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**Article**

## "Dialectical Contradictions" in the Neoclassical Theory and Policy Regarding Market Competition: The Consumer and His Continuous Burden of Crisis

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"DIALECTICAL CONTRADICTIONS" IN THE NEOCLASSICAL THEORY AND POLICY REGARDING MARKET COMPETITION: THE CONSUMER AND HIS CONTINUOUS BURDEN OF CRISIS

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**Abstract**

In spite of the apparent general consensus, both economic theory *in abstracto* and the political practice in the realm of competition are looked upon from (too) many perspectives. Far from being convergent or even complementary, the "theories" and "policies" are rather contradictory and conflicting "in" and "between" them. Nominally subsumed to the "consumer welfare", the praise of competition and of its disciplinary power within the market economy (and twistingly even within the socialist one) has experienced between the eras of "classical" and "neoclassical" economic science a subtle transition from the paradigm of "freedom" to that of "perfection". And the transition was accomplished with a significant risk of loss both in internal consistency and realistic adequacy, which undergo the fictional methodology as well as the mathematical formalism, endemic in the neoclassical approach. The tension inside the theorizing of competition cohabits with the one inside the policies' camp: the regulations often seem to be at odds with the stated commitment towards the consumers (seen holistically and aggregately). Some of the real "flesh and blood" consumers become in fact passive objects of "pro-competition" coercive rearrangements of welfare in three hypostases that individuals (though unevenly) subsume: as "consumers" (of goods and services), as "competitors" (factors of production in labour markets) and as "citizens" (asymmetrically hit by the myriad of policies). This paper offers an "original recovery" of a common sense argument: after the mainstream imposition of "perfect" instead of "free" competition standard, the neoclassicism-inspired public policies end up promoting a competition climate heavily strained from both freedom and perfection.

**Keywords:** free competition, perfect competition, consumer, public policies.

**JEL Classification:** B50, D40, H10, I30.

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## Introduction

This essay intends to (re)connect three economic concepts which, both in economic science and in economic reality, are profoundly intertwined, still much more prominently in the age of public-private complexities: *consumer*, *competition* and *crisis*. Present and presented in his individuality and personality, subjective and unique, or, conversely, as historical archetype and statistical aggregate, approximated and assimilated to some basic optimization functions, the consumer of the last century eventually discovered that he has specific rights. The competitive environment makes the supply of goods and services to faithfully subordinate to his whims, while the law and justice protect him from limitations (counterfactually assessed) and fraud (factually documented). And recurrently the economy experiences – after booms – crises and desperate quests for recovery. But still very few have noticed the latent crisis of the “competitive system”, borne by the consumer.

Perhaps the most interesting attribute with which *the consumer* has been praised over time is *sovereignty*. L. von Mises (1949) put the concept of “consumer sovereignty” at the foundation of the capitalist order, arguing that in the new democracy of the market (as opposed to the absolute dictates of *l’ancien regime*) the “kings” of industries are precisely the most loyal subjects to the public, without which “their” titles (and the profits they legitimizes) would evaporate in an instant. But the metaphor may seem exaggerated taken literally, for “sovereignty is the quality of ultimate political power; it is the power resting on the use of violence.” (Rothbard, 1962), inducing the image that, in the political depiction as citizen, the consumer may claim control over businesses which do not serve him properly. The rule of law resides in other type of sovereignty: universal, of the *individual*.

Then, during the maturation phase of economics, understanding the idea of *competition* followed a somehow “Hegelian” destiny throughout history, tributary to the ideological idiosyncrasies of the times: from *classical theses* (competition understood as a process beneficial to society, of coordination and cooperation devoted to consumers, within a framework of freedom of action in the market, which rewards efficiency and penalizes waste) to various *post-classical antitheses* (competition seen as frenzy concentration, finally monopolistic, of capitalist wealth and power and as clenching conflict, fundamentally dismissing the small and fragile enterprise and labour outside union trades) to the *neoclassical synthesis* (competition as a process conducted in deeply flawed markets, partly improvable by implementing corrective and political institutions of the state-arbiter).

On the idea of *crisis* in the economy a lot have been written, proof that the very idea of understanding crisis is in crisis. Little matters the psychological clarification of the term, read as “evil” or as “opportunity” (as seen in the glass “half full” or “half empty”). The fact is that an economic crisis unveils, reveals a point of “inadequacy” between means and ends (which of course hides a latent waste that now has the chance to be corrected). We will not talk again about the crisis in the view of Marxists (the hypertrophy of the capital without outlets), Keynesians (fluctuations in aggregate demand), Austrians (the illusory expansion of credit) or of followers of the real business cycle theory (fiscal or technological shocks), but we will discuss, as applied to competition and consumer, about two different crises that transcend the usual business cycles: one of coherence, the other of consistency.

The argument will run as follows: we will emphasize the apparent rigor of the perfect competition, we will reiterate the “institution” of free entry into the market, we will reveal

the adverse effects of legislation, showing the collision of the competitive system with the "too big to fail" philosophy. The moral of our journey is that competition policies seem to serve selectively *some* competitors (and possibly *some* consumers), while interferences with the *universal right to property* still remain.

### 1. "Competition" between theories. "Free" is not "perfect"

"As it is, it is one of the great paradoxes of economic science that every act of competition on the part of a businessman is evidence, in economic theory, of some degree of monopoly power, while the concepts of monopoly and perfect competition have this important common feature: both are situations in which the possibility of any competitive behaviour has been ruled out by definition." (Paul J McNulty, "Economic Theory and the Meaning of Competition", *The Quarterly Journal of Economics*, Vol. 82, No. 4 (Nov., 1968))

In his lecture *The Meaning of Competition*, Hayek (1946) discussed the meaning of *competition* in common language, highlighting on this occasion the deportation – sometimes the blatant opposition – from reality of the concept operationalized by the "science fiction" model of the so-called "perfect competition". For Hayek, competition is a "process of formation of opinion" in the economic system of the market. It acquires unity and utility in the competition game through which *information* is distributed in society and on which judgments about the quality and cost of goods and services are based, thus lighting up the range of possibilities and opportunities of its members. Competition is a *process*, one that involves constant change of social data and whose significance will be completely foresaken for any theories that would consider them constant and emanating from the "state of equilibrium".

Following various pleadings submitted by other economists alerted by the reforming / deforming / malforming of the concepts of classical economics in the "Procrustean bed" of the "neoclassical general equilibrium" – such as Clark (1940) or Machlup (1942) –, Hayek points out that the demonstrably adequate meaning of competition cannot be other than the traditional one, Smith-inspired, of freedom, and that the common and practical sense in the business world organically operates with this common sense understanding that more freedom equals more competition. The Austrian economist warned against the semantic confiscation of the term, whereby finding any market imperfection requires the intervention of the "corrective" state: this, par excellence, meant less freedom, less competition in the common / intuitive / natural sense of the idea – and thus less "common welfare".

For Mill (1864) or Jevons (1882), the entry of competition in the conceptual "stock" of economics equalled with its accession to the field of science. But it seems that exactly this "scientific feature" is responsible for the translation, not at all edifying, from understanding competition as a *behavioural process* of rivalry – with Cantillon, Turgot, Hume, Steuart preceding and preparing us for Smith (1776) – to that of some sort of *final / supreme state / equilibrium*, where paradoxically the very forces that would generate that kind of mathematically-modelled stillness disappear, leaving instead an atomistic landscape with bidders with no ability to influence the price and acting in a "perfect informational" environment – from Cournot, Edgeworth, Jevons and to the economists of neoclassical synthesis concerned with the market structure / organization to the detriment of processuality. Perfect competition becomes contradictory because it is, ultimately, stillness.

The subject of remoteness from reality of perfect competition was overwhelmed by the neoclassical consensus that captured the textbooks of economics and the legal representation of the phenomenon. The early critics of the neoclassical vision on competition / monopoly – Knight (1935; 1946), Clark (1940; 1961), Machlup (1942), Hayek (1946), Mises (1949), Schumpeter (1950; 1954) – were followed by some monographic revisitation of the subject – Stigler (1957), McNulty (1967; 1968) –, some developments in the direction of free market – Kirzner (1973) –, as well as profound deconstructions and reconstructions – Rothbard (1962), Block (1977), Hoppe (1989). Thorough revisions of the debates can be found at Armentano (1982; 1986) and Machovec (1995). In Romania, recent inter-paradigmatic concerns on competition can be found, among others, in the works of Costea (2003), Muşetescu (2006), Stamate (2009), Dima et al. (2010).

### ***Complicating a simple discussion***

*Nomen odiosus* in the fight for more competition is, invariably, the *monopoly* / the *monopolist*. If in the free market paradigm monopoly is the result of the privileges and protection granted to some economic agents and of the obstacles placed to their competitors by the state / government – while market monopolies are considered merely accidents, even salutary in certain cases –, in the perfect competition paradigm it is definitely a scourge whose cure is public intervention by dismantling such dangerous entities. Thus, for the “perfectionists”, restricting production – as compared to the ideal of perfect competition – by a supplier of a product (without reasonable substitutes) or by plot, with several major suppliers raising prices, distorts the allocation of resources and social welfare decreases.

The mathematized representations of competition and monopoly, although seem seductive scientifically, are experiencing severe shortcomings. It is hard to plead the relevance of such theories – taking as reference the “immutability” – in the real world, characterized by various preferences, uncertainty and dynamic changes (perfect competition requires uniform information and unchanging preferences). Resource allocation is not to be related to Nirvana standards; of crucial importance is deducting the *realistic* manner in which the market process coordinates the anticipated supply and demand. *Thus, the neoclassical efficiency – fragile without ethical add-ons* (Rothbard, 1956) – *is technically right for a static world, but highly futile to real market situations.*

Uncertainty and change may involve differentiated products, some cooperation between firms (instead of rivalry) and advertising for some product / service. This does not mean that there is no competition or that the competitive process is insufficient or inefficient, but the simple fact the last is in a state of imbalance. If, in theory, the market tends toward certain forms of equilibrium, in reality, this equilibrium will never be reached. However, almost all of the entire “antitrust legislation”, as it has developed (we will return to this issue in the next section) and evolved from then on in forms mostly tributaries to the original vision, has as a very foundation the static – erroneous – definition of efficiency.

Summing-up: markets that did not fit in perfect competition conditions were considered “restricted”; advertising, differentiation and innovation were often seen as signs of monopoly power (instead of expressions of the competitive process), thus misdirecting resources and reducing social efficiency; any control over the market price was catalogued as monopoly power too; cooperation between firms looked suspicious to economists and

antitrust authorities. These representations still persist in present day analyses and verdicts (Armentano, 1982; DiLorenzo, and High, 1988). *But, if “perfect competitive equilibrium” is not a valid benchmark for social welfare, then any characterization of different practices as being “against competition” (as the ones above) doesn’t really make sense any more.*

The concern of the authorities – “the power of market monopoly”, *via* mergers and secret agreements – is to be taken over automatically by market forces: if the effect of monopolization is increasing prices (absent barriers), competitors are attracted by such a market, *ceteris paribus*, they will depress prices, and if they try to charge prices “artificially” low, then additional sales would be generated and the market would tend towards a potential equilibrium (price tends to marginal cost). Theoretically and historically, “inefficient” monopolies cannot survive systematically and spontaneously, if prices are allowed to perform their function (for a discussion on prices, see *Cassette 1*).

Therefore, the relevant element is the possibility or impossibility to enter the market, *i.e.*, there is a *natural* or, on the contrary, a *legal* inability to compete in one market. Therefore, either we agree that “inefficiency” is a *natural* invitation for more efficient competitors, or we accept that the efficiency keeps competitors away and then the law is called into the scene to tackle efficiency (paradoxically, “in the name of efficiency”, practically, in the name of certain competitors, too frustrated by their own inefficiency).

**Cassette no. 1: The illusive distinction between “competitive price” and “monopoly price”**

Rothbard (1962) argues that the conventional definition of monopoly (“control over the whole supply of products or resources”) is misleading – in certain circumstances (of place), any vendor can be monopolist. Even accepting the definition, “monopoly price” in a free market is an illusory concept, since it lacks a definable referential – the free market has only free prices (“competitive” or not).

Competitive prices defined by neoclassical literature ( $P = C_{mg}$  under perfect competitive equilibrium) are clumsy for they are associated with static equilibrium that can never exist (and even if it exists, this does not necessarily mean that it would be the optimum level). In a free market, prices are free (not “high” / “low”) regardless that there are many small sellers or a few big companies.

The “monopoly price”, defined as a price that results when production is restricted under the terms of an inelastic demand (increasing the net income of the provider), cannot objectively be termed as such nor qualified as antisocial. All we know is that all business companies are trying, in each and every moment, to produce a stock of goods to maximize their profits (given their estimate of demand).

It makes no sense to consider the initial price as competitive price and the restriction of production as giving birth to monopoly price as we cannot objectively state that the first price is the “competitive” one. Firms can make mistakes, producing more, and when realising that, they may limit production, and prices may increase without this automatically meaning monopoly – prices are, simply, free.

But given that such “unjustified” (from different kinds of “social justice” standards) prices even exist, it would not result in negative implications on welfare: since the inelasticity of demand is the result of purely voluntary requests of the consumers and exchanges at a higher price are completely voluntary, there is no unequivocal manner to conclude that any restriction of supply reduces social welfare.

***Simplifying a complicated discussion***

If until now the arguments against the theoretical perspective and, as such, against antitrust policy were entirely economic, of real help for critically analysing the judgments behind antitrust regulations can be the non-economic considerations, postulating anti-competition failures in the *free market* (and “pro-competition” policies). Thus, in the economic and legal literature (*Law & Economics*), of classical-liberal pedigree, recovered and refined in the tradition of modern and contemporary Austro-libertarian approach and anchored solidly in the concept of *ownership* – i.e., Rothbard (1978, 1982), Hoppe (1989; 1993) – it is argued that the antitrust laws violate the natural meanings of civil liberties, individual rights or access to a fair trial (Armentano, 1986; DiLorenzo and High, 1988; Muşetescu, 2009; Stamate, 2009). Freedom should not be sacrificed in the name of efficiency. On the contrary, only ensuring and enforcing *all legitimate* property rights is consistent with the “social efficiency” commandments (see *Cassette 2*).

By its very nature, the antitrust law (anti-monopoly) flagrantly interferes with the legitimate property rights of economic entities. Prohibiting or restricting certain practices (and results) such as price discrimination, acquisitions and mergers, fixation / alignment of prices or “monopolization” of the market (without additional qualifications on the “politico-institutional conditions” in which the incriminated phenomenon occurs: whether there are barriers or not to entry the market) hampers the contracting parties. The holders of legitimate rights of ownership, are coercively banned from making or refusing to make contracts which they consider to be in their own interest and which do not infringe *materially* nor usurp – through force, fraud or misrepresentation – other people’s ownership (we are not saying anything about the value of other persons’ property, for no sound law can preserve it: value is basically volatile). (Adam Smith himself, despite his reservations on the “conspiracy of prices”, rejected the idea of antitrust laws suspecting that their implementation might not be so “consistent with freedom and justice”.)

**Cassette no. 2: The illusion of the efficiency criterion  
The criterion of social coordination**

Underlying all social welfare judgments, a certain conception linked to value/utility, whose “jurisdiction” is the individual/person, must stand. It is worth mentioning here the subjectivist-marginalist rigorous reasoning: the utility is “seen” following (freely) demonstrated preferences and the social welfare increases through voluntary actions (Rothbard, 1997a; 1997b).

Thus, the costs and benefits associated with exchanges are personal and subjective and do not lend themselves to quantification, computation and comparison. Costs for consumers and benefits for producers (or vice versa) cannot be aggregated across markets nor compared to determine whether a market share of a company or a business agreement is (or not) socially “efficient”.

Efficiency, *simpliciter*, occurs when goals are met with available resources; efficiency is graded as the economic success of human actions, which is strictly personal, occurring within the range of resources operated by the individual: his property. “Social efficiency” is a myth: although individual utility and (consumer/producer) surplus may exist, they cannot be mathematized.

An alternative consistent perspective on social efficiency is “coordination of plans”, affirming that all voluntary arrangements (including the so-called “restrictive agreements”) promote efficiency because each aims, *ex ante*, at the coordination of individual market participants’ plans based on private calculations of returns on “alternative” investment projects employing resources.

As information is neither perfect nor constant, the process of coordinating the plans will never reach a final equilibrium. Instead, the institutional framework for property rights and the free market generate the strongest incentives for betterment, correction and coordination of private plans, while legal restrictions on competition, cooperation and market entry create dis-coordination.

It is also argued that both business people and companies “give up” the right to complete freedom when engaging in cartelization and the restriction of production because such behaviour violates the rights of potential consumers. We encounter here a great misunderstanding of rights: the producers have their property (as property owners or mandated managers) and possess all the rights associated with it, including the absolute right not to use their property at all; consumers have full rights over their property, including the absolute right to spend or not their own money. In the most common approach, freedom is the right of a person to dispose of his body (*self-ownership*), of what he firstly appropriated from nature through processing (*homesteaded*) or obtained voluntarily. And no other arrangement can be argued as being non-contradictory, for each act of argumentation involves mutual recognition of the selfownership along with the ownership of the other belongings of the participants, *qua* “teleological extension” of their persons, necessary to the full comfort of the dialogue (Hoppe, 1993; Kinsella, 1996).

For example, a consumers’ boycott against a certain producer does not violate the property rights of the producer, the latter having, first of all, no right over consumers’ income; also a restriction of production from the manufacturer (a boycott of the manufacturer) does not violate the rights of consumers, since the latter, in the absence of a contract, have no property rights over the producers goods; therefore, restrictive agreements (such as pricing), although unpopular, do not violate someone’s rights, so state intervention in regulating these voluntary agreements is not justified in terms of property. And because antitrust laws are “capricious and arbitrary” (Armentano, 1982; 1986), the businesses that are judged according to them do not receive a fair trial (that is in the terms of the standard natural ethics / justice, and not of the positive legislation).

## **2. From inference to invective. How to read monopoly**

“To economists, prices serve as crucial signals to producers and consumers. In a regulated market, the state sets prices high enough for private companies to cover their costs and earn a guaranteed profit for their investors. But in a deregulated market, prices should vary with demand and supply.” (Alex Berenson, “Deregulation: A Movement Groping in the Dark”, *The New York Times*, February 4, 2001)

There are two major pathways on which we can investigate the monopolies and the misunderstandings associated to their theorizing as observed in the history of business and of business regulation laws: *casuistry way* (for example, Standard Oil in 1911, being the most famous and most distorted understanding of anti-monopoly case in the history of business, comparable only to the Microsoft “saga”, with the competitors, and not the consumers, filling a plethora of complaints), and *statistics way* (about market concentration, profitability and the welfare losses associated with monopoly power, profitability being often seen as a measure of monopoly power and inefficient allocation of resources).

### ***Antitrust “standards”: USA versus Standard Oil***

*The “official” description of the case.* Standard Oil was engaged in fierce monopolistic business practices in the oil industry in the 19th century; becoming monopoly, it reduced production and increased the market price of kerosene, a basic commodity of the industry; the federal government indicted the company on the basis of the *Sherman Act* – the famous law of 1890 that criminalized in Section 1 the collusion (the secret agreements) and in Section 2 monopolization or dominance in the market – showing in court that the company



reacted unreasonably in relation to consumers and competitors, and obtained a dismantling (breaking up) of the company that was supposed to help restore the competition in the oil industry.

*The “actual” situation of the company* (Greenspan, 1962; Bork, 1978; Armentano, 1982; DiLorenzo, 1985). Standard Oil was a major player in the development of oil industry in the 19th century and had evolved from a small company in Ohio in 1870 (with a market share of approx. 4%) to a multidivisional giant conglomerate in 1890 (with a 85% share of the domestic oil refining). The growth was driven by: careful negotiation of contracts; smart investments in research and development; reductions in transportation costs; strict financial accounting; vertical and horizontal integration to achieve improved returns; massive investments in tanks and pipelines for more effective control of the transport of crude oil and processed products; managerial innovations.

This overall internal efficiency enabled it to purchase other businesses and to manage its additional assets following the same criteria of efficiency and even expand the operations abroad. Efficiency increased enormously the company’s success: it kept costs down and put on the market refined products at increasingly smaller prices. All this was achieved in a market open to competitors: in 1911 (the year of the lawsuit) it lost in favour of the competitors a significant part of the market share: from 85% in 1890 to 64%; in 1911, there were about 147 companies in the sector (even large ones – Gulf, Texaco, Union, Pure, Associated Oil and Gas, Shell). Technological changes in the market and the dynamics of oil discoveries stimulated the development of the market.

The antitrust case against Standard Oil would have to prove that the company reduced production, increased prices and was engaged in fierce business practices against suppliers and competitors, but it had not done so. The (lower) court which condemned the company in 1909 “discovered” just that the formation of the “Standard Oil of New Jersey” holding in 1899 denoted “a contract that restricted trade”. However, the process did not prove that kerosene prices were raised because the production had been reduced or that the rebates got from the railways for transportation had been dishonest. The court did not rule on substantive economic issues, with clear-cut injuries to third parties.

The decision from 1911 against Standard Oil enshrined the principle of the *rule-of-reason* in antitrust, under which “any reasonable mind would conclude that Standard Oil had acted unreasonably”; fact perpetuated on how the Supreme Court’s verdict confirmed what was previously decided. The Supreme Court’s conclusion was that some actions of Standard Oil (*i.e.*, mergers) showed a clear intent to monopolize and considered those practices as “unreasonable”. But neither the (lower) court nor the Supreme Court carried out at that time any detailed analysis of the market performance of Standard Oil (as they will later proceed in cases where the monopoly rule-of-reason applied).

The case of Standard Oil can hardly be cited as evidence that monopoly is an organic problem of the free market or that antitrust regulators are necessary to protect the people from the private economic power as further research on the oil market in the US (reviewed by Armentano, 1982; DiLorenzo, 1985) showed that: the production of petroleum products rose and prices fell throughout the nineteenth century, so the market was competitive; the company was not engaged in practices that looked like “aggressive” business operations (such as slashing prices for grabbing market share), but performed relatively in accordance with (while better than) the rest of the industry.

***Meta-methodological limitations of the empirical analysis***

The reason for which profitability is used as a measure of monopoly power is the belief that, under conditions of perfect competition, profits tend to be dispersed – the existence of long-term profits could indicate that competition has been restricted. Furthermore, some empirical studies even suggest that certain expenses, such as advertising or product differentiation, be included in profit when measuring social costs derived from monopoly power, in order to get a “more accurate” picture.

But both approaches are problematic:

- most empirical studies use the accounting profit to draw conclusions about profit(ability); this measure is questionable, for the “accounting profit” takes into consideration only the explicit costs, while the “economic profit” is more suitable, incorporating implicit costs as well (*i.e.*, the costs of own resources);
- the legal monopoly and the market monopoly could be interconnected in the real world: tariffs, quotas, licenses and other legal restrictions always tend to generate economic rents in markets that would otherwise be competitive; the mere contemplation of the profit indicator can hide the real source (efficiency or privilege);
- there are made comparisons with imaginary data derived from perfect competition equilibrium: this is irrelevant in any aspect of resource allocation in the real world, where both profits and losses are essential in providing critical information and incentives, long-term profits denoting (yet) unsurpassed efficiency;
- uncertainty, risk and innovation are not short-term market “impairments”, to be “abolished” *à la longue*, but perpetual market process aspects;
- advertising or differentiation are not burden on the society’s welfare; they are not social costs, but means to conform to the markets’ dynamics.

In short: *per se*, profit does not show inefficiency / social burden; regression empirical studies focusing on profit and concentration cannot constitute a solid guideline for antitrust law. The institutional analysis in terms of respect for property rights remains a more coherent instrument.

***“Policies” in the “image and likeness” of the state***

The clarifying of the ownership problem comes with light being shed on another issue: the nature of the state and of its acts. We open here a parenthesis on this subject to understand how the *economic analysis in terms of property* – which opposes, counterfactually, the effects of an action respecting the natural sense of ownership against the effects of its alternative (or vice versa) (Jora, 2013) – can meaningfully decode even the impact of those actions that are formally legalized/legislated.

Ensuring the welfare of society can be done by maximizing the satisfaction of individuals in the community either by “economic means” or by “political means”. According to Oppenheimer (1914, pp.24-27), “*I propose... to call one’s own labor and the equivalent exchange of one’s own labor for the labor of others, the «economic means»... while the unrequited appropriation of the labor of others will be called the «political means». The state is an organization of the political means*”.

Through its feature of (self-titled) legally coercive monopoly in a given territory (including the means for maintenance and perpetuation of this mechanism), the state has different effects on social welfare, depending on how its institutions and policies protect or prohibit citizens' peaceful actions. State interventionism varies in degree across countries, still creating dependency of *the economy* on the *government*.

Institutionalization / legalization of social practices is not insignificant: by systematically usurping legitimate private property, long-term adverse social effects are set in motion: people tend to join the class of beneficiaries from institutionalized expropriation (by fiscality, inflation, regulation) and to leave the class of its victims; the loss of "social" welfare is now unequivocal because some social needs cannot be met, inputs being diverted from what is deemed useful by legitimate resource owners.

#### ***"Legal(ized) monopoly" and institutional analysis***

Market monopoly theory has severe shortcomings. Only legal, state-imposed barriers in the way of competition can demonstrably create monopoly power (and inefficient allocation of resources) in the economy. Basically, at the urging of lobbyists, governments establish licenses / certificates of compliance / legal franchise / quotas (for domestic and international trade) which have the final effect of "restricting market entry, reducing production, and rising prices".

This means that companies / suppliers that might have entered voluntarily on the market, engaging in free exchanges with customers, are legally prevented from doing so, consumers cannot buy additional production at low prices, and innovations that could be introduced by the new suppliers are delayed or even lost forever, therefore "legally" distorting the workings of competition.

Legal / state monopoly power (legal restriction on commerce) can really reduce – in an economically unjustified manner – the supply in the market and raise the prices. Such output restriction is not voluntary, is not a result of an imbalance, there is no voluntary refusal to trade (potential buyers and sellers are most likely willing to interact mutually beneficial, but are not allowed by law).

Potential suppliers are not excluded because they might be less efficient and thus waste consumers' money, but precisely because they are able to outperform their protected competitors. In fact we need to accept the assumption that some potential competitors are more efficient than the existing producers (otherwise these legal restrictions that block their market access would not be necessary).

In addition, for protected business organizations, the incentives are to maintain and extend the current restrictions that legally exclude the potential competitors. For this, resources are invested, more or less occultly (nevertheless wasted, in a societal sense) to perpetuate legal privileges and monopoly rents. Summing up, ironically in a sense, *all "neoclassical" criticisms to monopoly are precisely valid exclusively for the legal (state-imposed by explicit policies) monopoly.*

### 3. “Pro-competition” policies. A non-romance history

“The world of antitrust is reminiscent of Alice’s Wonder-land: everything seemingly is, yet apparently isn’t, simultaneously. It is a world in which competition is lauded as the basic axiom and guiding principle, yet «too much» competition is condemned as «cutthroat». It is a world in which actions designed to limit competition are branded as criminal when taken by businessmen, yet praised as «enlightened» when initiated by the government. It is a world in which the law is so vague that businessmen have no way of knowing whether specific actions will be declared illegal until they hear the judge’s verdict — after the fact.” (Alan Greenspan, “Antitrust”, in Ayn Rand, ed., *Capitalism: The Unknown Ideal*, 1962)

Economic and legal “folklore” and part of the scientific literature received enthusiastically the *Sherman Act* of 1890 (Posner 1976; Kovacic and Shapiro, 2000), although neither sound economic theory (which accuses the government for granting privileges for monopolies, these not being specific to the free market) nor history ever documented convincingly (and it couldn’t have so in the absence of a correct theory) a reality such as that sanctioned by law. Moreover, from the end of “The Civil War” until the end of the 19th century, America was faced with constant deflation – the consumer price index was steadily declining, thus the haunting dilemma is how prices declined steadily (for four decades) if industries became increasingly monopolistic.

The history of both Senator Sherman and the Republican Party at the time was one of a devoted protectionism, arguing systematically for higher custom duties – and common sense could not ignore the close link between trade protection and the development of domestic monopolies. Only later on, the media and the public decrypted the true nature of the antitrust regulation. For instance, *The New York Times*, the main newspaper from the US, “turned its guns” against the *Sherman Act*, after initially being friendly to it, following the passage of the hyper-protectionist *McKinley Tariff Act* whose designers and beneficiaries were, coincidentally, the corporate contributors to the Republican Party. *NYT* understood that the *Sherman Act* fought against – yet, hypocritically – the “law of unintended consequences” of their own and previous policies.

The arguments used to justify the law were coarse, resting upon the refrain of “bigger business means more cunning, worse, uglier business”. Large companies allegedly bribed public officials (while the scenery was full of “persuasive” lobbies of small businesses as well), were protectionist (though finally politicians do politics and policies), charged predatorily small prices (the standard of judgment was rather “humorous” than scientific), abused their customers (obviously, everything that is not free seems to have a high price), defrauded investors (but for that we already have the criminal law) and dangerously concentrated wealth (however, public statistics say that income in 19th century America was divided in a very pro-labour proportion: work took 70%, while “capital” the rest). Yet, perception and interests too often overcome reality.

Even before the enactment of the *Sherman Act* by the Congress, the antitrust state regulations clearly showed that certain interests determined the lawmaker to try to suppress competition for the peace of some. The passion and pressure for antitrust laws began in the Midwest, from the farmer groups (notably, not from the industrial capital). In response to the formation of large farms that enjoyed the benefits of economies of scale and could reduce prices, farmers in Missouri started to organize themselves politically and, in 1889, an alliance of agricultural producers from St. Louis called their legislators for laws

“to suppress... all unhealthy rivalries”. Antitrust regulations had their “maculate design” coming from the very movement for suppressing competition.

### *The ages of US competition laws*

US competition law (see *Table no. 1*) is milestone for understanding how the law followed the “gains” in science, obviously in conjunction with the architecture of the political interests. The theoretical pillars of antitrust policies were developed from the neoclassical microeconomics framework and were refined by the theorists of the industrial organization, whose attempt was to integrate the “complications” of the real world (transaction costs, bounded rationality, entry barriers – associated with “imperfect competition”, but obviously relative by default to the perfect one). The *structure - behaviour - performance* perspective became the intellectual justification for the traditional antitrust policies during 1950-1960s.

In the 1970s, there was a “small revolution” in the industrial organization theory which disputed the lineage *concentration - inefficiency / monopoly profits*, and the authorities became slightly more cautious in the application of antitrust laws, being charged fewer cases of mergers and shifting the focus rather on manipulated prices practices. The Supreme Court showed openness for the use of the *rule-of-reason* approach in antitrust law because orthodox microeconomic analysis seemed to offer inconsistent and incomplete conclusions. Later, Bush Sr. and Clinton administrations reversed this trend and the hostilities towards anti-competition behaviour (defined in neoclassical rite) were back in place, and the antitrust crusade was fashionable once again.

**Table no. 1: A chronicle of the competition legal scenery in the US**

Year/s	Law / main provisions
1890	<b>Sherman Antitrust Act</b> (the first law aimed at defending competition) was adopted as a result of the concern expressed at the end of 19th century in connection with the increasing number of agreements in the field of railways, oil and banks, which might have threatened the stability of economic and political system; the law presents situations in a broad sense (Section 1 – <i>collusion</i> : all those contracts that restrict trade are illegal; Section 2 – <i>monopolization</i> : it prohibits monopolization or attempted monopolization on the exchanges made between states or with foreign nations) and its interpretation was left to the Courts of Justice.
1914	By <b>Clayton Antitrust Act</b> (complementing the Sherman Act), four types of restrictive practices were included in the sphere of illegality: <i>price discrimination</i> , <i>exclusivity contracts</i> , <i>binding agreements</i> and <i>acquisition of competitor companies</i> (in either cases, the practice was considered a malpractice only if its effects reduced competition or when it created a monopoly).
1914	<b>Federal Trade Commission Act</b> aimed to establish this administrative body with restricted judicial powers which could pull hearings of alleged violations; Section 5 of this law considered that <i>all unfair competitive practices</i> were illegal and depended on the Commission to establish exactly which were the practices that fell into that category; The Federal Trade Commission had authority rather over the civil sphere, while Sherman Act dealt with practices that could constitute criminal offenses.
1936	<b>Robinson-Patman Act</b> (complementing the Clayton Act) against <i>price discrimination</i> sought to prevent the elimination of small firms from the market due to the expansion of national chain retailers.

Year/s	Law / main provisions
1950	<b>Celler-Kefauver Act</b> , reforming and strengthening Clayton Act, aimed at supporting the <i>merger control</i> , which enabled the government to attack certain categories of vertical and horizontal transactions which hitherto could not be subject to judicial review.
The 1960s	It is the period of extreme activism in US’s competition policy, the horizontal mergers which had the effect of obtaining economies of scale are blocked in order not to eliminate less efficient competitors from the market.
The 1980s	Starting with the 1980s, the perspective of the authorities has changed radically. The <i>efficiency criterion</i> is being promoted in assessing the compatibility of business practices with the objectives of competition laws, so they are not classified as anti-competition <i>per se</i> . A business practice that seemed anti-competitive at first was regarded as pro-competitive if it generated increase in efficiency of resource allocation in the economy and in consumer welfare. Under the mandate of W.F. Baxter, the investigations of major companies, like ATT and IBM, are closed and the attitude to vertical agreements (producer - distributor) and concentration (especially horizontal, between competitors) became more favourable.
The 1990s	In the '90s, the US government began to use game theory to combat collusion in two ways. Firstly, the US Department of Justice decided to grant immunity for a member of a cartel which provided information on the existence of that cartel. Secondly, the government decided to condemn the kind of behaviour that facilitated coordination, and not just coordination itself. In this phase, antitrust policy focused more its attention on innovation, as proved by the issuance of explicit rules on intellectual property licensing.

*Source: synthesis after Muşetescu (2006)*

***The European experience and the competition laws***

The basic European legislation on competition (see *Table no. 2*) is a post-war “breakthrough” associated with the image that the outbreak of the conflagration was, among others, a consequence of economic concentrations in coal mining and steel production, which later became the backbone sectors for European reconciliation and integration.

The challenge of creating a single European market (as compared to the existence of a single market prior to enforcing competition policies, as it was the case in the US) has changed the perspective with respect to the anti-competition phenomena. The mere adding up of some territorial / national monopolies could not be equivalent (maybe only in blindfolded statistics) with the image of a “community-wide competition”.

We are talking about a historically deeply interventionist Europe at that time, with major difficulties in harmonizing the national interventionist policies on the background of gradual removal of trade (and other type of) barriers from the flows of value. The mission of the early artisans of European integration was a very delicate one: to generate openness and competition, but without upsetting disruptions inside the Community.

The target was to avoid the accumulation of “non-competitive” concentration on each national market and to ensure a sense of competition in conclave by focusing simultaneously on controlling vertical agreements, encouraging parallel trade and intra-brand competition, and disciplining national state aids (Muşetescu, 2006).

However, the residual, protectionist-interventionist mindset of many governments made certain barriers (which favour concentration) to be kept in hidden forms (*i.e.*, through harmonization, with the standards set so their achievement is more expensive for foreign third parties) or by outright designation of strategic “national champions”.

Without much detailing, a few differences in optics between the US and the EU regarding competition: if the American model is an investigative (*forensic*) *ex post* one, based on private complaints and with punishments applied also to the individual decision makers (not just holistically, penalising “businesses”), the European model is “bureaucratic”, based on notifications submitted to the European Commission and the obtaining of *ex ante* official approvals and is focused exclusively on firms.

**Table no. 2: (Basic) Competition laws in the European Union**

Law (year of enforcement)	Main provisions
<b>The Treaty which establishes the European Coal and Steel Community – ECSC (1951)</b>	It attests the first rules on competition in the European area, the aim being <i>to prevent concentrations</i> in this sector, considered an important economic factor in the outbreak of World War II.
<b>The Treaty of Rome (1957)</b>	The Treaty lays the foundation for the European Economic Community (EEC) and contains explicitly and extensively provisions on competition. Article 85 – prohibits agreements between companies Article 86 – prohibits abuse of dominant position Articles 90 and 92 – regulate the granting of state aid
<b>The Maastricht Treaty of the European Union (1991/1992)</b>	Article 81 – prohibits agreements between companies Article 82 – prohibits abuse of dominant position Articles 87 and 88 – regulate the granting of state aid Articles 28 and 86 – regulate monopolies and exclusive rights
<b>The Treaty on the Functioning of the European Union (2007)</b>	Article 101 – prohibits agreements between companies Article 102 – prohibits abuse of dominant position Articles 107 and 108 – regulate the granting of state aid Articles 34 and 106 – regulate monopolies and exclusive rights

*Source: synthesis after the European Commission*

#### ***The scepticism towards antitrust laws (synthesis)***

Returning to antitrust law, which is the materialization of (the dysfunctions of) the neoclassical theory of competition and monopoly, we can conclude the following:

- antitrust laws distort the nature of both competition (open process of discovery and adaptation under uncertainty, combining rivalry and cooperation between firms) and monopoly (its “abusive” power derives from legal restrictions on third parties with respect to rivalry and cooperation);
- history of antitrust regulations shows that laws served especially to shield inefficient companies with high costs, against low prices and innovation from competitors, fuelling inefficiency (more than 90% of disputes come following complaints from ineffective competitors);
- there is the assumption that regulators and courts have access to information about the “social costs and benefits” and about the “efficiency”; these are being revealed only through free competition in the market;
- by limiting the rights of owners and their agents to engage or abstain from engaging in voluntary agreements, the market signals are being corrupted;

- laws such as Clayton Act (Section 2) and Robinson-Patman Act have the explicit intention to restrict rivalry between prices in the name of maintaining / preserving competition; but the processes filed for antitrust price discrimination would lead to price increases, and this to the detriment of consumers;

- Section 7 of the Clayton Act, which restricts those mergers that would reduce competition, is destructive to the competitive process: the process by which production reaches the hands of a better management is being inhibited – delaying a takeover of a company is precisely what hampers its access to efficiency;

- firms that innovate a new process / product need to think about whether that innovation will give them an “unfair / unjust” competitive advantage or it will be “predatory” in the definition of the authorities and the assessment of competitors;

- reasonableness behind antitrust reforms was only administrative; the structural vice behind the representation of reality persists.

#### **4. Case Study. “Too big to fail” and captive customers**

“Size, we are told, is not a crime. But size may, at least, become noxious by reason of the means through which it was attained or the uses to which it is put.” (Louis Brandeis, “Other People’s Money: And How the Bankers Use It”, 1913)

This part of the analysis is devoted to the role of competition policy (including antitrust law) in bank regulation, especially large banks, the so-called “*too big to fail*”, which, supported by the state only for fear of chain reactions created by their possible bankruptcy, hinder the development of more productive entities, valuable resources being blocked from being transformed in needed goods and services and, of course, in jobs.

Comparing the response of regulators to the crisis in the European Union and the United States, we see that EU competition policy has played a significant role in shaping the financial regulation, and, therefore, this optic managed to avoid the development of giant banks (as a side effect of trying to stabilize the distressed financial institutions).

In the US, banks’ consolidation was a priority. There are authors (Foer and Resnikoff, 2014) who believe that the US should take the example of the EU approach to prevent financial crises, involving, therefore, the competition authorities in all actions that would have as consequence modifying the substantial structure of the banking sector.

#### ***USA: consolidation in the financial sector in response to the crisis***

The American financial legislation (intertwined with competition legislation – see *Table no. 3*) contains a continuum of acts that cross the economic cycles since the Great Depression, constituting aggravating and mitigating factors (here, the approaches diverge) for what usually is considered to be a *boom-bust* traditional business cycle (Berle, 1949). Beyond the greater or lesser accuracy of understanding the phenomenon of cyclicity (attributable either to mal-coordination of deregulated markets or to the falsification of key milestones in the economy – interest rates –, amid a myriad of different unfortunate regulations), invoking the logic of “*too big to fail*” banks has produced a great amount of excitement.

About these entities (whose propensity to oversize is subject in the US to prudential regulations specific to the financial sector, without being under the scrutiny of traditional



competition considerations), several opinions have been formulated: large financial institutions can ask prices artificially higher in some markets; their collapse is risky because of the size and interconnections in the economy; political connections create, besides addition to perpetual bailouts, a variety of legal immunity to other types of anti-competition actions (“*too big to jail*”); managerial restructuring is costly and difficult. In the US, somehow they have been treated as a fatality of the market, to be taken as such.

**Table no. 3: Legislation in the financial-banking field  
(with impact on competition policy) in the United States**

Law (year of enforcement)	Main provisions
<b>The Gramm-Leach-Bliley Act Amendment / Financial Services Modernization Act (1999)</b>	By this rule the provisions of the Glass-Steagall Act of 1933 cease (we speak of the law banning US <i>commercial banks</i> to run the specific activities of the <i>investment banks</i> , ban primarily aimed at preventing financing speculative activities on the capital market with people’s money drawn from deposits, an activity which caused, in the collective memory, the Depression of the 1930s; <i>universal banks</i> , in their search for specific skills to cope with competition, offered full range of financial services under one roof) and the way for banking deregulation is paved.
<b>Commodity Futures Modernization Act (2000)</b>	The normative act was introduced in Congress by the lobbyists of Enron and had <i>two major effects</i> : it allowed the <i>proliferation of derivatives on a single underlying asset</i> and <i>deregulated the market</i> – if for trading derivatives, in general, the seller was held responsible to report to various regulatory institutions and to write in the balance sheet the potential loss generated by the transaction, since the first days of 2001, for the instruments on a single support, it was no longer required reporting and, most dangerously, not even their disclosure in the balance sheet and provisioning; the result: Enron bankruptcy, then US banks collapsed and the <i>generalization of an unprecedented financial crisis</i> .
<b>Housing and Economic Recovery Act (2008)</b>	This act legislated <i>the state support, through the Federal Housing Administration, of the so-called “subprime borrowers”</i> for mortgage credits, in order to ameliorate the effects of the crisis. It is concerned with, primarily, the two mortgage funds, Fanny Mae and Freddie Mac, which are thus aided with capital.
<b>Economic Stimulus Act (2008)</b>	In the attempt to ameliorate the effects of the crisis, this law is adopted, which purpose is: <i>reducing taxes for individuals with middle/small income, granting tax incentives for businesses</i> and, once again, <i>helping the mortgage sector</i> .
<b>Emergency Economic Stabilization Act (2008)</b>	This law is a measure to save the financial system authorising the US Treasury Secretary-General <i>to inject government funds to troubled banks, whether domestic or foreign</i> .
<b>Troubled Assets Relief Program (2008)</b>	This program had as reference a similar program implemented during the Great Depression and the aim was that the US Treasury <i>buy toxic assets of troubled banks</i> . Goldman Sachs Group Inc., Morgan Stanley, J.P. Morgan Chase & Co., Bank of America Corp. (including Merrill Lynch), Citigroup Inc., Wells Fargo & Co., Bank of New York Mellon and State Street Corp. benefited from this.

Source: synthesis after Păun (2008)

For the decisions to take over the assets of weak financial institutions by stronger financial institutions – *memento*, JPMorgan took over Bear Stearns and Washington Mutual, Bank of America took over Merrill Lynch and Countrywide (the largest mortgage bank, for the takeover of which the Fed relaxed the normal requirements of capital), Wells Fargo took over Wachovia Corp., operations through which the degree of consolidation in the banking sector increased appreciably – the main actors were the US central bank (the Federal Reserve) and the Treasury, institutions with no responsibilities in the competition field (the exception at the table was the Antitrust Division of the Department of Justice). It was assumed, for reasons of celerity, that the mergers respected the antitrust legislation.

The economic problem that cannot be eliminated by the mere compliance with the law of the “*too big to fail*” thesis is the chronicity of the *moral hazard* – defined as some sort of a license to expropriate third parties (Hülsmann, 2006) – already existent in a financial banking system where there coexist a money production monopoly (*legal tender*), banks with “fractional reserve”, public guarantees for people’s deposits and a lender of the last resort (Dowd, 1996; Hülsmann, 2008) and where the financial sophistication coupled with public’s ignorance only pours fuel on fire. In such a web of “safety nets”, risks which are significantly above the level that would be tolerated in a free market are being taken, and when those risks become manifest, the remedy comes with high costs for the public.

If in the literature, it has been much talk about the *agency problem* and about the insidious manner in which the management can act towards shareholders (Berle and Means, 1923), making the erroneous imputation that the dispersion of ownership is the main problem, not the various legal regulations that obstruct the ability of owners to protect themselves operationally, through the market, from moral hazard (*i.e.*, antitrust law, acquisitions and mergers law, the insider trading law, the statutes of corporate contracts or labour legislation – for a broad revision, see Jora (2013)), the approach also applies to the opportunistic behaviour developed between corporations (*i.e.*, financial and banking entities) and the rest of the society, as a whole.

Changing the perspective, and viewing corporation as a managerial-shareholders compact, we can identify, in the framework of property rights, “victim-corporations” and “guilty-corporations”. The latter fall in moral hazard, getting decoupled marginally from the consumer and getting connected to the discretionary conduct encouraged by the state (*i.e.*, contracts from the government, public aid, privileged access to resources, monopoly privileges, trade barriers, prohibitive standards, delaying and burdening insolvency and bankruptcy procedures etc.). Translating such an image to the concrete financial-banking landscape (not just American) does not require much of a big imagination exercise, but only a lucid reading of common quotidian life.

The repair of the damage caused by the crises in the financial system is based on palliative reforms (the structure of these systems remains unchanged in the modern era, what has changed being the emphasis on some pre-emptive regulation – *i.e.*, “capital adequacy” and the suite of Basel agreements). Greater efforts are being invested in mobilizing public resources – more visible (fiscal, but reduced, especially for this reason) or less visible (inflated money supply through injections of liquidity in the system, which, by their very nature, are relentlessly inflationary and redistribute the purchasing power from the marginalized of the economic circuit).

The citizens are eventually losing from such an economic setup in three instances (situations that can be found either separated or overlapping for different people in society): *taxpayers* who bear through fiscality (by the paid taxes) or the reduced purchasing power of the national currency the bailouts of the “systemically important” economic players; *competitors* in the broad labour market (the financial sector, but also its extensions in the rest of the economy), where some jobs are lost due to safeguard-mechanisms that selectively save others’ employment; *consumers* of financial and banking services, where the quality and (real) price of these services are distorted as a result of *de facto* “cartelisation” in the financial-banking systems.

#### ***EU: pro-competition policies as part of anti-crisis treatment***

In an environment affected by a high degree of indebtedness in complex and overvalued financial derivatives, the crisis has brought serious problems in the European banking sector. Unlike the US, the EU has invoked state aid legislation – the *Treaty on the Functioning of the European Union* (Art. 107) – and the European Commission (EC) has explicitly assumed the role: “[G]iving up on competition was the surest way to waste state aid funds and hurt consumers as they began to hurt from job losses, home foreclosures, and the general economic malaise.” (Kroes, 2010); “It is our responsibility to make sure that companies genuinely compete rather than collude and that the markets are transparent, contestable, and open to innovation.” (Almunia, 2012). EC has focused on three goals: financial stability, integrity of the internal market and ensuring that the aid beneficiaries will balance their financial situations on the long run and will not get addicted to public money. Though smaller than in the US, the state aid to banks has still been significant.

Since the early months of the financial crisis (November 2008), the EC drew up a “European Economic Recovery Plan” (EC, 2008) with a primary role of state aid for troubled banks. It started from the idea that the proper functioning of the real economy is vital to ensure financial system stability. Consequently, in 2008-2009, the EC adopted specific rules on state aid, aiming, on the one hand, to recapitalize banks or save their assets and, on the other hand, for banks to increase guarantee provisions to reflect the actual risk profile and to present, due to public financial support, a restructuring plan (Diaconescu, 2009; GebSKI, 2009; Howard, 2009; Larosiere, 2009; CEPR, 2010).

During October 2008 - October 2011, the EC approved state aid for the financial sector of 4,506.5 billion euro (36.7% of EU27 GDP) (Câmpeanu, 2011). By 2015, 112 banks (approximately 30% of the EU banking system) received state aid (Adamczyk and Windisch, 2015), the member states provided almost 2,000 billion euro, the bulk of this amount being intended for government guarantees, meant to cover obligations of banks but also other types of liquidity support, recapitalization and impaired (“toxic”) assets coverage. Between 2008 and 2014, the General Directorate for Competition of the EC issued over 450 state aid decisions, causing the restructuring of banks given support. According to estimates made by Adamczyk and Windisch (2015), the effectiveness of the measures to restructure the banks was proven by the fact that almost 25% of the entire banking system of the EU has been restructured (still “efficiency” should be taken *cum grano salis* since assessments made outside the market framework).

There are both favourable and unfavourable opinions on the EU’s approach on competition during the crisis (Foer and Resnikoff, 2014). *Pros*: competition policy coordination to

regulate systemic risk led to a low degree of concentration in the banking field; even if banks benefited from state aid, it seems that they did not have an increase in market share; this coordination protected competition, thus avoiding unnecessary consolidation in the sector. *Cons:* EC has been criticized for having granted, however, too much freedom to national authorities in protecting local banks (if the actions of member states do not exceed certain limits, they are managed locally, without notifying the EC); too much attention was paid to stabilize banks by public funds; imposing strict conditions for financially assisted banks, which produced some destabilization. However, looking at the basic architecture of the modern banking, we can say that the differences in approach between the US and the EU looked to be of *degree* and not of *kind*.

### Conclusions

The presence in the title of our paper of the expression "dialectical contradictions" is only apparently metaphorical. If *dialectics* is a method of philosophical argumentation, of investigation upon reality, involving a discursive tension between two elements / entities that oppose one another (in the form that was consecrated by the Plato's philosophy of Socratic dialogues, it involves a dialogue between "interlocutors in opposition", and, as restated by Hegel, it presupposes an intra-concept dialogue between opposite meanings with the purpose of refining the idea in one's mind), *dialectical contradiction* can be understood in two ways: either as a game of opposites in incurrence of scientific truth or as irreconcilable tension between the premises of communication and its materializing. Both of the above meanings fit the analysis of the theory and policies *in use* regarding competition (which we have "tested" through a "counteroffer" that underlined their limits).

The organizing of this analysis was conducted on two major levels: a brief critical incursion *among theories* dedicated to competition (and also to the place reserved for the "consumer") and, respectively, one *among public policies* (on the one hand, those explicitly called "pro-competition" policies, and, on the other, some of those with which the first ones cohabit in the mixes of public policies, with an emphasis on the conflict between the imperatives of "systemic stability" and the imperatives of "strengthening competition" in the financial sector – present in the "*too big to fail*" doctrine). Thus, we underline that the neoclassical *theory* sins when offering, in solving the problems of the reality, a deeply unrealistic standard (perfect equilibrium), where competition as a process is absent and where the problems raised are impossible to be detected precisely in that kind of framework (the "social welfare losses" due to "monopoly prices" are indiscernible on a free market).

In the area of *policy*, we have seen how, in the extension of the theoretical ambiguity of neoclassicism (ignorant to the "objective" reality of the subjectivity of value, but also to the institutional analysis of social welfare), despite positioning – in an exaggerated declamation – of the consumer (in his hypostases as taxpayer or competitor on the labour market) at the heart of the state concerns towards ensuring a competitive environment, the consumer remains the silent victim of welfare losses. Fundamentally subjective, thus impossible to commensurate, compute and compare by the outside observers, these losses can be discerned only counterfactually, relative to a situation where the process of competition would be simply free (from state granted privileges and "legal" obstacles on market entry, levelled against domestic or foreign undesirable players), based on the respect for *private property rights* and *voluntary contracting* of all economic actors.

Therefore, after we had systematized and synthesized the arguments from the economic literature, pointing out the shortcomings of the conceptual neoclassical theory of competition, we revealed the most pertinent criticism as coming from the classical economy, recovered and restored by the *Austrian School of economics and political philosophy*, exposing unambiguously the flaw in neoclassical theory: the lack of a coherent *ethical* scrutiny on the *economic* process of competition. Then, after a historical overview of pro-competition legislation (focusing on “antitrust” diatribes), we analysed the financial and banking “consensual redistribution”, crucial to the economy, but affected by an ill-suited design and by privileges granted for actors of “systematic importance”, by means of the “conflictual redistribution” (tax, regulation, inflation). These create the prerequisites for various economic behaviours disconnected from the consumers, but finally borne by them.

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