Competition issues including in the international agreements of the Eropean Union

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Abstract

The scientific thesis aims at theoretical definition and analysis of provisions on competition policy in selected international agreements, which affects the development of fair international business. Fair competition works effectively if entrepreneurs at the market can make their business decisions independently, while there has to be a legal framework applicable to protect the rights of competitors. At the international level there are several legal instruments applicable, which have a positive effect on fair competition among competitors in the market. International agreements concluded at the level of the European Union with non-member countries contain provisions on healthy competition. Our intention is to identify those international agreements containing competition provisions that affect the behavior of entrepreneurs operating in international markets and obliged to respect competition rules, as they aim to achieve economic benefits. The European Union is undoubtedly involved in the process of global competition protection.

Keywords*: competition policy, internal market, agreement, legal act, globalization.*

JEL Classification: F15, F42, K21

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1. Introduction

Economy, including competition on one hand, and the regulation of economic relations, on the other hand, represent two different areas. However, the competition policy is regulated by national legal provisions and international agreeements, that create conditions for fair business in global environment.

Competition as a scientific area and any other scientific discipline has its material content, language, theory, legal framework as well as facts about its object. Competiton experts recognize facts and applicable legal regulation protecting rights of competitors, they also recognize scientific accuracy and scientific clarification of problems. Competition policy is based on logic facts and evidence about economic operators, it does not accept speculations, assumptions and intuitions. From this point of view, competition seems to be the guarantee of effectiveness and positive impact on the development of competitiveness and stability of the economy. Competition has become part of the market economy and its contribution to market liberalization cannot be overlooked, because in a market environment based on alternatives of choice, preference for quality and price, the road leads to natural

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restructuring processes and consequent increased competitiveness, which has positive effects on consumers.

Competition policy has become an important topic in the context of the global trade, services and investments liberalization processes of the past decade. The global economy has led to a rapid increase in the number of transnational antitrust problems, which arise when preventing or redressing competitive injury in one country requires dealing with conduct, witnesses or evidence in other countries.[3]

This scientific study clarifies from a legal point of view the importance of competition for fair business in an international environment.

2. Aim and methodology

The scientific thesis aims to highlight the importance of competition, which affects the development of international business. By systemic analysis based on legal logic and facts, we have shown that in the formation of fair rules for international business, it is important to adopt international agreements that regulate, *inter alia*, relations related to fair competition. The object of our examination was selected international agreements containing provisions on competition. Various research methods are used to clarify scientific problems. As for a scientific method, we applied the method of analysis, divided the issue into individual parts and clarified the essence of international agreements, which contain provisions on competition. The aim of the analysis was to identify only agreements that contain competition provisions from a wider range of international agreements concluded at the level of the European Union with other subjects of international law. Based on the facts and context, we have clarified the essence of competition rules with a transnational dimension.

The method of synthesis has enabled us to observe the relationships between the facts of competition, the nature of the interrelationships between them, to reveal the reasons for the implementation of these rules, the functional dependence of the correct application of competition rules. We pointed to the competition rules adopted at the European Union level applied in 27 Member States having the significant impact on shaping a well-functionning EU internal market. The benefit of the thesis for theory as well as for practice is the identification of international agreements, which contain provisions on competition policy and which also have a positive effect on the behavior of competitors in international markets. In working on this topic, we have worked with European Union documents, with scientific and professional literature, with applicable international agreements as well as with data from the Antimonopoly Office of the Slovak Republic.

3. Literature revue

The competition policy is complex and interdisciplinary. It combines the fields of international law, corporate law, industrial organization, innovation policy, transnational corporations, international trade and transport.[4] Competition laws were

[3] Melamed Ad (1999).Vol. 2, Issue 3/1999 pp. 423-433. ISSN 1369-3034.

[4] Passman, B.R. (1999). No.2.p. 1-8 ISBN: 9211212510.

first introduced in the United States and later in European countries. Although the issue of trade and competition policy has been dropped from the Work Programmes of the Doha Round of World Trade Organization (WTO) negotiations, it continues to be discussed in other fora and may return to the WTO after the completion of the Round.[5] The European Union has a supranational system of competition policies that regulate anti-competitive practices, mergers and acquisitions having transborder effects.[6] Enforcement of EU rules in the field of competition helps to create open competitive markets that contribute to greater efficiency, inovation and competitiveness of European economic operators.

There are many studies, scientific theses and publications, including definitions, from many authors, related to competition. Mitschke, A. (2008) is of the view that: "*two fields of economic research in competition policy have gained in importance in times of economic globalization. Firstly, globalization has resurrected the debate whether there is a need for international competition rules against private anticompetitive practices and how these rules could be implemented in the best way. Secondly, the concept of the international competitiveness of nations has become a significant issue for all open economies.*[7]

According to Pelc the competition represents competing of natural and legal persons in the economic area with the aim to achieve economic benefits. The competitors have the right to develop freerly their competitive activities. However, their conduct cannot be contrary to the good morals of competition and to the detriment of other competitors or consumers.[8]

Fuchs argues that competition is the process of meeting the different, usually conflicting interests of market entities. The process of competition is inseparable from the market and is a prerequisite for the proper functioning of the market.[9]

Vincúr is of the opinion that competition in the market acts as an effective regulator, which minimizes incorrect decisions on the supply and demand side and requires that all economic operators in the market have equal discretion. The essence of competition lies in the effort of independent economic entities to win over their opponents, especially through better performance and thus gain a certain advantage[10].

Further to these opinions we state that competition can be understood and the competition of economic operators in order to gain a better position in the market and thus achieve better economic success. Effective competition enables businesses to compete on equal terms across Member States, while putting them under pressure to strive continuously to offer the best possible products at the best possible prices for consumers.[11] Competition between entrepreneurs encourages innovation, reduces production costs and increases the performance of the whole economy. With the growing number of international transactions, strong transnational companies and international cartels, there is an increasing need for States to work together.

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[5] Bhattacharjea A. (2006). Vol. 9, Issue 2/2006, P. 293–323. ISSN 1369-3034.
[6] Passman, B.R. (1999). No.2. p. 1-8 ISBN: 9211212510.
[7] Mitschke, A. (2008). p.1-8 ISBN 978-3-7908-2036-2.
[8] Pelc, V. (1995). p. 26 ISBN 80-7169-124-0.
[9] Fuchs, K. (2004) p. 183 ISBN 80-7168-688-0.
[10] Vincúr, P. et al (2001). p.121 ISBN 80-88848-67-9.
[11] Parenti, R.(2020). Competition policy.

The exchange of information, knowledge and experience, as well as direct working contacts and the possibility of consultation with experts from different countries, contribute to a more effective enforcement of competition policy.

4. Notion of international agreement and memorandum

Given that the subject of our study is also international agreements, we clarify, among other things, the concept of international agreements, which belong to the system of public international law. An agreement, contract, treaty, convention or pact are several names used in practice to express a bilateral or multilateral legal act, for the establishment of which a consensual expression of will is required, and which establishes a specific legal relationship between subjects of international law.

In order for existing international treaties to be in force, the parties must be able to conclude the treaty, that the subject-matter of the treaty be possible and permissible, and that the parties duly express their will to be bound by the treaty. States that are full subjects of international law have full legal personality to conclude international agreements. International agreements are concluded also by international organisations that have legal personality. Article 47 of the Treaty on European Union (TEU) explicitly recognises the legal personality of the European Union, making it an independent entity in its own right. Legal personality comprises the ability to conclude and negotiate international agreements in accordance with its external commitments.

The universal international instrument providing for rules for concluding, termination, modification, suspension, interpretation, etc. represents the Vienna Convention on the Law of the Treaties of 1963. Vienna Convention represents the international codification of international law of treaties. The Slovak Republic is bound by this Convention together with other 115 parties. As for the EU law, international treaty is considered as a legal instrument for the external action of the Union. As the instrument for ensuring stability, reliability and order in international relations, treaties are one of the most important elements of international peace and security. This is why, from the earliest days in the history of international law, treaties have always been the primary source of legal relations between entities today known as States.[12] In the process of globalization, international treaties have an important place in terms of legal regulation. Globalization integrates national economies into global economy while significantly limiting efforts of governments to favor domestic interest groups.[13]

In addition to international agreements, memoranda also rank among instruments of cooperation between entities differing from international agreements, in particular in that they do not have the exact structure of international agreements. The memorandum defines the scope of cooperation in certain areas. Often, they have only declaratory character. However, memoranda concluded at the level of the

[12] Dörr O., Schmalenbach K. (2012). Available from: https://doi.org/10.1007/978-3-642-19291-3_1.
[13] Novotný, J. (2015).p. 155-162. ISBN 978-80-8154-191-4.

European Commission clearly and precisely define rights and obligations of the parties, especially in the field of application of competition rules.

5. Identification of international agreements containing provisions related to competition policy

Globalization is connected to strenghtening of various forms of international cooperation.[14] The European Union is vested with legal personality and thus has the competence to conclude international agreements on its own behalf in the areas conferred upon it by the Treaties. Article 3 specifies areas where the EU has exclusive competence, including trade agreements. Article 216 TFEU specifies where EU is authorised to concude international agreements. These form integral part of EU law and represent *sui generis* category in adition and separately from primary and secondary EU law. The EU Member States are obliged to apply the international agreements. This obligation follows from public international law, as well as from article 4 paragraph 3 of the Treaty on the EU stating that „The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union."

From a wider range of international agreements, we have selected international agreements concluded between the European Union and non-member states of the European Union, which contain provisions on competition. From the point of view of European law competition policy is important tool because it ensures the proper functioning of the internal market. It is not necessary nor appropriate to comment the Treaty on the Functionning of the European Union, noneetheless in this context, we have to emphasize that the competition policy within the exclusive comptence of the European Union in accordance with article 3 of the TFEU. In this context, it has to be pointed out that, in accordance with the principle of subsidiarity, the Member States have to take measures of such a nature that they are in line with the EU's tasks and objectives.[15] Competition policy is one of the areas where Member States have actually delegated parts of their enforcement the EU as a transnational international organization. With the aim to effectively apply the EU competition rules Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty was adopted.[16] Through the policy aimed at protecting competition the comparable rules for competitive activities of companies and States are set wit.

Through the competition protection policy, comparable rules are set for the competitive activities of companies and states, so that their behavior is not restricted, nor does not distort competition in the EU internal market, respectively. At the same time, Bracjun argues that current European policy is a compromise between US antitrust law, on the one side, which essentially regulates only the basic conditions

[14] Rosputinský, P. (2015). p.1880-1887. ISBN 978-80-8154-191-9.
[15] Wefersová, J. (2016), p. 218-225 ISBN 2464-6040.
[16] OJ EC L 1, 4.1.2003.

of economic operators and possibly addresses the threat of competition only *ex post*, and Japan's rather flexible practice, on the other side.[17] A fundamental principle of competition policy is the principle of regulated freedom of movement of economic factors, enabling the development of economic relations in the global area. In this context it has to be borne in mind that increased economic integration has proven compatible with the general strengthening of environmental standard.[18] The implementation of competition policy in the territory of the Slovak Republic is carried out in accordance with primary and secondary EU legislation.

6. International agreements and memoranda regulating copmetition policy

International trade is one of the first policies where EU Member States have agreed to be represented by the European Union in external relations policy and entrusted the EU with the competence in this area. International trade contributes to economic growth and is one of the factors in achieving internal economic balance.[19] The European Union acts as the sole body of international law in these relations and negotiates, on behalf of all 27 Member States, the conclusion, amendment or termination of bilateral or multilateral agreements. Competition provisions are included as part of wider general agreements such as free Trade Agreements, Partnership and Cooperation Agreements, Association Agreements and Memorandums of Understanding etc. In our thesis we focus on international trade agreements regulating competition policy. They are mainly international agreements concluded between the European Union and third states:

a) on trade and investment relations (free Trade Agreements, Partnership and Cooperation Agreements, Association Agreements, etc.);
b) on cooperation in the area of protection of competition and cooperation with institutions competent in the area of competition policy.

In addition to international agreements the European Union in the interest of protection of competition established a regulatory framework in the area of state aid and fair competition in form memoranda on understanding.

Agreements whose object is the development of international trade and investment include:

a) Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (OJ L 127, 14.5.2011, pp. 6–1343). (Chapter 11 Competition policy).
b) Free trade Agreement between the European Union and the Republic of Singapore (OJ EU L 294, 14.11.2019, pp. 3-755) (Chapter 11 Competition policy).

[17] Bracjun, A. (2008.) p. 221, ISBN 978-80-969927-8-2.
[18] Vogel, David (2000)., Vol, 3, Issue 2/2000 p. 265–279, ISSN 1369-3034.
[19] Pašktrová, L. (2016). p 1642 – 1648. ISBN 978-80-8154-191-9.

c) Comprehensive economic and trade agreement between Canada, of the one part, and the European Union and its Member States, of the other part (OJ L 11, 14.1.2017, pp. 23-1079) (Chapter 17 Competition policy).
d) Agreement between the European Union and Japan for an Economic Partnership (Free Trade Agreement - OJ L 330, 27.12.2018) (Chapter 11 Competition policy) and others.

All these agreements have a common denominator: the creation of a free trade and services area, the removal of barriers to trade and the development of mutual relations, as well as to develop stronger rules-based and values-based trade regimes with the trading partner countries concerned, and last, but not least, to contribute to the sustainable development.

The second category consists of agreements, the content of which is directly focused on cooperation concerning the application of competition laws:

a) Agreement between the European Community and the Government of the United States of America regarding the application of their competition laws, (OJ L 95, 27.4.95);
b) Agreement between the European Communities and the Government of Canada regarding the application of their competition laws, (OJ L 175, 10.07.1999);
c) Agreement between the European Community and the Government of Japan concerning cooperation on anticompetitive activities, (OJ L 183, 22.07.2003)
d) Agreement between the European Community and the Government of the Republic of Korea concerning cooperation on anticompetitive activities, (OJ L 202, 04.08.2009).

The third category consists of so-called memoranda of understanding, where the Directorate General for Competition of the European Commission acts as a direct participant of relationships. The subject matter of memoranda is the implementation of the competition law and cooperation of competition autorities. The structure of memoranda on cooperation in the area of competition is composed of:

a) Memorandum of Understanding on a dialogue in the area of the State Aid Control and the Fair Competition Review, April 2019 (China and EU)[20];
b) Memorandum of Understanding on Cooperation (2013) India an EU[21];
c) Memorandum of Understanding on Cooperation (South Africa and EU[22];

[20] The Memorandum of Understanding on a dialogue in the area of the State aid control regime and the Fair Competition Review System. Available from: https://ec.europa.eu/competition/ international/bilateral/ mou_ china_2017.pdf.

[21] The Memorandum of Understanding between the Directorate General for Competition of the European Commission and Competition Commission of India (2013) Available from https://ec.europa.eu/competition/ international/bilateral/india_agreement.pdf.

[22] The Memorandum of Understanding between the Directorate General for Competition of the European Commission and Competition Commission of South Africa. (2016). Available from: https://ec.europa.eu/ competition/international/bilateral/mou_south_africa.pdf. [cit.2.1.2021].

d) Memorandum of Understanding on Cooperation (2009) Brasil and EU[23];

Further to these facts we have reached the conclusion that bilateral relations of the European Union in the area of competition policy have various legal forms. On the one hand, the European Union is a party to legal relations as a subject of international law. On the other hand, the party to legal relationships is the Directorate General for Competition of the European Commission. Different approaches can also be found in different legal forms. The European Union develops cooperation on the basis of international agreements, which are characterized by characteristic features and also on the basis of memoranda which, by their nature, establish a coordinated system of cooperation in the application of competition law. Muraviov, V. et al. (2020) claims *that the expansion of EU primary and secondary legislation into third countries' legal orders is most often achieved as a result of the conclusion of international agreements whose provisions reproduce the prescriptions laid down in the treaties establishing the European Union and in acts adopted by institutions of the EU*[24].

The essence of competition enshrined in international agreements is that the parties reject anti-competitive behavior by companies and anti-competitive transactions, which have the potential to distort the proper functioning of their markets and undermine the benefits of trade liberalization. In principle, they agreed to apply competition rules in the development of trade relations and to promote a system of transparent and fair development of business activities. Within the framework of fair development of economic activities, the contracting parties also reject any form of discrimination and unfair practices. Common approach of contracting parties creates conditions for fair development of business activities.

Wsithin a system of fair and favorable business environment in the territories of the contracting parties, horizontal and vertical agreements between undertakings, which have as their object or effect the prevention, restriction or distortion of competition are prohibited. The competition provisions in the agreements leave the parties a relatively high degree of flexibility in designing the competition regimes in their states.

From the point of view of competition protection, agreements restricting competition are considered as the most harmful practices because they significantly reduce consumer benefits, increase prices and reduce the supply and quality of products. Agreements restricting competition can take many forms and their effects on the market may vary. These agreements can be categorized into horizontal and vertical ones. Market-sharing cartels bring profit only to their participants, as their mutual agreement eliminates the competitive environment. Illegal profit gained in the application of cartels distort healthy competition and improve the market position of competitors who, for example, set prices.

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[23] The Memorandum of Understanding between on the one side the Directorate General for Competition of the European Commission and on the other side the Council for Economic Defense, the Secretariat of Economic law of the Ministry of Justice [online 2009] Available from https://ec.europa.eu/competition/international/bilateral/brazil_mou_en.pdf[cit.3.1.2021].

[24] Muraviov, N. et al. (2020).Vol. 10/2020/October SI p. 49. ISSN L 2247-7195.

In general, cartels can be defined as the organization of independent entrepreneurs in the area of the same or similar economic activity created to promote the common interest by controlling competition between them.[25]

Undertakings with significant market power may, by imposing vertical restraints, significantly distort competition, in particular by restricting competition between individual sellers of their products. These are agreements between entrepreneurs who operate at different stages of the distribution chain. Mostly it involves the relationship between supplier and customer. Article 101(1) TFEU prohibits agreements that may affect trade between EU countries and which prevent, restrict or distort competition. Vertical agreements are usually less dangerous than horizontal agreements. Due to the existence of several economic studies proving that vertical agreements can also have a positive impact on the market, a number of experts are of the view that resale price restriction cases should be considered individually as price agreements between competitors operating in the same market and competing for the same group customers, production restriction agreements, market sharing or coordination of tenders in public procurement.

The parties have agreed in international agreements that they would reject exploitative prohibited practices by dominant entities. Abuse of a dominant position on the market is characterized by the fact that economic operators will restrict competition in the market by their actions if they use their market position to unjustifiably increase their own profit. As a dominant entity is considered a business entity that exercises disproportionate economic power in the markets. In case C – 27/76 (point 2) the Court of Justice of the European Communities defined the dominant position in the market as "*position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers in general a dominant position derives from a combination of several factors which, taken separately, are not necessarily determinative*".[26] In principle, as signs of dominance are considered: relevant market, market share, economic and financial strength, barriers to entry are considered as signs of dominance.

As it was already mentioned, the constant jurisprudence of the Court of Justice is rich in competition cases. The concept of dominance in broader context was clarified in case C-85/76 (point 6) as follows: *the concept of abuse is an objective concept relating to the behaviour of an undertaking in a dominant position which is such as to influence the structure of a market where, as a result of the very presence of the undertaking in question, the degree of competition is weakened and which, through recourse to methods different from those which condition normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition*.[27] The existence of

[25] Harding J. and Joshua Ch.(2010) ISBN 978-0-19-955148-4.
[26] Judgment of the Court of 14 February 1978. Case 27/76.
[27] Judgment of the Court of 13 February 1979. Case 85/76.

dominant position thus understood represents a basic precondition for the factual abuse of a dominant position on the market.

The issue of competition in identified international agreements also includes the issue of concentrations between undertakings. We understand concentration as the merger of economic entities. A concentration is a merger, acquisition, acquisition of control and a joint venture whose function is not to coordinate the competitive behavior of the parent companies.

The concentration does not have to take place *de jure*; concentration is *de facto* considered as the creation of joint management of several companies, strengthened for example by mutual compensation of losses or joint liability towards third parties.[28]

In essence, concentrations are harmfull between undertakings which result in a substantial lessening of competition, or which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position in in the territory of either Party. The aim of these provisions is to create legal environment to provide for a market structure which would prevent significant barriers to effective competition and ultimately adversely affect consumers.

7. Free trade agreement between the European Union and Korea

The European Union is seeking to ensure the integration of all countries into the global economy, including through the conclusion of international trade agreements. The globalization is an important factor in the development of international trade. Globalization enables the development of investment relations, capital flow and also influences employment.[29] Part of globalization changes is the development of investment relations. Foreign investments create positive effects in creating jobs, improving competitiveness.[30] The main objectives the Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (OJ L 127, 14. 5. 2011) are mainly: liberalisation of trade in goods and services, elimination of tariff and non-tariff measures, elimination of duties for EU exporters of industrial and agricultural products, promotion of competition by improving market access for EU service providers, protection of intellectual property rights, liberalisation of government procurement markets, removing barriers to trade, promotion of sustainable development, etc. The FTA between the EU and Korea entered into force on 13 December 2015. Competition policy is regulated in Chapter Eleven, where contracting parties agreed to the common principles that they recognise the importance of free and undistorted competition in their trade relations. Contracting parties agreed to apply relevant legal standards on competition, i.e. a prohibition of abuse of dominant position, or concentration between companies. Fundamental principle for competition rules is the free access to market and equal rules of behaviour for all participants of competition. Positive sides of market liberalization

[28] Dalgoš, Ľ. (2006). ISBN 80-89238-03-3.
[29] Milošovičová, P. et al. (2018) p. 8356-8364. ISBN 978-0-9998551-1-9.
[30] Milošovičová et al. (2015), p.383- 389. ISBN 978-80-7435-547-9.

where these principles of competition apply can only be manifested when all contracting parties create appropriate legal environment and national authorities would supervise their correct application in practice. Consistent enforcement of principles of competition helps to create favourable conditions for economic growth and development. Cooperation in the are of competition laws enforcement between the EU and Korea is also established by the Agreement between the European Community and the Government of the Republic of Korea concerning cooperation on anti-competitive activities signed on 23 May 2009. (OJ L 202, 4.8.2009).

8. The free trade agreement between the European Union and Singapore

The Free Trade Agreement between the European Union and Singapore (OJ L 294, 14. 11. 2019) represents the first free trade agreement concuded by the EU and an ASEAN (Association of Southeast Asian Nations) country. Negotiations between the EU and Singapore started in 2009, nonetheless, after the entry into force of the Lisbon Treaty, which extended the EU competence in the area of trade, the opinion of the EU Member States and the Commmission began to differ regarding the interpretation of competence in certain areas, especially transport, sustainable development and investment. Further to the Opinion of the Court of Justice 2/15 the investment elements later became the EU-Singapore Investment Protection Agreement, while Free Trade Agreement was signed on 19 October 2018 and entered into force 21 November 2019. It is an ambitious agreement providing for liberalization and facilitation trade and investment between the EU and Singapore, providing for improved market access, including the service sector, reduction of technical and non-tariff barriers and elimination of custom duties. Both contracting parties also provide for access to participate in governmental procurements and enhanced protection of intellectual property rights and sutanaibility development. Chapter Eleven deals with competition and related issues, where contracting parties recognize the importance of undistorted competition and proper functioning of their markets. To this end parties undertake to maintain comprehensive legislation in order to prevent distortion of competition, abuses of dominant position and concentrations impeding effective competition. The contracting parties in all sectors of the economy will emphasize the prohibition of abuse of a dominant market position, horizontal and vertical agreements and good practices in mergers between companies. However, the specificity remains that each contracting party retains its autonomy in the development and enforcement of its competition laws. In applying the legislation, national competition authorities will act in a transparent and non-discriminatory manner, while respecting the principles of fairness in proceedings. Transparency is not an abstract concept; but an absolute requirement in any proceedings. High level of transparency is the guarantee of a fair trial. In other words, national competition authorities should ensure the broadest possible access to documents containing competition rules.

9. The agreement between the European Union and Canada

Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part[31] aims at creating the area of free trade. The European Communities and Canada have been developing their economic relations since 1976 on the basis of Framework Agreement for Commercial and Economic Cooperation between the European Communities and Canada.[32] CETA pursues the same objectives and has in principle the same content as the Free Trade Agreement with Singapore, where the emphasis is put on facilitating the development of trade relations by removing tariff and non-tariff barriers. European standards on food and product safety, environmental protection and consumer protection are maintained and all imports from Canada must comply with EU rules after the agreement has been concluded. Competition policy is regulated by Chapter Seventeen 17 in CETA Agreement. According to this Agreement the anti-competitive business conduct „*means anti-competitive agreements, concerted practices or arrangements by competitors, anti-competitive practices by an enterprise that is dominant in a market, and mergers with substantial anti-competitive effects*…"

The contracting parties clearly undertook the obligation to create conditions for free and undistorted competition in their trade relations. They refuse all anti-competitive business behaviour, which has the potential to distort proper functioning of internal market. The framework for such cooperation is provided for by the *Agreement between the European Communities and the Government of Canada Regarding the Application of their Competition Laws* done at Bonn on 17 June 1999[33]. This agreement improves the administrative cooperation between the European Commission and the Competition Bureau of Canada, which has positive impact on the enforcement of rules of competition as well as imposing of sanctions. Both competition authorities are obliged to mutually provide information related to investigations of businesses, which infringed the competition rules. Like in other agreements, here the contracting parties emphasize transparency and prohibition of discrimination.

10. The economic partnership agreement between the European Union and Japan

The Economic Partnership Agreement between the European Union and Japan provides for the development of trade and investment relations between the EU and Japan.[34] Key elements of this agreement are elimination of customs duties all industrial products and liberalisation of services (postal and courier service, telecommunications financial services) Japan is the significant trade partner for the EU Member States. Chapter Eleven of this agreement contains important principles related to competition, where both parties undertake to strive for fair and free competition in their mutual trade and investment relations. Both sides commit

[31] OJ L 11, 14.1.2017, p. 23–1079.
[32] COM/2016/0443 final - 2016/0205 (NLE).
[33] OJ EC L 175/50 10.7.1999.
[34] OJ L 330, 27.12.2018, pp. 3-899.

themselves to maintaining comprehensive competition rules and implementing these rules in a transparent and non-discriminatory manner. In this context we have to bear in mind that in order to contribute to the effective enforcement of competition law, the contracting parties are obliged to in their mutual interest, promote the application of the Agreement between the European Community and the Government of Japan. With regard to the aim of this study we have identified trade agreements containing the provisions on competition policy concluded by the European Union and third countries. An interesting element to be emphasized, mainly the clauses that in implementing these agreements the contracting parties undertake to respect the valid agreements regulating competition.[35]

11. Agreements on cooperation on anti-competitive activities

The globalization of fair trade, services and investment requires higher standard of international regulation in the area of competition policy. The EU has concluded bilateral agreements with third countries on the application of their competition laws: the United States (1991), Canada (1999), Japan (2003), South Korea (2009). From the point of view of EU law these agreements are referred to as "first generation agreements". The aim of the cooperation provided by these agreements is to contribute to the effective enforcement of the competition laws and coordination between the competition authorities. The bilateral agreements contain various instruments of cooperation in the area of competition policy, however, the exchange of evidence is excluded. They include, *inter alia*, provisions prohibiting the disclosure of confidential information. In practice this means that no information obtained through the formal investigative process can be shared with the other authority without the specific consent ("waivers") of the company that provided the information[36].

In this context we are of the view that this form of cooperation is of fundamental international importance, because these agreements stipulate:

a) forms of cooperation between competition authorities of contracting parties;
b) system of application of legal provisions applicable in the field of competition;
c) cooperation within the framework of investigation in cases of infringement of competition rules;
d) forms of cooperation between the competition authorities of the contracting parties.

The legal basis for the Union to adopt acts are Articles 103 and 352 TFEU. Article 103 is the legal basis for the implementation of Articles 101 and 102. Article 352 is the legal basis on which Regulation 139/2004 (the Merger Regulation) was adopted. The proposals for agreements also cover cooperation in merger investigations. These agreements provide the structure for cooperation and political dialogue in the field of competition with the national competition authorities of the contracting parties. They are concluded on the basis of the Treaty on the Functioning

[35] COM/2012/0245 final - 2012/0127 (NLE).
[36] COM/2012/0245 final - 2012/0127 (NLE).

of the European Union, and in particular the first subparagraph of Article 207(3), in conjunction with Article 218(5).

In general, the agreements concluded so far with the United States, Canada, Japan and Korea aim to ensure that competition law is properly applied and that companies are sanctioned in the event of infringements of competition rules. In this area the European Union is represented by the European Commission. In principle, it is a matter of creating a framework at international level with a single objective: fair competition and a level playing field for all competitors in the market. In the context of trade development and investment relations, the European Union emphasizes the protection of the environment. The environmental policy of the European Union is based on a number of principles, including that of precaution, prevention, diminish of pollution from its source, as well as that of the polluter's liability[37].

12. The memorandum of understanding

The European Union, or European Communities, respectively, have also concluded memoranda of understanding with third countries in order to regulate legal relations in the field of competition policy. The concept of cooperation is determined by the fact that the globalization of economy requires more intensive and closer cooperation between competition authorities not only in Europe but also worldwide. The aim of memoranda is to express the will to cooperate and to seek new forms of cooperation in the field of competition and in deepening and expanding economic cooperation. Within this framework there are memoranda concluded between the Directorate General for Competition of the European Commission and Competition Commission of India (2013), Competition Commission of South Africa (2016), China (2019) and Russia (2010).

International cooperation between competition authorities helps to tackle problems related to globalization effectively and promotes convergence of competition policy principles and practices around the world. The European Union, using the form of memoranda, to create a space for cooperation between competition authorities and unity in the field of competition law enforcement. Their main benefit is that they integrade case-by-case cooperation in concrete cases as well as political dialogue into a structured framework, thus contributing to more effective enforcement of competition law.

13. Competition functions

On the basis of the above, it can be stated that competition regulated in international agreements has the following functions:

a) Regulatory: it regulates legal relations in the area of international business relations and creates space for open and fair international trade. The regulation of competition rules results in greater openness of markets and greater competition in markets.

[37] Stoican, A. (2020**).** Vol. 10/2020, 1, p. 94, ISSN-L 2247 – 7195.

b) Incentive: every competitor in the market has the same market conditions.
c) Innovative:it forces competitors in the market to introduce innovations and technological progress and thus strenghten competitiveness.
d) Social: the development of a competitive environment will also have an impact on the consumer, who will have access to better and more technologically advanced products at lower prices.

In this context are of the opinion that *the implementation of international competition rules promotes open and fair trade.* Although the European Union's commitment to competition has many forms, we must not forget that the Organization for Economic Co-operation and Development is also active in this area.

14. Conclusion

As part of the process of globalization, there is an ever-increasing competition between market participants and therefore effective enforcement of competition rules is essential. It is only natural that economic operators try to maximize their profits, and some of them also use practices that do not comply with competition rules. The process of globalization and internationalization opens up opportunities for the development of international trade, services and the development of investment relations. Intensive enforcement of competition rules is also necessary in identified areas of international cooperation. With regard to the stated goal of the scientific study and the analysis, we can conclude that the European Union's approach has created the conditions for the protection of competition in the territory of the EU Member States, as well as in the territory of Singapore, Korea, Japan and Canada. Such form of international cooperation proves that the European Union is striving to establish fair and favorable trade relations. It is often marked as „global player", nevertheless such a name does not correctly describe its position, because the EU can also be described as the creator of international competition policy. The rules introduced in international competition agreements create the conditions for transparent international business. Fair relations between entrepreneurs as competitors in global environment represent the basis for further development and stable cooperation.

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