

## Conditions for Loyal Competition in the Food Retail System of the Republic of Moldova

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### Abstract

The food retail market in the Republic of Moldova, as well as many developing countries, has enjoyed great growth over the last decade. In the trends of market development and liberalization, the psychological social factor plays an important role.

Given that retail networks have undergone aggressive expansion, small stores have hardly been able to cope with the competition. Thus, ensuring the conditions for maintaining a stable competitive environment is essential for the sustainable development of the market.

The development of the food retail system has led to a significant increase in the number and diversity of formats on the market. The new format differs from other sectors due to several features. These include the way of carrying out the trade, the variety of assortment offered, the size of the trading point, the service system, etc.

The conditions for fair competition in the food retail market in the Republic of Moldova can be fulfilled through the establishment of loyal relationships between the market actors, as well as by considering the particularities of the market complexity in the market analysis. And the active involvement in the cognitive development and the establishment of proactive actions for the development of the self-regulation programs by the market actors in this context are essential.

**Keywords:** food retail market; loyal competition; advocacy; market relations; market analysis; compliance

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## **1. Introduction**

Over the past two decades, the global food retail market has undergone significant changes as a result of economic, social and demographic developments. Increasing purchasing power served as a motivating mechanism for developing and modifying the structure of this market. As a result, traders developed, the form of modern commerce appeared (through self-service), their own brands were developed, some producers became traders, increased the degree of concentration vertically and horizontally, etc. Therefore, the food retail market is taking on a different form, its limits are no longer so clear, and inside, it is becoming a much more complex structure. The liberalization of markets, the elimination of barriers, but also the social factor also plays an important role in the evolution of the forms of presentation to the food retail market and the increase of the share of modern trade in the food retail market. The tendency to manifest, to benefit from innovative and different products and services from consumers leads to the emergence of the demand for new formats, which respectively stimulate the development of the offer, and the tendency of market actors to evolve. The evolving nature of sales in new formats and expanding their market is driven not least by human psychologic factor. The significant increase of the new formats in the market (retail networks) was registered following the crisis of 2008, when one of the consumers' concerns in the purchase was the low prices but also the presentation of the products (disposable packaging, fast opening, fast formats, etc.). Thus, the existence of the demand for the new format of the market (retail networks), has favored its considerable expansion worldwide, reaching quotas of 30-40% of the food retail market.

The modern format of the market was considered attractive by the producers too. Due to the large capacity of selling retail networks, suppliers / distributors sell very large quantities of products, as compared to filling the demand for traditional trade, therefore, expenses for logistics can be optimized and costs reduced.

Concerns about the proper functioning of the food retail market have arisen due to several reasons. As a result of expanding retail networks, the market has become concentrated. The high level of concentration, but also the degree of consolidation in this sector in recent years can distort the good functioning of the market. The most serious effects created by the violation of the principles of competition are those of the abusive exercise of market power by the consolidated companies. The abuse of dominant power derived from the dominant positions can be expressed by establishing inequitable conditions in the Business to Business (B2B) contractual relations, practicing ruining or dumping prices, economic concentration, cartel agreements regarding the establishment and maintenance of high prices, and so on.

The proper functioning of the market is conditioned by the identification of the violations that take place on it and the remediation of them with as few losses as possible, with the maintenance of the effects for a long time. This process can be conventionally divided into 3 stages or parts. The first is the analysis and identification of problems or possible problems, the second is the naming of the violations and the analysis of their impact on the competitive environment and the third is the step of correcting the violations in order to restore the normal competitive environment.

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For a correct and complete analysis of cases of breach of competition rules on the market, the most important is the definition of the market. Defining the relevant market offers a clear view of the market situation: the presence of competitors; the degree of market concentration; downstream and upstream relationships; and other information relevant to the study. Although market analysis is an informational process, in the case of competitive environment analysis it can be called one of the factors that condition the good functioning of the market. From this stage depends the final conclusions about the state of the market and the distortions that may occur on it as a result of the structural changes.

Another important factor in ensuring the proper functioning of the market is the relationship between the market players. The contractual relations, when they contain anti-competitive conditions, can create major effects of distorting the competitive environment. These effects can be constricting, diminishing competition, even eliminating it (European Commission, 2014).

The executive regulation methods, based on the legal provisions regarding the protection of the competition, may not be effective every time. Often, the sanctions imposed after identifying the violations do not stop their repetition. Besides, resolving infringement cases through regulatory methods requires time and resources, and does not guarantee total market remediation. Large sanctions can destabilize the economic situation of the sanctioned company, and in small markets this situation is not exactly favorable to the business environment. Alternatively, non-regulatory methods, such as those contributing to the education of a competitive culture among the business environment and applying commitments as a tool to correct and eliminate violations, can be used. Advocacy methods are proven as an effective alternative tool to regulatory methods, with increased effects on small markets, due to the social factor.

Businesses with a high level of knowledge about the benefits of a fair competitive environment on the market, in other words with a high competitive culture, can develop and adopt compliance programs, to ensure that their activity does not create any impediment to the fair competitive environment. The use of compliance programs for the whole business environment I think is the most desirable level on the market in the view of the competition authority.

Next, the three stages of ensuring a normal competitive environment on the food retail market will be analysed, taking into account the dimensional aspect of a small domestic market, such as the market of the Republic of Moldova.

## **2. Market Analysis**

Market definition is the basic stage in the analysis process, regardless of the correction methods used later. So, we can say that this is the primary stage in the analysis of the competitive environment.

### **2.1. EU Practice of food retail Market Analysis**

European Commission(EC) has a strong interest in the food retail sector. Food retailing is of considerable importance in the development of the market economy. This sector accumulates

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a significant part of GDP, but it also has a large part of SMEs. Therefore, given the close links it has with neighboring markets, the food retail sector has been considered one of the priority sectors. Retail, in the process of economic development, has undergone modifications, becoming varied as structure, with several forms of presentation (European Commission, 2014).

The food retail market has become a subject of interest and concern, following the significant increase in prices at all levels of the supply chain, since 2007. Concerns have arisen regarding the functioning of the general food supply chain. Priority for the EC is to ensure a functional competition at all levels of the food chain for the final benefit of European consumers, who spend a significant part of their food budget (European Commission, 2016).

For better understanding and tracking trends, but also to identify the effects of changes occurring on the market, as well as possible problems, EC has launched several retail market analysis programs. Thus, a number of market studies took place, which included several countries from the European area, such as Austria, Bulgaria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Lithuania, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and UK. In total, 36 market studies were conducted in the food retail sector, for the monitoring of the retail market. The results of these studies presented a number of problems regarding the structure and functioning of the retail sector. First, concerns have been expressed about the degree of consolidation in this sector in recent years and the high concentration ratios that characterize local retail markets in many states. Concerns were also raised regarding the supposed abusive exercise of market power by the retail networks extended to the market. (European Commission, 2009).

The results of the monitoring investigations and market studies have contributed to establishing the current structure and functioning of the food retail sector and establishing the conditions for ensuring a fair competitive environment in the food retail market. Particular emphasis was given to the analysis of business models and market structures; the manner in which the retailers exercise their purchasing power in the commercial relations with the suppliers; the perceived existence of unfair commercial practices within such relationships; the effects of certain specific relationships; practices regarding competition and barriers to entry in food retail markets (European Commission, 2014)

Concerning several markets, in particular the developing ones, the conclusions revealed that the modernization of the retail sector has led to a significant increase in the concentration level, resulting in both large retail groups (40% of the figure). industry), as well as in other less structural forms of cooperation between retailers, such as cooperatives, associations, franchises, etc. (60% of the turnover of the industry). On a horizontal level, competition has changed from individual companies to groups of companies integrated to different measures and often linked through simple contractual relationships. Also, on vertical level, the study identified the importance of large purchasing alliances for about 75% of the retail procurement market, whose members frequently change (European Commission, 2014, 2018).

### **2.2. Practices accomplished for the conditions of competitive small Food retail Market, characteristic for RM**

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The market of the Republic of Moldova is within the characteristics established for a small developing markets. The food retail system has registered a constant growth in the last years on the territory of the Republic of Moldova. Thus, in 2018, the retail sale of food products reached approx. 34% of total retail trade. As on the European space, the development of the food retail market in the Republic of Moldova in recent years has led to a change in its structure. Thus, the market separation takes place by levels, with the identification of target groups of users, differentiating according to product type, size, price level, etc.

And, although general statistical data on the retail trade of food products are provided within the statistical analyzes, food retailing is much more complex, in which several levels of the market can be differentiated, segmented on the basis of several particularities. Size, assortment variety, price levels are some of the factors that make segmentation possible.

The food retail market, as a positioning of the actors, has a dual character, given the fact that it is related on 2 markets, both on the downstream market and on the upstream market.

The upstream market is usually left open for market analysis, as suppliers are present throughout the country, and products are constantly changing.

An increase in power or the consolidation of the dominant position in the market, may lead to the exercise of superior powers at the time of negotiation, in order to obtain the price advantages, or other favorable conditions from the suppliers.

From the perspective of the downstream market (the relationship with the final consumer) food retail networks have a strong influence on the quality of life. The products offered by them reach the final consumer directly. Therefore, price policies, service system, attracting customers, have an impact on the final consumer. If the market limits are left open upstream (considering the entire territory of the country), downstream, however, the food retail market is segmented, local markets being established, taking into account a ray that an economic agent has an impact / is present. The criteria for selecting the store by consumers also play an important role in maintaining market sustainability, under conditions of fierce competition.

The correct identification of the relevant market is the key factor in identifying possible distortions of the competitive environment in the analyzed sector. This should allow the identification of existing and potential competitors of the analyzed economic agents, which are capable of conditioning the behavior of the respective companies and prevent them from acting independently of the pressures of a competition.

Several cases investigated by the European Commission (Carrefour / PomodesCOMP / M.1684, Lidl / Plus COMP / M.5790, Pomodes / CasinoCOMP / M.991 etc.) in the food retail sector led to conclusions of redefining the market. Its results were based on segmentation criteria and market analysis, used both in the European area and in other countries, respectively in the Republic of Moldova. This approach is maintained even today, with the specification that the analysis will be done on a case-by-case basis, given that, among the criteria that can extend the size of the geographic market is the existence of important circular overlaps of several different local areas, which determine an effect of homogeneity regarding the conditions of competition, especially at urban level, taking into account the density of the points of sale and the density of the population. Therefore, in the retail food retailing sector, markets are defined locally. These

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are markets where outlets are operated and where consumers have easy and quick access (Competition Council, 2017)

An analysis of the current market must take into account the particular aspects of the market. This conclusion was made in the analysis of several cases of economic concentration. In which the market study was carried out, in which the particularities of the current retail trade in the food sector were identified.

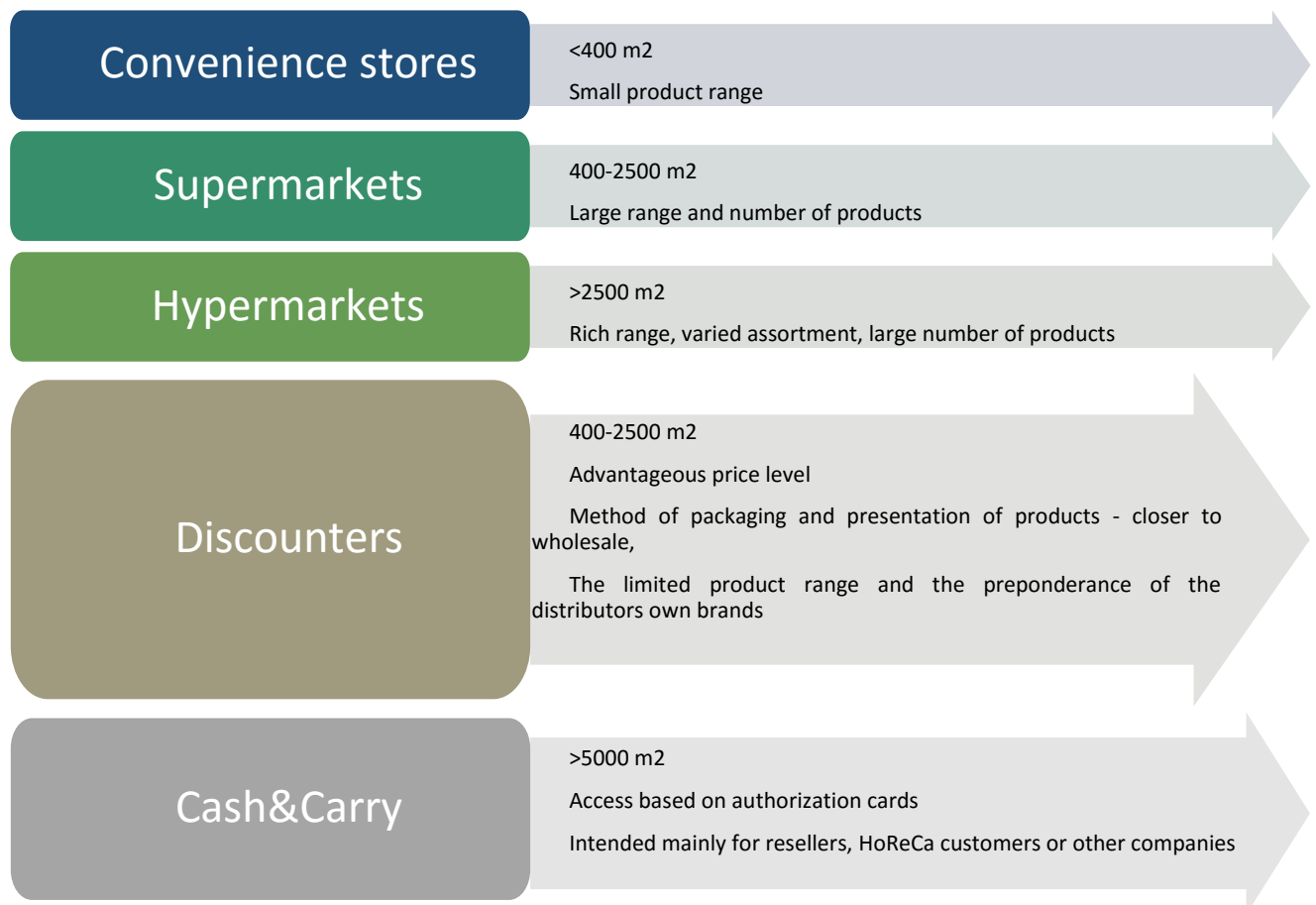
According to the results reported in the study, the relevant market in the food retail sector can be delimited taking into account the following particularities (Competition Council, 2017):

1. Depending on the type of service:

- traditional trade, in which the consumer generally benefits from the assistance of a seller;
- self-service trade (modern trade).

2. Depending on the sales area (figure 1), the shops differ according to size, and the variation of the assortment range, as well as the number of products offered. The choice of the store is usually correlated with these particularities. Therefore, particular to Hypermarkets, is that they represent the format with the highest profitability, appreciated as an essential element for the level of competitiveness of any distribution group, both in the distributor / consumer relations and in the distributor / supplier relations. Discounters, as a rule, present specific features regarding the most advantageous level of prices, how to pack and present products similar to wholesale, the limited range of products and the preponderance of the distributors own brands. And the Cash & Carry stores have access only with legitimacy, which is granted exclusively to legal entities and authorized natural persons (according to Law no. 650/2002) (Competition Council, 2017).

**Figure 1. The variation of the market according to the sales area**



Source: By author

The differentiation is also conditioned by the price gap, offered depending on the form of organization and the size of the commercial unit.

Given that, in the retail market of mainly food products, the time required to move to the store is a very important factor in consumer choices, a catchment area can be defined for each store, an area that represents the area around the store, from where it will attract the majority of its customers.

Thus, depending on the willingness of consumers to move to make purchases of consumer goods, the catchment area will represent a circle with the radius corresponding to a distance that consumers can travel within a certain time frame (isochronous), with the car (depending on several factors, such as: size and preferences of households, level of income, accessibility of shops, size of shops, transport network).

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The European practice suggests that the time allowed for traveling to the store is 10 - 30 minutes, with the car, which can be extended, from case to case, when there are circular overlaps of several different local areas.

According to the findings of the sectoral investigation, the analysis of the relevant food retail market in subsequent cases of economic concentrations had as a starting point the competition between hyper / supermarkets, discounts and other similar stores (such as neighborhood / neighborhood stores) in the areas delimited by a maximum distance of 30 minutes by car (Competition Council, 2017).

Thus, according to the study The supply of groceries in the UK market investigation completed in 2008, as well as the decisions that followed, customers allocate up to 5 minutes by car to stores with an area of up to 280 m<sup>2</sup>, up to 10 minutes for shops with areas between 280 m<sup>2</sup> and 1000 m<sup>2</sup> and up to 15 minutes for those with areas larger than 1000 m<sup>2</sup> (Competition Council, 2017).

Defining the market according to the particularities of the market, plays an important role in evaluating the analyzes and issuing decisions to ensure fair competitors in the market. The wrong definition of the market size can lead to wrong conclusions regarding the behavior of the competitors on the market, which may limit the identification of market powers.

### **3. Relations between market players (B2B)**

The market relations between the actors are very important for ensuring a fair competitive environment. Acceptance and use of anti-competitive clauses in collaboration agreements may hinder effective competition. At the same time, it is considered a violation and impediment of the fair competition to develop the anti-competitive agreements or concerted practices between two or more economic operators that can take place horizontally, between competitors or vertically, between companies operating at different levels of the production chain or distribution. As well as establishing and imposing a common conduct on the members of some associations of companies, related to prices, standards or trade secret information. And with serious effects are considered the secret cartel-type horizontal agreements, regarding the fixing of prices, the division of markets and customers, the limitation of production and distribution or the imposition of the resale price.

In the food retail market, the quality of the relationships of the retail networks with the suppliers has a considerable impact on the sustainable development of the market. In the territory of the Republic of Moldova, the suppliers of domestic products are often also the producers of the delivered products. In other cases they appear as the intermediary link of the distributors.

The sustainability of domestic producers is very important for the development of the national economy. Creating conditions for their development is a problem that concerns both local and central regulatory authorities. Under market liberalization trends, small domestic producers are losing ground, and may not be able to cope with competitive pressures. Therefore, the market relations between food retail networks and suppliers are of multilateral importance.

The regulation of relations between suppliers and food retail networks takes place on the basis of the law on internal trade and the law of competition. In which are established the conditions



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of delivery and marketing, but also those of relationship between the economic agents, which will ultimately offer quality products to the consumer.

Signs of concern in establishing relationships between food retail networks and suppliers appear if some companies consolidated in the market adopt an abusive practice in relations with other companies. And due to the dimensional inability to cope with competition on external markets, the producers / suppliers accept some contractual conditions.

Domestic producers, as a rule, are small, with small quantities of products, and limited expansion possibilities. Thus, for them sales are vital, without which they could no longer produce, develop and exist on the market. Under these conditions, food retail networks, having a better position in the market, feel benefited, and can take advantage of the conditions of the producers, influencing subjectively in the contract negotiation process, in order to obtain low delivery prices. Moreover, they may impose other contractual conditions to their advantage.

The restriction of actions in collaboration through the use of abusive contractual conditions are possible and appear biased due to power imbalances between the contracting parties. These practices become possible in case of limitation of possibilities or lack of alternative, such as small producers that do not deal with foreign markets. Another factor may be the exploitation power of the informational advantages to the detriment of the other party. In the practice of food retailing on the Moldovan market, the so-called "fear factor" is present in the unfair practices. This factor appears in the case of perishable products, and the supplier has no real alternative to the commercial relationship with the stronger party. Which leads to the inhibition of the weaker parties from filing a lawsuit against their stronger partners, due to costly and risky legislative processes.

Following the analysis carried out in several market studies regarding the delivery contracts between suppliers / distributors and food retail networks, the violations identified contained dominant points. Namely, cases where food retail networks put pressure on suppliers, or producers on distributors; or cartel agreement, where the parties agreed on the conditions of constraint, creating barriers to the emergence of new players on the market.

Anti-competitive contractual clauses may contain conditions such as agreements on the division of the product delivery territory and offering exclusive sales on it, which presents an anti-competitive agreement, conditions of exclusivity on products, conditions for restricting the distribution territory, and training the customers, price conditions or promotion and marketing conditions.

These conditions of business-to-business relationship, in the Directive on unfair trade practices (UTP) in business relations in the agricultural and food supply chain, made by the EC in 2019, are set as the blacklist of practices that should be banned immediately [8]. The competition law and the law on internal trade expressly provide for the incompatibility of the contractual conditions mentioned above with a normal competitive environment. The provisions may be found in articles 5 and 11 of the competition law and article 211 of the internal trade law.

□ Article 5 paragraph (3) lit. c, e, agreements aimed at dividing markets or sources of supply, as well as limiting or preventing market access and the freedom of competition by other

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undertakings, as well as agreements not to buy or sell to certain enterprises without justification there are reasonable anti-competitive agreements (Competition Law, 2012).

□ Article 11 paragraph (2) a, directly or indirectly, imposing unfair selling or buying prices or other unfair trading conditions presents an abuse of a dominant position (Competition Law, 2012).

□ Article 5 paragraph (3) g, and art. 11 paragraph (2) c, d, conditioning on the conclusion of the contracts for the acceptance by the partners of additional benefits which, by their nature or in accordance with the commercial customs, are not related to the object of these contracts and the application in the relations with the commercial partners of unequal conditions to equivalent benefits, thus creating some of them a competitive disadvantage, presents abusive practices. Establishing a price for services as a percentage of the value of the volume of products for which the services will be provided, creates discriminatory conditions for suppliers by setting various prices when providing the same service for different providers. (Competition Law, 2012).

□ Art. 211, paragraph 2 (Published: 18.01.2013 in the Official Gazette no. 10-14 art. Nr. 41), the trader cannot request and receive from the supplier payments for the services that are not included in the purchase cost of products (shelf fees, costs for expanding the distribution network and arranging the sales area, costs for advertising and promoting products). The trader cannot be obliged by the supplier to contribute to the marketing costs of the supplier. This regulation does not prevent the supplier or the trader from voluntarily and reciprocally participating in marketing costs to promote the products. The same article states that the trader cannot condition the supplier not to sell the product to other traders at a lower price than the one he sells to (Trade Law, 2010) At the same time, the supplier cannot condition the trader to maintain a certain shelf price.

Global trends of market liberalization and the establishment of free competition, with limited market regulations, are a cause for concern for authorities regarding local producers. The small domestic market does not hold favourable land for the sustainable development of producers. And for the export of sales they are too weak. At the same time, when removing barriers, and lowering import taxes, local producers hardly face external competition coming in with low selling prices. In order to protect them, the regulations of the relations in the retail market of food products have been modified, in order to establish minimum quantities of local products present on the shelves of the shops, as well as to establish other conditions of relation between the retail food networks and suppliers. Therefore, in 2017, the draft amendment of the law on internal trade was introduced, regarding the extension of the scope of the regulation of supplier-trader relations to all foodstuffs. By which, it will take place to promote the domestic products, and limit the freedom of the content of the delivery contracts, only to actions regarding the object of the contract. New amendments to the Law on Internal Trade and the contraventional Code prohibit the invoicing / re-invoicing of services and taxes that are not included in the purchase price of the products, limit the payment term for the purchased food products up to 30 calendar days from the date of receipt of the products, as well as prohibiting the return of products if they were received according to the technical regulations in force.

## **4. Non-regulatory remediation practices**

### **4.1. Advocacy practice**

The advocacy practice is the act of informing and educating the economic environment about the benefits of a fair competition on the market. This term was introduced in the practice of antitrust authorities in 2002, for defining the activities for strengthening the competitive environment, through mechanisms that do not involve taking coercive measures. As well as for establishing active relationships with other government agencies and better understanding by the general public about the benefits of competition (Terry, Murrisa, 2002)

As a rule, the competitive problems that appear in the relation of the economic agents in the market, either investigations of the economic concentrations / the creation of dominant positions, or behavioral analyzes in the vertical and horizontal relationships of the retail food networks according to the legislative framework, are solved by investigating the cases and possibly sanctioning them. , or setting restrictions for the companies concerned. In some cases, an excessively regulated market, or disregarding its specific features, may create barriers to free competition. At the same time, the market control mechanism based on the competition law is a complex one, and the identification of infringements and their sanction requires material efforts and expenses. In this context, in recent years, the use of the Advocacy tool, a complementary mode of action towards reaching a maximum level of development of the competitive markets, has expanded. In the education of correct conduct, the method of compromises is more efficient than the imposition of restrictions. A way of activating imposed loses in favor of benevolent actions, while preserving their stability and duration.

The basic objective of Advocacy is to determine the market actors to voluntarily adopt a loyal behavior on the market, thus avoiding the negative effects for the competitive environment of the non-competitive actions, but also the sanctions for infringements. Competition advocacy has several functions. It contributes to the understanding of competition law, develops and promotes competitive culture, disseminates information to market players, through its work reduces the number of infringements and prevents the new ones.

Advocacy practices are currently widely used by competition authorities both in the EU and in the US as an alternative tool to remedy the fair competitive environment on the market. The dissemination of information within the business environment takes place through Conferences, Workshops or other meetings with the business environment as the case may be. Their purpose is to impregnate knowledge about the benefits of a loyal long-term competitive environment, and the beneficial impact on the healthy process of developing the economic environment. Increasing the level of competitive culture contributes to the development of responsibility, thus the number of violations must be decreasing.

The contribution by various methods to the development of the competitive culture through information, determines the economic agents to help to form the normal competitive

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environment. Moreover, for a small market, the information and education of the competitive culture is essential for the creation and development of a competitive economic environment.

The level of development of the competition is directly proportional to the level of the market, degrees of liberalization but also of the competitive culture. Therefore, the practice of advocacy is welcome for the development of the competitive culture, in order to raise awareness and increase the possibilities of competing on the market among the economic agents. The practice of advocacy registers benefits for both the economic agents and the competition authority, due to the reduced efforts and resources for the implementation of the activities of advocacy. At the same time, sanctioning or executive actions lead to the distancing of relations and communication between legal representatives and market actors, whereas a healthy relationship between the competition authority and the market actors for the development of a sustainable competitive environment requires joint efforts and trust.

The Advocacy tool is practically one of the most suitable non-regulatory instruments for small markets, characterized by instability during the development period, because it offers multiple results after application. The results obtained from the application of the advocacy procedure are long-term, such as informing and raising awareness of the market actors but also remedying the voluntary and restricted competitive environment.

Among the methods of disseminating information in the practice of Advocacy of the competition authority in the Republic of Moldova are the organization of thematic workshops and conferences. Also, if necessary or upon request, the competition authority provides assistance to economic agents on topics of interest.

Due to the general low level of information specific to the developing market, the reactions of the business environment to the prospect of direct discussions with the competition authority are reserved. Whether they are about topics of interest, or about the provisions of the competition law. This fact confirms the need to apply the methods of informing and developing the competitive culture among the market actors. The fear of fines persists, as well as violations due to lack of information, which creates an inadequate situation for development. Therefore, continuous information is essential for developing and increasing market competitiveness.

The practice of applying non-regulatory methods to remedy the competitive environment is constantly increasing among the authorities of the Republic of Moldova. Moreover, these practices may have greater efficiency in the small market in the Republic of Moldova, due to the easier dissemination of information, but also of the close social ties, characteristic of small territories. As a result of applying non-regulatory measures, it is possible to restore the competitive environment with several advantages. The application of non-regulatory methods involves informing and educating the competitive culture among the market actors. Therefore, a benevolent correction of unfair practices can be obtained, with the involvement of minimal resources.

This practice, in some cases presents advantages over the regulatory methods due to the particularities of application.

- First, it requires less time and resources, compared to investigations;

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- Secondly, it directly implies the effort of the economic agent, which contributes to accountability;
- Third, ensure the return to the initial state of the market quickly;
- - Fourth, the rate of repeated violations decreases.

The accountability method can be applied in practice in the form of commitments. The project of establishing and taking action can be compared with the PDCA management method

- Plan - at the planning level the discussions on the problem arises, and the elaboration of the plan for making the commitments takes place;
- Do - at this level, the economic agent applies the commitments made;
- Check - with a periodicity established by the authority together with the economic agent, the report regarding the fulfillment of the commitment takes place;
- Act - at this stage the effect on the market can be analyzed, following the commitment made.

For example, the practice of commitments can be used as a non-regulatory measure to remedy the unfair practices present in the contractual relations between the market actors. The contracting parties may make commitments that stipulate the elimination of unfair terms from contracts. At the same time, the commitments assume the responsibility of not accepting such practices in the future. This method is an effective tool for the proactive involvement of market actors in remedying and maintaining the normal competitive environment.

The commitments made by the economic agents to comply with the provisions for fulfilling the conditions of a fair competitive environment, can be both behavioral and structural. Behavioral commitments are the obligations of loyal behavior in relationships with other market players. These can have positive effects only if they are accepted voluntarily, and not restrictively. Behavioral commitments do not provide certainty that they will be met in the long term, which is why they require continuous monitoring. Structural commitments have an immediate and definitive effect on the market structure and do not require medium or long term monitoring.

In the case of acts of great gravity, with particularly serious consequences for the market, with effects on its large areas, or when the importance of punishment and deterrence prevails, commitments are not accepted.

According to the regulation of acceptance of the commitments established by the CC of the Republic of Moldova, these must be initiated by the economic agents. Commitments are accepted when the involvement of the economic environment with the commitment, leads to the rapid and sustainable restoration of the competitive environment or in a more efficient way than would have been achieved through coercive intervention. And in cases where the application of a sanction better meets the objectives of the competition policy, the commitments will not be accepted. In analyzing the acceptance of commitments, the Plenum of the Competition Council takes into account all the relevant factors related to the respective commitment: the type, the extent and the scope of the proposed commitment, taking into account the structure and the distinctive characteristics of the market where the competition

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problems appear, including the position the companies involved and other companies on the market (Competition Council, 2018).

### 4.2. Compliance

More and more companies, especially those developed or having trade relations on several markets (including export trade), are developing compliance programs. In other words, programs that comply with the competition rules. Compliance programs are tools that allow businesses to avoid violating applicable competition law and other laws that regulate food trade. The competition authority encourages companies to develop efficient programs to comply with the competition rules, in order to prevent the participation in violations of the law that would expose the companies to financial or other sanctions or image damage. (Competition Council).

The use of compliance programs allows to avoid violations of the competition law resulting in sanctions and tarnish the image of the company.

Such programs are based on the development of the information culture up to the level at which the culture of conformity is established; in the form of manuals or written procedures, as well as operational mechanisms, such as competitive audit, counseling, warning, etc.

Compliance programs are usually adapted to the particularities of the activity of each economic agent. The role of compliance programs is to respect the competition rules and to develop their own methods of identifying and remedying possible violations.

For food retail market players, the opportunity to prevent violations is much more effective than participating in investigations and sanctions, as well as for the competition authority. Assuming compliance policies indicate a direct interest in protecting against threats from the risks of violations of competition rules. It is clear that in situations where, as a result of the risk of infringement, you lose the ability to operate on the market due to costly fines, you will choose to develop a compliance program to avoid these situations.

Usually, the elaboration and implementation of compliance manuals or procedures is carried out by consulting companies. As an implication of the external resources for the realization of the programs but also as an implementation, this program involves costs, which only large companies can afford. While the most vulnerable are small and medium-sized companies, which are limited in financial resources.

Also, the use of company compliance programs is a common practice among companies with a high level of competitive culture. In developing markets, such as the Moldovan market, these practices are only at the beginning, and the allocation of own resources for achieving such objectives among the economic agents is poor.

A first step, in developing compliance procedures in the food retail market, was the elaboration and application of the code of good practice in the relations between market actors.

The Code of Good Practices on the Relationship between Retail Networks and Consumer Goods Providers contains a set of recommendations regarding the relationship between retail food networks and suppliers. The main objectives of the code are to establish interaction

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practices based on the principle of good faith, to negotiate and execute contracts between suppliers and retail networks, as well as to balance the commercial interests of retail networks and suppliers in order to increase the interaction efficiency and optimize costs throughout. along the supply chain. At the same time, the aim is to create the conditions for the observance of the ethical norms by all the market actors in the use of the bargaining power and to promote the competition in the market in order to contribute to satisfying the needs of the consumers with high quality products. The provisions of the code are not obligatory for the retail networks and / or suppliers, unless the written agreement to accept its provisions is expressed.

The general principles applied to the relationships between retail networks and suppliers in the Code of Good Practice are:

1. The Code is based on the principles of civil law and the reasonableness and good faith nature of retail and supplier networks, regardless of the application or non-application of its provisions.
2. Predictability when defining the trading conditions in contracts (transparency criteria, the dependence of the trading conditions on the efficiency of the joint activity, the proportionality of the penalties, etc.). The parties will promote competition and partnerships in the relationships between suppliers and retail networks, which would optimize costs and minimize losses at the coordination stages of the conditions of collaboration and the fulfillment of the obligations of the parties. At the same time, both suppliers and retail networks can take any measures provided for by the legislation in force to limit the access of its competitors to the individual conditions of commercial contracts and other confidential information.
3. Each supplier and retail network independently supports business risks and determines its sources of income. At the same time, one of the main sources of retail networks and suppliers is the commercial addition, and other conditions may vary depending on the objectives pursued regarding the volume of sales, the development of the brand (increasing the brand awareness), increasing the level of customer loyalty and of other economically justified criteria. The parties do not have the right to transfer the costs related to: contracting new suppliers, marketing research, opening / renovating the business unit. The suppliers and retail networks make every effort to ensure fair competition and do not interfere with the commercial activities of its partners and competitors.
4. The exchange of information between the supplier and the retail network takes place on voluntary principles, without violating the competition law of the Republic of Moldova, and other normative acts that ensure the confidentiality of the information received from the partners.
5. All agreements, including the agreement of intent, are made in written form (including the use of electronic means of communication), it is obligatory to register all the agreements and trading conditions in the contract concluded between the parties and strictly respect them, the simulated and fictitious transactions are not allowed.
6. Retail suppliers and networks make joint efforts to increase the predictability of the volume of orders and the delivery schedule of goods, service delivery, in order to optimize the costs of production, storage, delivery and sale of goods.

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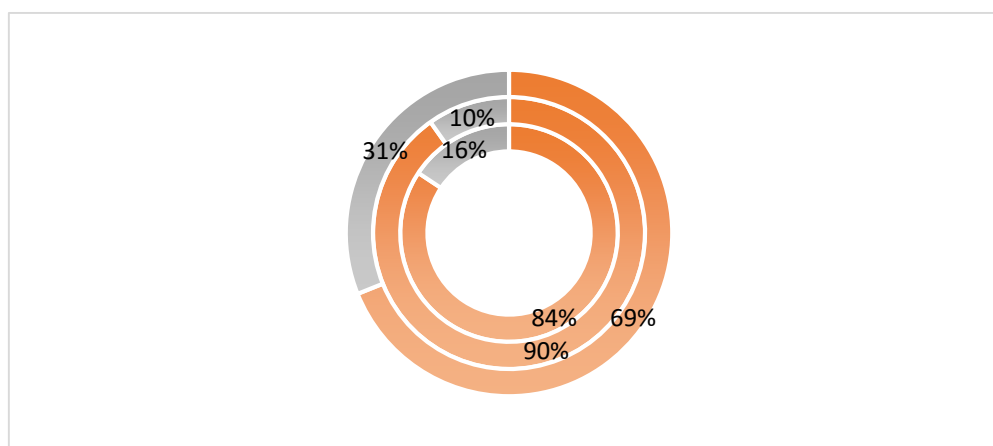
7. Retail providers and networks make joint efforts to identify low quality consumer goods and consumer goods whose composition information is not truth (Competition Council, 2017).

Applying the code of good practice as a compliance procedure helps identify actions in relation to food retail networks and suppliers / producers, which do not meet the competition criteria, and may jeopardize the conduct of free competition in the market. The efforts made to inform, understand and comply with the competition rules, facilitate the development of economic agents as well as the liberalization of markets.

### 5. The practice of violations on the food retail market in the Republic of Moldova

During the last 3 years, the competition authority of the Republic of Moldova has analyzed several cases of economic concentration involving food retail networks. Thus, during the period 2016-2018, 21 decisions were issued authorizing the economic concentration to be compatible with the normal competitive environment, 3 of them being sanctioned due to procedural violations, namely the non-notification before the implementation of the concentration. Also during this period, 2 decisions were issued for imposing the fine for not providing information, and another 5 decisions were issued on other cases of non-competitive behavior on the market. Regarding the abuse of dominant position expressed by contractual clauses in the relation with the suppliers (B2B), practically every 2nd food retail network had such contractual provisions. Therefore, the Competition Authority has launched the commitment program. As part of this program, companies were encouraged to self-correct, explaining the risks of these anticompetitive actions, and the possibility of avoiding sanctions by adhering to commitments. Thus, in 2018, 16 companies joined the program of commitments. Following the acceptance of the commitments, the competition authority ordered the cessation of the investigation on behalf of these companies, and they started monitoring their fulfillment. In the diagram presented in figure 2, the report of the shipments based on which decisions were issued, on the food retail market in 2016-2018 is illustrated.

**Figure 2. Rate of violations on the food retail market, based on decisions issued in 2016-2018**





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Source: By author

An example of an important achievement in the non-regulatory practice of remedying the competitive environment in the food retail market and ending the violations of the competition authority, is the practice of the commitments regarding the removal of the non-competitive clauses in the delivery contracts, concluded between suppliers / distributors and networks, or manufacturers and distributors.

In the process of analyzing the delivery contracts, several anti-competitive clauses were identified from the competition authority, such as:

1. Conditions for the formation of sales and resale prices.
2. Marketing taxes, expressed as a percentage of the value of the delivered goods.
3. The condition not to distribute the products of other similar companies.
4. Dividing the product delivery territory and offering exclusive sales on it, penalizing the violations of the territory.
5. Purchase condition with the purpose of exclusive distribution from the given company.
6. Prohibition of training new customers without company permission.
7. The company reserves the right to form the distribution territory for the duration of the contract and to receive penalties for infringement.
8. The company reserves the right to form the list of customers whose distribution is prohibited.
9. In case of incomplete supply of customers, the company reserves the right to cancel the customer from the distribution territory at the third notification.
10. Establish a mandatory payment at the opening of new points of commerce, as well as payments for the introduction of new products in the list of products delivered charged for each store.
11. Establishing the minimum payment amount for the promotion actions, and collecting these amounts as penalties in case of non-use during the year for the promotional actions.
12. Establishing the minimum amount of marketing expenses expressed as a percentage of the sales volume.
13. Conditions for modifying the payments for marketing services in amounts calculated in% of the value of the delivered goods.
14. Terms of delivery at the lowest price offered (if you distribute to someone with a lower price, you must lower the price and the respective customer).

These clauses were, practically in each delivery contract, that is, practically all the major food retail networks (with small exceptions) had at least one anticompetitive clause from the ones presented above.

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Therefore, based on these violations, the complex investigation was initiated by the competition authority, in order to identify the size of the effects of these violations on the competitive environment, and to eliminate them.

Solving this case through the non-regulatory instrument, namely the commitments, presented the best option for action. Therefore, discussions were held with the business environment, in which they were informed about the seriousness of the breaches and about the double benefits of remedying them with the involvement of companies. Respectively, after assuming the commitments to eliminate the competition authority's concerns regarding the anticompetitive content of contracts, on the one hand, the fair competitive environment on the market will take place, and on the other hand, the companies will not be sanctioned.

The program of commitments proposed by the competition authority provides several stages:

1. Adherence to commitments by economic agents;
2. Realization of the assumed commitments (of correcting the behavior in the contractual relations on the market);
3. Regular reporting at the request of the competition authority;
4. Signing and observing the code of good practice, as a method of compliance by economic agents.

The realization of this program was successful, and the companies that made the commitment to correct themselves, fulfilled their promise. In total, several companies benefited from this program, including both retail networks, as well as manufacturers, suppliers and distributors (Competition Council, 2018). Thus, the investigation case was closed in restricted terms, with the assurance of the effects maintained on the long-term market.

## **Conclusions**

Ensuring a fair competitive environment in the food retail market is very important due to the complex nature of the market relations of their actors. Establishing loyal relationships between food retail networks and suppliers / producers offers activity opportunities to domestic producers / suppliers, which are usually only competitive in local markets. At the same time, in the downstream market, food retail networks are directly related to the final consumer, and the quality of services and products offered is directly proportional to the quality of life and products consumed. Given that these products are indispensable for life.

The dual nature of the market, or the fact that food retail networks interact with producers and the final consumer at once, determines the importance of this market, and the market trend and its competitive status depend on the nature of the actions of the food retail networks.

Of particular importance is the conduct of food retail networks in market relations. Once they are premised for the installation or consolidation of dominant powers in the market (in case of network expansion) it is very important to avoid abuses of power.

The involvement of Advocacy activities in complementary to the executive ones leads to obtaining an environment conducive to the development of a free and open market. The loyal

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education methods attract the attention of the market actors by satisfying the needs of knowledge, that is, explaining the effects of anti-competitive behaviors, and the need to respect the competition law. The privilege of avoiding sanctions as a result of the violations arouses the interest of the market actors in the active involvement in establishing norms and processes of self-regulation. Competitive culture develops the market capacities and the competitive skills of the actors in the developed external markets, where the level of the competitive culture is significantly higher.

An indispensable element in manifesting a free market economy is price competition. Any element that impedes the free conduct of market shares and the free setting of prices presents a serious deviation from the principles of fair competition.

The conditions for fair competition in the food retail market in the Republic of Moldova can be fulfilled through the establishment of loyal relationships between the market actors, as well as by considering the particularities of the market complexity in the market analysis.

The most important moment of the analysis of the correspondence of structural changes made by the market actors with the normal competitive environment is the market analysis. The importance of this criterion in the problem of the food retail system derives from the complex character of the market. And due to the aggressive expansion in recent years, the food retail sector needs a specific approach in identifying and establishing the market size to identify possible distortions of the normal competitive environment in the market. Therefore, for the definition of the relevant market in the food sector, a methodology of analysis different from the classical instruments for defining the relevant market is used, due to the particularities of this market.

In order to create a fair competitive environment on the market, the relationship between the actors is very important. The contractual relations are the basis of the efficiency of the collaboration between the providers and the networks, and the final product of these contracts is the satisfaction of the needs of the final consumer. The importance of these relationships is the destination of the products, namely the food destination. The products are indispensable for life, and the quality of life of the company on which the market is active depends on them. The elimination of anti-competitive clauses from contracts, increases the degree of responsibility of the participants. And understanding the need for fair competition leads to increased efforts to develop and increase market competitiveness.

The knowledge of the legislative provisions and the awareness of the importance of a fair market environment for its harmonious and balanced development, is an equally important criterion.

And, I think the most important moment, which comes as a result of the efforts made for knowledge, understanding and action to create a fair competitive environment is the establishment and implementation of the procedures for carrying out and following up the actions with the competition law.

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