
CONSUMER PROTECTION IN THE CONTEXT OF COMPETITION AND GLOBALIZATION

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Abstract

The orientation towards the consumer and its welfare is a developing trend in many business sectors as well as in the field of elaborating policies at global level. The objective of the present article is to analyze if consumer protection is ensured on the globalized market and which is the role of competition in strengthening consumer welfare in a globalized business environment. The article analyzes if competition rules, which aim to support consumer protection, are unitary at global level and if globalization has an influence on consumer protection worldwide. The paper presents the American view versus the European view towards the issue of consumer protection in a globalized business environment. The article shows which role does the “more economic approach” theory play in this context. It also illustrates the challenges in ensuring consumer protection given the context of globalization and of multinational companies as global players.

In order to deal with the abovementioned key-aspects a multidisciplinary research method will be used, combining elements of economic analysis and of legal analysis. The method is appropriate, as the topic is interdisciplinary. Furthermore, a comparative method will be used, presenting the American view versus the European view towards the analyzed aspects. Qualitative methods of assessment will be used. Case studies will provide examples and will enlighten the practical aspects of the analyzed theoretical approaches and concepts.

Consumer oriented approaches are part of business strategies of all the international companies that are significant global players. Competition rules do therefore play an important role in drafting a harmonized framework for consumer protection and consumer welfare around the world, supporting the trend to focus on the consumer and its welfare.

Competition rules are aimed to serve the consumer and to ensure consumer protection and consumer welfare in the context of globalization.

Keywords: consumer protection, competition, globalization, consumer welfare.

JEL Classification: D18, D11, F60, K21, L40, M10, M16, M21

Introduction

Globalization is a trend that has implications both on companies and on consumers, having an influence on the behavior of these market actors. From slogans like “Think global, act local” to the change of paradigm into “Think local, act global”, globalization developed to glocalization (a term used by multinational companies like Sony and by other Japanese companies) and the business strategies nowadays take into consideration both global and local dimensions of the business environment. But the question is how does the globalization process affect consumer protection. It is important to find out if consumers are protected, given the context of globalization and if multinational companies have so much power that they decide the degree of consumer protection they apply. Another aspect to be analyzed is the role of competition in this globalized business environment. It is important to deal with the issue if competition serves the consumer and how is the interest in protecting the consumer reflected in concrete measures and actions at European level or at global level.

The focus on the consumer is an answer to the question “What do citizens of the European Union gain from the project of the European Union?”. The European Union has often been criticized that it only takes into consideration economic criteria in terms of profitability when drafting a project. The answer to the abovementioned question is consumer protection and the orientation towards the consumer.

In this context, it is important to analyze which concrete measures are the expression of consumer protection. It is interesting to compare which is the American view versus the European view towards consumer protection through functional globalized competition and to find out which similarities and differences are between these approaches.

Institutions at the level of the European Union are concerned about the issue of consumer protection, as this is a cross-section topic. In the energy field, the European Commission adopted on the 30th November 2016 the “Clean Energy for All Europeans” package, which aims to modernize the energy sector at the level of the European Union and has a clear focus on the consumer and on consumer benefits.

Being an interdisciplinary field, consumer protection builds a bridge between economic issues and legal issues related to competition and consumer protection through fair competition, a connection that is as well illustrated in the theory of the “more economic approach” used when assessing competition law aspects. The literature deals with the aspect of “the more economic approach” and with its perception over time. About ten years ago, it seemed a very modern trend among the institutions of the European Union, but now this trend has changed, as some important Member States, such as Germany, did not agree with this view, especially when assessing competition law issues. The cooperation between economists and lawyers proved to be difficult from this perspective, as illustrated by McNutt (2005, p. XIII). What everybody agrees upon is that cartels are agreements that harm the consumer, acting against consumer protection (O’Kane, 2009). Previous studies and works related to the topic of consumer protection in the context of globalization and of competition have been consulted, for example McNutt (2005), O’Kane (2009), Albers (2017) and Möller (2008). The article is in line with previous research. It brings a new perspective which combines legal aspects and economic issues regarding the analyzed topic, providing a cross-section, multidisciplinary analysis.

The goal of the present article is to research if consumer protection is ensured on the globalized market, to analyze which is the role of competition in strengthening consumer welfare in a globalized business environment, to debate if competition rules, which aim to

support consumer protection, are unitary at global level, to discuss if globalization has an influence on consumer protection worldwide, to illustrate the American view versus the European view towards the issue of consumer protection in a globalized business environment, to present the role of the “more economic approach” theory in this context, the concrete measures that are the expression of consumer protection and the challenges in ensuring consumer protection, given the context of globalization and of multinational companies as global players.

Review of the scientific literature

The literature reflects the idea that the protection of competition on the market has the role to ensure consumer protection and consumer welfare, as shown by Mäger (2006, p. 2). By protecting competition, the consumer gets fair prices and products of a better quality, so competition contributes in an important manner to consumer protection and to consumer welfare. Agreements between the competitors, which normally are forbidden because they distort competition, are permitted if these agreements have positive effects on the consumer, according to Möller (2008, p. 157). In other words, the positive effects on the consumer are more important than the negative effects on competition. The positive effects are reflected in improved efficiency due to lower production costs, a better use of the capacities, product variety and a wider range of products offered to the consumer, improved quality of products and services offered to the consumer, opening up of new markets, improved economic efficiency through lower transaction costs or distribution costs, more selection options offered to the consumer, support of innovation and improved research and development, as illustrated by Mäger (2006, p. 27). According to Möller (2008, p. 161) these advantages bring an improvement of the products in order to meet consumer preferences, a better distribution of the products, so that they reach the consumer easier and an improvement of the technical or economic progress and development. As a conclusion, according to the studied literature, competition has the role of providing a large range of choices of products and services to the consumer and to ensure an optimal quality level at low prices for these products and services (McNutt, 2005, p. XVII). Another criterion in order to assess the positive effects on the consumer is if consumers have a fair share of the resulting benefit (article 101 paragraph 3 of the Treaty for the Functioning of the European Union). This means in the acceptance of the European Commission that the positive effects of the agreement between competitors on the consumer are more important than the negative effects of the agreement on competition and therefore the positive effects compensate the negative effects (Mäger, 2006, p. 27).

The connection between competition issues and the consumer protection is illustrated in the literature in the theory of the “more economic approach”. The literature deals with the aspect of “the more economic approach” and with its perception over time. About ten years ago, “the more economic approach” was seen as a new doctrine with American influence used by the European Commission for the assessment of competition related issues. According to the “more economic approach” the economic effects of agreements between competitors should be taken into consideration from an economic perspective when assessing competition related issues, as shown by Möller (2008, p. 34). This approach suggests to consider the effects on the consumer when assessing competition issues, for instance to consider achieved improvements in terms of efficiency despite the restriction on competition related to the agreement (Möller, 2008, p. 38). Furthermore, the “more economic approach” emphasizes not only the idea of considering efficiency in competition

issues, but to use complex economic methods in competition proceedings, as presented by Albers (2006). This approach could ensure consumer welfare according to Möller (2008, p. 38).

Although the trend of applying the “more economic approach” was modern about ten years ago especially within the European Union (being supported by Mario Monti, who was a member of the European Commission in charge with the field of the internal market and later with the field of competition), nowadays this trend has changed, as some Member States did not agree with this view. The cooperation between economists and lawyers proved to be difficult from this perspective, as illustrated by McNutt (2005, p. XIII). Lawyers want predictability and general provisions to be applied for all situations in order to ensure this predictability of the law. Economists do not agree with this “one size fits all” concept and want an individual assessment of each particular situation. This is on the other hand time-consuming and it is possible to have different results for similar situations, due to the evaluator of the case and to the subjectivity of the evaluation. This is why lawyers are skeptical about accepting to apply “the more economic approach” when assessing competition issues. What economists as well as lawyers agree upon, is that cartels are agreements that harm the consumer, acting against consumer protection, an idea that appears in the work of O’Kane (2009).

The article is in line with previous research, for example McNutt (2005), O’Kane (2009), Albers (2017), Möller (2008).

Research topics and research methodology

Globalization is a phenomenon that has affected all business sectors. Due to this evolution, multinational companies gained power and influence in our society. Being so powerful, multinational companies often act as power poles on the market, building an oligopolistic market structure. Perfect markets with perfect competition and symmetrical access to information exist only in books, in real life all the markets are imperfect, oligopolistic markets. Given this situation, it is interesting to research to what extent multinational companies put consumer protection among their values. An important research question is if powerful companies are interested only in profit or if people do count as well. The financial crisis gave us a sad answer to this question.

The present paper will deal with the research topics of consumer protection ensured on the globalized market, it will analyze which is the role of competition in strengthening consumer welfare in a globalized business environment, it will debate if competition rules, which aim to support consumer protection, are unitary at global level and it will discuss if globalization has an influence on consumer protection worldwide. The article will illustrate the American view versus the European view towards the issue of consumer protection in a globalized business environment, to present the role of the “more economic approach” theory in this context, the concrete measures that are the expression of consumer protection and the challenges in ensuring consumer protection, given the context of globalization and of multinational companies as global players.

The present paper will analyze how the studied literature reflects the research topics.

In order to find answers to the research questions related to consumer protection and globalized competition case studies will be presented, which illustrate concrete aspects of theoretical concepts.

Furthermore, legal provisions and documents related to the Law of the European Union and to consumer protection (Regulations of the European Union, Directives, Decisions of the

Court of Justice of the European Union, case law of the Court of Justice of the European Union) will be analyzed. Relevant sector studies (for instance in the field of competition) will be as well used.

References to concepts and theories, such as the “more economic approach” or the Competition Theory will be used.

A multidisciplinary research method will be used in order to find answers to the research questions. This multidisciplinary approach provides the possibility to better understand complex market situations, which are related to economic aspects and to legal issues. This way the paper gives a better understanding of the analyzed issues, from various perspectives, by enlightening the perspective of Law and Economics. According to Dinu, Săvoiu and Dabija (2016, p. 34) Law and Economics belong to econosciences. Market situations are complex situations, where economic factors and legal factors act together and cannot be clearly separated. It is difficult to establish clear cause-effect relations, as a multitude of factors act together and have a certain effect as a consequence.

The paper uses a comparative approach with an international perspective, presenting the American view and the European view towards the researched topics.

As the research topic has a high degree of interdisciplinarity, qualitative methods will be used. Many economic papers focus on the quantitative methods and they neglect the qualitative methods. As the subject is related to competition law, qualitative methods (for instance the teleological interpretation) are appropriate in order to research the topics.

Results and discussion

Consumer protection is ensured on the globalized market. Competition has a key-role in ensuring consumer protection and consumer welfare in a globalized business environment. This is why the protection of competition is important in order to ensure consumer protection and consumer welfare.

There is a tendency of harmonizing competition rules. At the level of the European Union, we have common competition rules, so there is a harmonized European competition framework. European competition rules are inspired by American Antitrust law, which has a tradition of more than 100 years. There are similarities between the European and the American competition framework, both aiming to ensure consumer protection and consumer welfare.

Consumer protection is important both in American and in European view, but it is achieved in different ways. In the American view, there is no intervention on the market (like in Adam Smith’s theory of the invisible hand), while in Europe there are regulations aiming to support competition and thus consumer welfare. The role of the citizen in protecting competition is more important in America, while in Europe competition authorities (the European Commission at the level of the European Union and the national competition authorities at national level) have this task.

The “more economic approach” ensures a convergence with the American Antitrust Law, which is important in the era of multinational companies and of global competition. In spite of this, it generates conflicts between economists and lawyers due to the individual assessment of situations, which does not permit predictability of the law and security of the law.

Globalization has an influence on consumer protection worldwide due to the fact that multinational companies are a global presence and act as global players. Multinational corporations include consumer protection among their values and include it in their

business strategy. This approach is an expression of consumer protection. Institutions at the level of the European Union as well are concerned about the issue of consumer protection and include this issue in their measures when drafting policies in various fields, like competition, energy, the banking and finance sector.

Given the context of globalization and of multinational companies as global players, ensuring consumer protection is related to challenges. Such a challenge is the fact that multinational corporations gain much power worldwide and they can abuse of this market power. Having a powerful position, it is possible that at some point they do not observe consumer protection and consumer welfare anymore, using strategies which on the long term bring disadvantages to the consumer, such as predatory pricing.

Regarding the harmonization of competition rules in the globalized environment, the European Competition Law is influenced by American Antitrust Law, so that there are similarities between competition rules in the United States of America and in Europe. The American view and the European view have in common the fact that they both focus on consumer protection and on consumer welfare. In the American view, consumers have a proactive role in protecting competition. This is a difference in the approach in the American view versus the European view. But both views agree on the consumer-oriented approach and on the role of competition in ensuring consumer welfare. Maybe the “more economic approach” as a consumer-oriented approach might function like a bridge between the American view and the European view towards consumer protection and maybe it can bring economists and lawyers together in order to find a common agreed solution.

The behavior of companies on the market may have some positive and some negative effects. An interesting point to be discussed is how to find a balance between them, in order to evaluate which effects prevail. Situations in which the consumer has price advantages, but the market structure suffers, are not acceptable, as demonstrated in the case Dutch T-Mobile (Case C-8/08 - T-Mobile), which deals with a concerted practice, a forbidden exchange of strategic information between market participants. The involved companies used the argument that the effects were positive for the consumers, as the prices were reduced, but this was not accepted by the Court of Justice of the European Union, because any exchange of such information is forbidden, as it has a negative effect on competition (Case C-8/08 - T-Mobile). It does not matter if there are positive effects on the final consumer. The American view towards this topic is that the market itself will find its equilibrium and that there is no need to interfere with regulations in this regard.

Related to the role of multinational companies in this context, an interesting discussion point is if consumers feel protected by the policies of multinational companies or if they rather trust local companies. Regarding the challenges related to consumer protection in a globalized business environment, one might be the fact that multinational companies gain much power and can then abuse of this market power. One example is the predatory pricing strategy used by powerful multinational companies, which are global players. In a first phase, these companies offer products at very low prices in order to gain customers and to eliminate competitors from the market, even if they have losses due to the very low prices. After eliminating competitors from the market, the company increases the prices. Once a behavior is established, it will be difficult for the consumer to renounce to his habits and he will be ready to pay the increased prices, as he has no other choice. In this situation, the consumer has short term benefits by paying low prices at the beginning, but in the long term, he will only have disadvantages. In this case, the long-term consequences of a market behavior on consumers have to be considered in order to ensure consumer protection. An

example of the use of this strategy is illustrated in the case of Akzo (Case C-550/07 P – Akzo). With regard to the strategy of predatory pricing, the European view is very strict in sanctioning predatory pricing, while the American view is not so strict.

Conclusions

Consumer protection is a topic of great interest in the context of globalization and of globalized competition. Competition plays an important role in ensuring consumer protection and consumer welfare at global level. The focus on the consumer is explained by the intention to give an answer to the question about which are the benefits of consumers in being part of the European Union. This orientation is a cross section issue, as it influences for instance competition policies, energy policies, banking policies, so it is reflected in several fields. It is in line with the new ongoing trend to give something back to society and not to think only in terms of economic gain and economic parameters, an approach which is of great interest both in the United States of America and in Europe. Following this trend, it is important to care about the consumers that build this society and to wish to offer them protection. Being a topic of great interest and with a global dimension, it is important to deal with it in scientific papers.

The present article is in line with previous research, for example McNutt (2005), O’Kane (2009), Albers (2017) and Möller (2008), further developing it. The present paper brings a new perspective which combines legal aspects and economic issues regarding the analyzed topic, providing a cross-section, multidisciplinary analysis. The legal perspective is important because many issues related to consumer protection in the context of globalized competition find a concrete expression in competition cases, discussed in front of European institutions, for example at the Court of Justice of the European Union. It provides as well a perspective on how the role of the consumer will develop in the future in the context of globalization and competition. This contribution is important because the field is dynamic and it will further develop. Further studies will for sure be performed in this sector, as they will be necessary. The research results can be used for these future studies and for future research in the field of consumer protection and consumer welfare and they can be as well applied when drafting strategies or consumer oriented policies in companies or in institutions, so extensions of the work are possible and needed.

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