reference to the Competition Council's investigation of potential damages to consumers, which for the purposes of competition law are not *final consumers* but rather **competitors on other markets**. As the Competition Council Regulation transposes the European Commission Communication on the Commission's enforcement priorities in applying article [102] of the [TFEU] to abusive exclusionary conduct by dominant undertakings, the *damage of interests of final consumers* is not treated, as it cannot be found in the EU Competition Acquis. It still remains to be clarified what the *damage of the interests of final consumers* means under national legislation, either via a clarification offered by the Competition Council or via national courts case-law and practice.

³² Article 10 (3) of the Competition Law

³³ Articles 28-31 of the Competition Law set the instruments of establishment of the relevant product and geographical markets, which largely reconcile with the EU principles and techniques on market identification.

³⁴ Approved by means of Competition Council Decision no. 16 from 30.08.2013

Mergers

The national Competition Law also regulates the economic concentrations. To a large extent the provisions of the Council Regulation no. 139/2004 on the control of concentrations between undertakings and the Commission Regulation no. 802/2004 implementing Council Regulation 139/2004 on the control of concentrations between undertakings are transposed into national legislation. The Competition Council holds competence to regulate the control of concentrations pursuant to the Competition Law.³⁵ In this respect, the Competition Council has approved the Regulation on economic concentrations³⁶

An important aspect, which requires attention, is the exemption from the validity effects a transaction with stocks or shares takes place, including within a stocks market.³⁷ This exemption is not applicable if the parties knew that they are bound by the law to inform the Competition Council of the planned acquisition. This provision is an important limitation of the efficiency of the merger control, as the parties participating at the acquisition of stocks or shares as one of the possible ways of economic concentration may lead to bypassing the national merger rules.

This provision requires reconsideration, as, exempting some parties in favour of other with respect to transaction with stocks or shares on the stocks markets, is significantly diminishing the effectiveness of the national merger rules and could in effect generate enterprises with dominant positions.

INSTITUTION

The Association agreement mentions two conditions for the institution responsible for the national competition policy: independent competition authority with adequate *human and financial resources* and which *effectively enforces competition legislation*.

Independent competition authority with adequate human and financial resources

Independent competition authority

The Competition Law provides for the Competition Council as the institution responsible for the implementation of the national competition policy. The Competition Council is accountable before the Parliament and has competences of decision, regulation, prohibition, intervention, inspection, sanctioning within the legal limits.³⁸

³⁵ Article 22 (4) of the Competition Law

³⁶ Competition Council Decision no. 17 from 30.08.2013 on the approval of the Regulations on economic concentrations

³⁷ Article 20 (8) of the Competition Law

³⁸ Article 32 (1) of the Competition Law

The Competition Council takes collective decisions, based on its autonomy and independence.³⁹ In its relations with other regulatory authorities, the latter act *ex ante* in the regulated sector, and the Competition Council acts *ex post* to ensure competition, enforcing the competition rules on all aspects of the national economy, which fall within the ambit of the Competition Law.⁴⁰

The relations between the Competition Council, on one hand, and the other regulatory agencies, on the other is particularly important when it comes to regulating multidisciplinary aspects of regulated industries. We have underlined the importance of the regulation of certain industries and the fact that other agencies may question the regulatory powers of the Competition Council with respect to their particular areas of competence (i.e. insurance, telecommunication services, energy, postal services, motor vehicles etc.). There is a general obligation in the Competition Law put on the public authorities to consult with the Competition Council the contents of their legislative and normative initiatives.⁴¹ This mechanism is however not yet functional, although the Competition Law was approved in September 2012. This conclusion is drawn from the reporting offered by the Competition Council with respect to the implementation of the commitments under the EU-Moldova Association Agreement.⁴² Thus, the reporting for the implementation of the commitments under article 335 of the EU-Moldova Association Agreement mention the progress in establishing a compulsory mechanism of *ex ante* notification of the Competition Council by the public administration authorities which develop new pieces of legislation.

The Competition Council has also reported the approval of internal regulations necessary to ensure the proper flow of documents in the Council and for the approval of decisions for pending cases.⁴³

Additionally, part of the planning process the Competition Council is in progress with the approval of a National Competition and State Aid Action Plan for 2014-2020, which would set objectives and goals relevant to the competition and state aid policies.⁴⁴

Adequate human and financial resources

The Competition Council had a budget of 14,99 million lei in 2014⁴⁵ and 13,36 million lei in 2015⁴⁶. This budget is correspondent to a number of 132 positions,

³⁹ Article 32 (2) of the Competition Law

⁴⁰ Article 34 (5) of the Competition Law

⁴¹ Article 32 (2) of the Competition Law

⁴² The on-line reporting system on the progress of implementation of the EU-Moldova Association Agreement can be consulted at: <https://monitorizare.gov.md/reports/Raport%20PNAAA.html> (accessed 17 November 2015)

⁴³ *Ibid.*

⁴⁴ *Ibid.* It must be mentioned that pursuant to the content of the Competition Council the name of the draft document as it stands is the National Programme in the area of Competition and State Aid for years 2015-2020

⁴⁵ Law on budget for year 2014, no. 339 from 23.12.2013

⁴⁶ Law on budget for year 2015, no. 72 from 12.04.2015

with a maximum of 80 hired personnel in 2014.⁴⁷ Although the Parliament has planned an increase of number of employees from 80 in 2014 to 132 in 2015 and onwards, the financing of the activity of the Competition Council has decreased with more than 1 million lei for 2015. This may not be considered a sustainable approach towards granting adequate human and financial resources and certainly diminishes the efficiency and the effectiveness of the Competition Council.

The structure of the Competition Council personnel also requires consideration. Pursuant to the approved structure by the Parliament, there is less personnel for each of the anti-cartel (8), abuse of dominance (8) and economic concentrations (8) directorates than for the personnel (12) directorate. The latter has among others, 5 drivers. Although the importance of the personnel directorate may not be neglected, a redistribution of the personnel within the Competition Council is absolutely necessary, besides a strong and steadily increasing financing.

Effective implementation of competition rules

The Competition Council reported for 2014, 5 cases of anticompetitive agreements and 24 cases of abuse of dominance, out of which the only 2 cases of anticompetitive agreements and 5 cases of abuse of dominance.⁴⁸ This low delivery rate coupled with the conclusions of the Court of Accounts⁴⁹ on the efficiency of use of public resources by the Competition Council suggests that the institution is not performing efficiency enough. Among the main conclusions of the Court of Accounts are the following:

- a) The Competition Council reacts to complaints, which means that there is a rather reactive than proactive approach in the institution
- b) The Competition Council does not use its resources in investigating priority markets in Moldova
- c) The Competition Council did not use to its full capacity the leniency policy available under the law to effectively investigate cases of cartels

These facts lead to the conclusion that, on one hand the Competition Council has not used to its fullest the available resources to investigate cases of anticompetitive behaviour, and, on the other, the Government has decreased the financing of the Competition Council. These two conclusions may not in any way reconcile with the commitment in the Association Agreement to effectively implement competition rules.

⁴⁷ Article 1 of the Parliament Decision no. 278 from 21.11.2013 on the approval of the maximum number of personnel units and of the organizational structure of the Competition Council

⁴⁸ Annual Activity Report of the Competition Council for 2014, table no. 2, page 24, available at: http://competition.md/public/files/uploads/rapoarte_anuale/28%2005%202015%20Raport_activitate_Cons%20Concur_last.pdf (accessed on 17 November 2015)

⁴⁹ Decision of the Court of Accounts no. 11 from 31.03.2015 on the Auditing of the activity of the Competition Council for years 2011-2014

Another aspect of the ineffective application of competition rules is linked to the currently existent fines the Competition Council may use to penalise undertakings. Thus, according to the Competition Law allows a fine of up to 5.6% out of the undertaking's turnover.⁵⁰ There is also the possibility to increase the basic fine for each aggravating circumstance, some of them being deliberate continuation of breach of competition rules and reoffending. For these aggravating circumstances, the Competition Council may increase the basic fine with up to ¼. It must be mentioned that undertaking's turnover is considered the total value of sales of the undertaking.⁵¹

Contrary to what the national legislation stipulates, the Council Regulation 1/2003 provides for a fine of up to 10% of the entire undertaking's turnover, which is the sum of income and expenses the undertaking had in the reference period. The European Commission's Guidelines on setting fines⁵² provides for clarifications to the application of the fines in cases of infringement of competition rules. Thus, the basic fine is increased if the duration of the infringement is longer and is usually applied at its highest end for particularly serious infringements such as hard-core cartels. Also, the turn-over taken into account is not just of the undertaking itself, but also of the group of undertakings it belongs, if the latter has exercised decisive influence on the behavior of the undertaking under investigation. Finally, if the undertaking is reoffending, the amount of the fine is increased by up to 100% of the basic amount of the fine. All these instruments are used to discourage the breach of competition rules at EU level.

The current limits for fines, which essentially may increase to a maximum of 6.6% if there is a hard-core cartel agreement and if the duration is particularly high (above 5 years) with an additional aggravating circumstance of reoffending, are too low to be considered decisive in determining the behavior of the enterprises. Coupled with the fact that only the total amount of sales of the undertaking itself, not the entire group, is calculated, these small fines are not sufficiently attractive for the undertakings to use an option of cooperation with the Competition Council – the leniency policy and also contribute to the *ineffective enforcement of competition rules*.

The Competition Law must be adjusted in the sense of increase of the level of fines to both interest undertakings to use the competition leniency policy and refrain from breaching competition rules in the first place, or if breached, be sufficiently "persuasive" not to reoffend.

PROCEDURAL RULES

The Association Agreement makes reference to *procedural fairness* and *the right to defence for the undertakings concerned*. In essence, article 335 of the Association

⁵⁰ Article 72 (3) and (4) of the Competition Law

⁵¹ Article 4 of the Competition Law

⁵² European Commission Guidelines on setting fines imposed pursuant to Article 23(2) of the Regulation 1/2003

Agreement requires from the Competition Council a non-discriminatory application of its competition rules, with due respect to the fairness and the an adequate right to defence when an investigation is initiated against an undertaking.

The right to procedural fairness and the right to defence should be applicable to all procedural actions taken by the Competition Council when it comes to interaction with the undertakings. Thus, the following procedural aspects require regulation by the Competition Council:

- a) Opening of investigation
- b) Access to file by the undertakings
- c) Collection of statements and other pieces of proof under a formal leniency process
- d) Inspections, including dawn raids and copying of relevant data and documents
- e) Application of fines
- f) Settlement procedures with the Competition Council on commitments under the economic concentrations and agreements exposed to individual exemptions
- g) Handling of complaints
- h) Administrative hearings
- i) Issuance of the Competition Council Decision
- j) Court proceedings

All these aspects require an elaborate approach, the best solution for the Competition Council being to approve a separate code of procedure for competition cases, which would involve also the right to a fair procedure and the right to defence at all stages of the investigation process.

Currently the Competition Council has scattered procedural provisions in the Competition Law and in some of its Regulations, which set up the investigation of vertical, horizontal, technology transfer agreements, abuse of dominance and economic concentrations. These legislative pieces are however not harmonised. Coupled with a list of internal Regulations, applicable to the Competition Council alone, the institutions becomes less transparent and unclear in terms of actions it will take when an investigation has been launched.

One important aspect of the right to defence is the ambit of the rights the undertakings have when the Competition Council initiates unplanned inspections (dawn raids). This is a very powerful tool, which is used when the Competition Council has solid proof that there is a hard-core cartel involved, with one of the members reaching the Council and cooperating in exchange for providing proof. However, the Competition Council must be very careful in obtaining the respecting

pieces of proof, including insurance of the safe handling of the sources of proof (hard disks, copied documents etc.), to comply with the basic principles of admissibility of proof according to national civil procedure legislation.

As the current procedural competition provisions stand, there are high chances that the Competition Council may not entirely comply with the already existent national provisions on the right to defence and fairness of the process, as well as with the Association Agreement commitments. Approving a harmonised set of Rules of Procedure would have a two-fold impact: first, it would ensure the proper level of fairness of the process, including the right to defence, and, second, it would strengthen the cases the Competition Council handles, which will decrease the chances of cases being lost in Court for procedural reasons.

The undertakings could refer to the Association Agreement provisions relating to fairness of the processes and to the right to defence, which ultimately may result in quashed decisions of the Competition Council, although substantive work was done and there was sufficient proof that the undertakings entered into anticompetitive behavior.

STATE AID

Similarly to the antitrust & mergers subchapter, the state aid subchapter also has a series of commitments, mostly with respect to Moldova in the implementation of the state aid regulatory framework. As identified in the previous chapter, these commitments may be similarly grouped in *applicable legislation, institution and, transparency and reports*. We shall review them in turn in the course of this chapter.

APPLICABLE LEGISLATION

First, state aid, which is granted either by Moldova or the EU, or through the resources of either of the two, in any form whatsoever, which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods and services that affects trade between the Moldova and the EU shall be incompatible with the Association Agreement.⁵³

This is a general prohibition on state aid, applicable for both parties and not valid for aid offered to agricultural products, which have a different status, both under the WTO and the EU Common Agricultural Policy.

Second, the legislation to be used to assess state aid is the EU provisions of article 107 of the TFEU, as well as all the secondary legislation which interprets and details the state aid provisions in the TFEU, including the case-law of the Court of Justice of the European Union. This implies a time limit of **5 years** since the entry in force of the Association Agreement for Moldova while transposing into national law all the

⁵³ Article 339 (1) of the EU-Moldova Association Agreement

relevant EU State Aid provisions. Unlike other provisions in the Association Agreement, which make reference to a list of Directives and Regulations, article 340 of the Association Agreement is much more burdensome, as it implies the entire transposition of the EU State Aid Acquis into national legislation, including the relevant case-law of the Court of Justice of the European Union.

Third, national legislation must be adopted and maintained, as appropriate, to ensure effective control of state aid. This means both the process of authorisation of state aid and the recovery of state aid, which does not comply with the state aid legislation. This legislation has a deadline of enforcement of **2 years** since the entry in force of Association Agreement.

The main piece of Moldovan legislation in the area of state aid is the Law of State Aid⁵⁴, which was approved by the Moldovan Parliament in 2012. The law transposes the key state aid provisions available under article 107 of the TFEU, namely:

- a) Notion of state aid
- b) State aid which is compatible
- c) State aid which may be compatible

Thus, *state aid* is considered any measure of support which:

- a) If offered by a supplier from state resources or from the resources of territorial-administrative units in any form whatsoever
- b) Offers to the beneficiary an economic advantage which may have not been obtained under normal market conditions
- c) Is offered on a selective basis, and which
- d) Distorts or threatens to distort competition⁵⁵

State aid, which is compatible:

- a) Aid with social character offered to individual consumers, with the condition that these are offered without any discrimination based on the origin of products or services
- b) Aid to remedy the damages caused by natural disasters or other exceptional situations⁵⁶

State aid, which may be compatible:

- a) Aid directed to remedy a serious disruption in economy⁵⁷
- b) Aid to train employees and to create new jobs⁵⁸

⁵⁴ Law no. 139 from 15.06.2012 on State Aid

⁵⁵ Article 3 of the Law on State Aid

⁵⁶ Article 4 of the Law on State Aid

⁵⁷ Competition Council Decision no. 12 from 30.08.2013 on the approval of the Regulation on the state aid granted to remedy a serious disruption in economy

- c) Aid offered to small and medium sized enterprises⁵⁹
- d) Aid for research, development and innovation⁶⁰
- e) Aid directed to the protection of the environment⁶¹
- f) Aid offered to beneficiaries which deliver a service of general economic interest⁶²
- g) Aid offered to beneficiaries which are in difficulty⁶³
- h) Aid offered to creation of enterprises to women who are entrepreneurs⁶⁴
- i) Sectorial aid, depending on the activity sectors of the national economy
- j) Aid for regional development.⁶⁵⁶⁶

For each of the types of state aid mentioned above the Competition Council, as the entity responsible for the implementation of the State aid policy and for the authorisation and recovery of illegal state aid, has approved Regulations, which transpose relevant EU provisions.

It must be mentioned that the Competition Council has not yet approved sectorial aid Regulations. These may be however found as draft Regulations for a series of industries on the website of the Competition Council.⁶⁷

The on-line monitoring system of the implementation of the Association Agreement reports with respect to the approval of the sectorial Regulations that these have been approved by the Competition Council.⁶⁸

⁵⁸ Competition Council Decision no. 5 from 30.08.2013 on the approval of the Regulation on the state aid granted to train employees and to create new jobs

⁵⁹ Competition Council Decision no. 10 from 30.08.2013 on the approval of the Regulation on state aid granted to small and medium sized enterprises

⁶⁰ Competition Council Decision no. 8 from 30.08.2013 on the approval of the Regulation on state aid granted for research, development and innovation

⁶¹ Competition Council Decision no. 9 from 30.08.2013 on the approval of the Regulation on state aid granted for the protection of the environment

⁶² Competition Council Decision no. 11 from 30.08.2013 on the approval of the Regulation on state aid granted to beneficiaries which provide services of general economic interest

⁶³ Competition Council Decision no. 6 from 30.08.2013 on the approval of the Regulation on state aid granted to save beneficiaries which are in difficulty

⁶⁴ Competition Council Decision no. 7 from 30.08.2013 on the approval of the Regulation on state aid granted for the creation of enterprises by women who are entrepreneurs

⁶⁵ Competition Council Decision no. 4 from 30.08.2013 on the approval of the Regulation on state aid granted for regional development

⁶⁶ Article 5 (1) of the Law on State Aid

⁶⁷ For more details, please consult: <http://www.competition.md/libview.php?l=ro&idc=40&id=5449&t=/Transparenta/Transparenta-decisionala/Consiliul-Concurentei-lanseaza-consultarea-publica-cu-privire-la-proiecte-de-Regulamente-sectoriale-in-domeniul-ajutorului-de-stat> (accessed on 18 November 2015); in total the Competition Council proposed for public consultations 7 draft Regulations for the following industries: postal services, rail and road passenger transport services, audiovisual products, steel industry, naval units administration societies, broadcasting undertakings, railroad undertakings

⁶⁸ For more details please consult: <https://monitorizare.gov.md/reports/Raport%20PNAAA.html> (accessed on 18 November 2015) at article 341 of the Association Agreement

INSTITUTION

The Association Agreement requires an *independent* institution responsible for the control of state aid, which *inter alia* will *authorise* state aid schemes and individual state aid as well as *order the recovery* of state aid unlawfully granted. This obligation should be complied with within **2 years** from the entry in force of the Association Agreement.⁶⁹

We have touched on the independent nature of the Competition Council in the previous subchapter related to antitrust & mergers. The national law on state aid empowers the Competition Council to authorise all aid, except the one, which is *de minimis* (which does not exceed the limit of 2 million lei offered during a period of 3 years), or which has a social character or granted to remedy natural disasters. The aid providers must prior to authorising the state aid notify the Competition Council.⁷⁰

The recovery of the state aid, which was illegally granted, is managed by the authority which granted the aid in the first place. The Competition Council may only issue a Decision on the illegal nature of the state aid and, if the authority granting the state aid does not comply with the decision to stop the offering of the state aid and recovery of the state aid offered so far, challenge the action of the authority in a court of law.⁷¹

This recovery procedure does not involve the Competition Council *per se*, as the issuing authority recovers it from the beneficiary. As it currently stands, the Competition Council does not hold a genuine *aid recovery* competence, cannot issue enforceable acts and must wait for the issuing authority to recover the state aid itself.

As the timeframe for implementing this particular obligation to empower the Competition Council to recover the unlawful state aid is elapsing on the 1 September 2016, the Law on state aid requires immediate attention and amendment, to comply with the commitments under article 341 of the Association Agreement.

Failure to comply with this particular obligation may result in the enforcement of the dispute settlement procedures under article 403 of the Association Agreement and may generate unfavourable decisions issued by the Court of Justice of the European Union, ordering penalties in favour of EU undertakings.

TRANSPARENCY AND REPORTING

The Association Agreement sets an obligation to present public reports on the state aid granted following the EU annual survey methodology for state aid. The reports

⁶⁹ Article 341 (1) and (2) of the EU-Moldova Association Agreement

⁷⁰ Article 8 (1) of the Law on State Aid

⁷¹ Articles 13 and 14 of the Law on State Aid

should be published on a biannual basis starting **1 January 2016**. In other words, the first report should be available on **1 January 2018**.

The Competition Council has approved a Regulation on the State Aid Registry⁷². Additionally, the Government approved the Concept of the automated informational system "State Aid Registry".⁷³ The Competition Council Regulation transposes a European Commission Regulation on the application of article 107 of the TFEU.

Additionally, the Competition Council is currently under way in promoting a National Programme in the area of Competition and State Aid for years 2015-2020.⁷⁴

⁷² Competition Council Decision no. 3 from 30.08.2013 on the approval of the Regulation on the State Aid Registry

⁷³ Government Decision no. 378 from 27.05.2014 on the approval of the Concept of the automated informational system "State Aid Registry"

⁷⁴ The draft National Programme may be consulted at:
<http://www.competition.md/public/files/uploads/files/transparenta/Program%20concurrenta%20si%20ajutor%20de%20stat.pdf>
(accessed on 18 November 2015)

CONCLUSIONS AND RECOMMENDATIONS

We have seen the main features of the national competition policy, and how it currently reconciles with the existent commitments under the Association Agreement.

The *first* conclusion is that the implementation of the competition policy in Moldova is a "*work in process*". There is a legislative framework, which transposes key provisions of the EU Competition and State Aid Acquis; there are institutional and procedural provisions.

The *second* conclusion is that the Competition Council has been more active in regulating the state aid component rather than concentrate on the antitrust and mergers component. This may be due to a mixture of reasons. Some of them could be:

- a) Insufficient functional independence in tackling high-profile cases
- b) Insufficient capacity to manage complex cartel cases
- c) Lack of institutional memory and practice handling antitrust cases
- d) Insufficient instruments to effectively pursue and sanction the undertakings

The *third* conclusion is that some of the legislative and regulatory provisions require elaborate revision and amendment to ensure that the competition and state aid rules apply equally for all types of anticompetitive agreements, irrespective of their legal source, and for all forms of economic concentrations.

As a result, the following main recommendations for the effective implementation of the commitments under the Association Agreement are suggested:

- a) The Competition Council must promote and together with the Parliament approve a multiyear Competition and State National Programme to adequately plan the activities necessary to be implemented to comply with the Association Agreement commitments
- b) The Competition Law and the State Aid law require revision and amendment to exclude any exemptions from the general prohibition of anticompetitive agreements and abuse of dominance and the direct recovery of state aid; increase of fines etc.
- c) The Competition Council must adopt a comprehensive set of procedural rules to ensure fairness of the procedure and ensure the right to defence to undertakings, including to reconcile these provisions with the currently existent civil procedure and strengthen the position of pieces of proof collected during investigation and inspections
- d) The Competition Council must review its priorities and investigate high priority cases

- e) The Parliament should reconsider the attitude towards the financing of the Competition Council, by constantly increasing the level of funding for this institution, instead of its decrease
- f) The Competition Council should consider transposition of other pieces of EU legislation in the area of antitrust & mergers and state aid to comply with the timelines of transposition set in the Association Agreement.

ANNEX: LIST OF CONSULTED SOURCES

International Agreements

1. The Treaty on the Functioning of the European Union
2. The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part
3. Association Agenda between the European Union and the Republic of Moldova, signed at Brussels, 26 June 2014

EU Secondary legislation

4. Council Regulation 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty
5. European Commission Regulation no. 330/2010/EU of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices
6. European Commission Regulation no. 1217/2010/EU of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements
7. European Commission Regulation no. 1218/2010/EU of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements
8. European Commission Regulation no. 772/2004/EU of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements
9. European Commission Regulation no. 316/2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements
10. European Commission Regulation no. 267/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector
11. Council Regulation no. 1534/91/EEC on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector
12. European Commission Regulation no. 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicles sector
13. Council Regulation no. 169/2009 applying rules of competition to transport by rail, road and inland waterway
14. Council Regulation no. 139/2004 on the control of concentrations between undertakings
15. European Commission Regulation no. 802/2004 implementing Council Regulation 139/2004 on the control of concentrations between undertakings
16. European Commission Guidelines on setting fines imposed pursuant to Article 23(2) of the Regulation 1/2003
17. European Commission Guidelines on the application of Article 101 of the Treaty on the Functioning of the European Union to technology transfer agreements
18. European Commission Guidelines on the application of Article 81 of the EC Treaty to technology transfer agreements

19. European Commission Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal cooperation agreements
20. European Commission Guidelines of Vertical Restraints no. 2010/C 130/1

National legislation

21. Law no. 139 from 15.06.2012 on State Aid
22. The Law no. 183 from 11.07.2012 on competition
23. The Law no. 339 from 23.12.2013 on budget for year 2014
24. The Law no. 72 from 12.04.2015 on budget for year 2015
25. Parliament Decision no. 278 from 21.11.2013 on the approval of the maximum number of personnel units and of the organizational structure of the Competition Council
26. Government Decision no. 378 from 27.05.2014 on the approval of the Concept of the automated informational system "State Aid Registry"
27. Decision of the Court of Accounts no. 11 from 31.03.2015 on the Auditing of the activity of the Competition Council for years 2011-2014

Competition Council Decisions

28. Competition Council Decision no. 3 from 30.08.2013 on the approval of the Regulation on the State Aid Registry
29. Competition Council Decision no. 4 from 30.08.2013 on the approval of the Regulation on state aid granted for regional development
30. Competition Council Decision no. 5 from 30.08.2013 on the approval of the Regulation on the state aid granted to train employees and to create new jobs
31. Competition Council Decision no. 6 from 30.08.2013 on the approval of the Regulation on state aid granted to save beneficiaries which are in difficulty
32. Competition Council Decision no. 7 from 30.08.2013 on the approval of the Regulation on state aid granted for the creation of enterprises by women who are entrepreneurs
33. Competition Council Decision no. 8 from 30.08.2013 on the approval of the Regulation on state aid granted for research, development and innovation
34. Competition Council Decision no. 9 from 30.08.2013 on the approval of the Regulation on state aid granted for the protection of the environment
35. Competition Council Decision no. 10 from 30.08.2013 on the approval of the Regulation on state aid granted to small and medium sized enterprises
36. Competition Council Decision no. 11 from 30.08.2013 on the approval of the Regulation on state aid granted to beneficiaries which provide services of general economic interest
37. Competition Council Decision no. 12 from 30.08.2013 on the approval of the Regulation on the state aid granted to remedy a serious disruption in economy
38. Competition Council Decision no. 13 from 30 August 2013 on the approval of the Regulations on the evaluation of anticompetitive vertical agreements
39. Competition Council Decision no. 14 from 30 August 2013 on the approval of the Regulations on the evaluation of anticompetitive horizontal agreements
40. Competition Council Decision no. 15 from 30 August 2013 on the approval of the Regulations on the evaluation of anticompetitive agreements involving transfer of technologies
41. Competition Council Decision no. 16 from 30 August 2013 on the approval of the Regulation on the establishment of dominance on the market and evaluation of the abuse of dominant position

42. Competition Council Decision no. 17 from 30.08.2013 on the approval of the Regulations on economic concentrations

Websites and web-links:

43. The on-line reporting system on the progress of implementation of the EU-Moldova Association Agreement -
<https://monitorizare.gov.md/reports/Raport%20PNAAA.html>
44. The EU-Moldova Association Agenda - http://eeas.europa.eu/moldova/pdf/eu-moldova-association-agenda-26_06_en.pdf
45. Annual Activity Report of the Competition Council for 2014 -
http://competition.md/public/files/uploads/rapoarte_anuale/28%2005%202015%20Raport_activitate_Cons%20Concur_last.pdf
46. Draft Regulations on sectorial aid schemes -
<http://www.competition.md/libview.php?l=ro&idc=40&id=5449&t=/Transparenta/Transparenta-decizionala/Consiliul-Concurrentei-lanseaza-consultarea-publica-cu-privire-la-proiecte-de-Regulamente-sectoriale-in-domeniul-ajutorului-de-stat>
47. The draft National Programme in the area of Competition and State Aid for years 2015-20120
<http://www.competition.md/public/files/uploads/files/transparenta/Program%20concurrenta%20si%20ajutor%20de%20stat.pdf>