

THE MANIPULATION OF THE MARKET IN ROMANIA AND IN E.U.

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Any major economic theory, the keynesism or neoliberalism, would constitute the fundament of the economic policy of a country, it has the responsibility, following the economic and social progress of the economic policy, to assure the proper and correct function of the markets that it has. Even though the market has nowadays a competitive climate, the legislation in developed countries – now on Romania too- does not accept any type of practices from the economic agents. Especially in the field of the capital market there are defined, tracked, sanctioned and forbidden by law the practices that have anything to do with, or that lead to market manipulation. And the authorities designated have attributions very clearly stated on this field.

Just that, in our country, this problem too, as many others, it is or taken to risible- using the market manipulation complaint with the same judgment, with the same efficiency and effectiveness with whom the DNA fights against corruption with the help of the TV – even if it is treated with a senior assignment as if it would have never been met on this mioritical region. Following I will try to dissolve some aspects of this problem, eventually to incite to analyze it, and certainly to give an impulse to the accomplishment of the commitments that some authorities have on this field.

In order to be able to speak about the market manipulation it should have a certain level of transparency. Without knowing the practices of the economic agents one cannot establish if they are acceptable or not. When they affect the adequate interaction between the demand and supply, some forces on the market, such as sellers and buyers, do not interact free and cannot action quickly enough, in order to promote the particular interest. In these cases the risk of the apparition of some unbalances it is so big, in order to maintain the integrity of the market, so that the competent and responsible authorities are obliged to forbidden. So, in order to do not perturb the normal function of a market – and, through it, in time in the economy as a whole – it is considered to be compulsory the honesty and the efficiency of the market participants.

Studying the “2003/6/EC directive regarding the market abuse” and the first guide emitted by The Committee of European Securities Regulators (CESR) regarding the uniform implementation of it, we observe what any person with a healthy judgment deducts from dairy act. I mean, a concern cannot be the subject of market manipulation as long as it is not present, admitted or – through its products – preceded on a market. As someone cannot be accused by market manipulation if he does not obtain any advantage from the activity considered to be inadequate practice.

By the way, according to the Directive recalled, art. 4.5, the market manipulation means: a) false transactions or false transaction orders or that deceits regarding the demand, the supply or the price of financial instruments, and b) that maintain, by the action of one or more persons, who act together, the price of one or more financial instruments at an abnormal or artificial level”. Furthermore, the Directive develops the problem of market manipulation, even by presenting the possible hints of the market manipulation“, also in the false transactions area or of the price influencing through fictive mechanisms, initiated by the orders issued or by the operations accomplished.

Behind the technical details regarding the transparency demands before and after transaction, which the 2004/39/CE Directive refers to, an institution wishing to bring light in the cases suspected by the public as being synonyms with price manipulation, finds in the Directive regarding the Market Abuse examples of such practices. Some of them, such as the one called “panting the tape”, consists of “transactions only to make the impression of an activity or of a price change regarding a financial instrument”, it worth one’s while to be studied related to the

examples offered by some transactional titles at The Bucharest Stock Exchange, for example the shares of SC Constructii Bihor. But such an institution might find in the Directive, art. 4.10, also an extremely useful guidance for the elucidation the price manipulation cases, of course, if this is what it wants.

There are well known cases of “Shares interfused after an Initial Public Bid”, as it is mentioned in art. 4.12b. of the Directive, through which the issuer proposes to those who hold his shares an “Irreversible commitment not to sale”. CESR considered that the problem was price manipulation” when a group of persons associated in such a consortium act in a common way after a primary issue of shares and the beginning of transacting those with the purpose of an artificial rise of the price”. Or, what has carried on such an autochthon issuer, no matter how many persons signed the “Irreversible commitment not to sale” proposed by himself, represents exactly what the Directive forbidden: the artificial increase of the price by deliberate decrease of supply.

If those are the European regulations in the field of market abuse, Romania, as member state of the EU, must conform to them, so I wonder who applies those regulations in our country? Is it not possible that the members of the consortium mentioned earlier determine some employers of institutions with influence on the capital market forget about the assignments that they have? Do we need a Consortium of those who demand to obey the European regulations in Romania as well so that something like this to happen indeed?

