THE EUROPEAN COMMON POLICY ON MERGERS COMPETITION AND THE ABUSE OF DOMINANT POSITION

POLITICA COMUNITARĂ ÎN DOMENIUL CONCURENȚEI, FUZIUNILE DE FIRME ŞI ABUZUL DE POZIȚIE DOMINANTĂ

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Abstract: *On 21 September 1990, was adopted The European Merger Control Regulation (Regulation Council of Europe. 4064/89). This act allowed the Commission to investigate and control the size those mergers on 'European' level. Mergers where firms face restrictions from the European Commission, these companies have two options: to abandon the merger or to negotiate with the Commission to accept the merger terms. producers and distributors related vertical restraints may have stimulating effects of competition, when you want to increase market penetration possibilities, restrictions are justified for a certain period of time.*

Key words: *European Common policy, competition, market, restraints, economy*

Until 1990, there was no regulation at EU level relating to mergers of companies. Only concerns who obtained a dominant position or restricting competition in the market were investigated in accordance with Article 82.

On 21 September 1990, was adopted The European Merger Control Regulation (Regulation Council of Europe. 4064/89). This act allowed the Commission to investigate and control the size those mergers on 'European' level, while smaller mergers remained still subject to national competition policy. Mergers sized companies 'European' was declared those whose turnover exceeds 5 billion Euros and at least two companies have a turnover component of 250 million Euros.

An exception is those mergers in which companies obtain more than two thirds of their turnover in one Member State, in which regulation cannot be applied. Special analysis criteria apply to mergers of financial institutions. The merger, if the dimensions were "European" and notified to the European Commission, which then investigate whether they were compatible with market economy.

In a first phase, the European Commission decides within one month, if the result of the merger creates a dominant position or restricts the market competition. If so, start a second phase of investigation, for a period of four months, which have as a final proposal for measures of constraint for that company.

A critical evaluation of the regulation on merger control authority was made by Bishop.[1] Until 2002, for example, the European Commission examined nearly 2120 of intent to merge. Of these, 2013 have led to evidence of "serious delays" and were approved, following the first stage of analysis. Of these, 54 were removed from the impact of Regulation, 1816 have been considered compatible, 127 were considered compatible with the competitive environment, and 22 were targeted for analysis in the Member States. 107 companies have come and the second stage of analysis. Of these, 22 were allowed to operate without a restriction, and 62 with certain conditions imposed. In 18 cases fusion was not allowed, and in 4 cases it was considered that market competition is eliminated.

Mergers where firms face restrictions from the European Commission, these companies have two options: to abandon the merger or to negotiate with the Commission to accept the merger terms. In 1997, the merger control Regulation was revised and adopted in accordance with the Green Paper (European Commission, 1996). In the same year the European Commission published a consultative Green Paper on Vertical Restraints.

However, it was found that many mergers of companies, whose activities affect the economy of many countries, the European Commission was not notified because they did not meet the criteria of turnover.

[1] Bishop M., *European or National? The Communitty's New Merger Regulation,* Oxford University Press, Oxford, 1993, p.56

Vertical restraints are evaluated case by case, according to the strict application of the provisions of Articles 81 (1) and 81 (3). However, the economic effects of vertical restraints are much lower than for horizontal restraints.

Vertical restraints can be deliberately used to limit competition. For example, Volkswagen was fined 30.96 million Euros for that instructed its German dealers in the period 1996-1997, the new VW Passat not to be sold at a price lower than the recommended retail price. However, the single market has created opportunities for firms to enter new markets, a process that was facilitated by the development of efficient distribution systems. Therefore, producers and distributors related vertical restraints may have stimulating effects of competition, when you want to increase market penetration possibilities, restrictions are justified for a certain period of time.

These features refer to:

- the increase standardization and quality by redistributing specialized outlets;
- the exploitation of economies of scale by focusing on a limited number of sales outlets;
- the encouragement of investment for the introduction and development of a certain brand.

In conclusion, vertical restraints can enhance competition if:

- Single Market legislation is widespread;
- vertical restraints imposed by EU governments shortly expire;
- important changes occur related to methods of distribution.

As a result, the European Commission was forced to make policy more coherent and consistent in relation to vertical restraints. Commission had to acknowledge that the provisions in this field so far, were too rigid.

Since 1999, the European Commission introduced new restrictions analysis criteria as follows:

- restrictions on two or more companies who buy, sell or resell goods and services;
- restrictions on the two companies on procurement barriers or the use of intellectual property rights or know-how.

These restrictions are made public and shall apply for a limited time. This liberalization policy treatment of vertical restraints closes to EU in the area of the United Kingdom.

Abuse of dominance is a relatively abstract concept, introduced by the legislature in the Treaty, the concept is not fully expressed and explained in its text. European Court of Justice gave a definition of abuse of dominance comprehensive concept that abuse is about the behaviour of an entrepreneur in a dominant position, which allows it to influence the market structure.

Following the simple presence of contractor concerned, the degree of competition is low and, through manoeuvres that are not related to conditions of fair competition, mitigation provides a degree of competition in the market or competition stops short term the environment. European Court of Justice ruled for the first time on this issue in business Hoffmann Laroche, then the definition of abuse of dominant position being taken fully into practice Community competition law whenever it was necessary to identify an abuse of dominant position in absence of proof international element.

The concept of abuse of dominance highlights a number of aspects such as:

- the objective character of abuse: Abuse to be held is not required proof of subjective attitudes (intent or negligence), although this abuse can be committed with guilt. Community case-law created the concept of abuse "automatically" on the application of Article 90 (now Article 86) of the Treaty text that the EU Member States may give special or exclusive rights of firms subject to competition rules. Although creating a dominant position by granting such rights is contrary to Article 82 of the Treaty, if the company concerned, by the simple example of rights have been conferred, exploit their dominant position or abuse these rights gives the opportunity and ability to commit such abuses, we are in the presence of abuse "automatic" and the establishment of such abuse should lead to the abolition of privilege recognized by the national law firm in question;
- the distortion of competition: the abuse to falsify competition affecting trade. In most cases, counterfeiting occurs in the market competition has been highlighted dominance, but abuse can be

recovered in a neighbouring market or related to the dominant. This is the statement made at the Competition Council sanctions photographers' obligation to buy holograms and thermal paper from the dominant operator market specific supplies digital technology, the effect of inflating the price consisting of photographs (Decision no. 127 / December 7, 1998).

In the event that market operators are, as a whole, dependent on a product or service, that is when they cannot escape the conditions imposed by the dominant firm, they can prove abuse.

Another common situation is when a dominant firm, usually a monopoly, use this rule to prevent another company separate but derived to develop normally. We are in the presence of distortions of competition on a neighbouring market or related to the one dominant power is exercised in this situation is applicable theory of "essential facilities". This theory holds that the hypothesis mentioned should be considered to limit the right which belongs, in principle, not a monopoly contract with any potential client.

In this sense, exemplified business Magill, the ECJ[2] considered abusive behaviour of dominant firms in a market of a competitor to refuse to provide services essential to a neighbouring market performance of its business. In the case cited, was the holder of intellectual property punishable offense to deny its license, given that essential information was refused and no alternative for the business competition on a neighbouring market;

- affecting the interests of buyers: the manufacturer's abusive practices have been the dominant purpose or result, in addition to affecting trade and harm consumers. Community legislation include rigorous regulations on consumer protection;
- special duty of care in the structure of competition: the particular responsibility of the company in a dominant position in the market is the extent of its power, in that without prejudice to effective competition on the relevant market. If the competitive structure is already weakened by the very fact of his presence, it is likely to constitute an abuse

[2] C.J.C.E.-06 aprilie 1995, af. C241/91 P şi C 242, Rec. I 743.

of dominant position operating under the conditions that change the competitive structure resulting from a dominant fact of the company, and this is objectively unlawful.

In this area, to set a standard case-law, Community law often noting that "a dominant firm has a special responsibility not to prejudice and undistorted effective competition in the common market"

In order to apply the provisions of Article 82 EU, two conditions must be fulfilled, namely:

- dominant firm: when assessing the economic strength of a company, the European Commission is considering economic market share and other factors, e.g. the existence of other competitors in that market credibility, there is a company's own distribution network existence of a corresponding company access to sources of raw materials. These factors enables the company to stand above the existing competitive market conditions at a time;
- company dominates the common market or a substantial part of this market: it was considered that having a part of a market share greater than 60% appears to be sufficient evidence of a dominant position, except in extraordinary cases. The company may have a dominant position even if it has 25% of the market, but provided that the rest of the market to be occupied by many small firms.

Based on these elements, we can determine the general criteria for identifying abuse of dominant position. Effective business is conducted in order to conquer markets until they can determine the position really strong. Holding a dominant position is not wrong in itself, which is actually the result of the activity efficiency of companies. But if the firm uses its power to stifle competition, there is an anticompetitive practice qualified as abuse. A firm has a dominant position when its economic power enables it to operate on the market regardless of the reaction partners, intermediaries and final consumers. Under these conditions, the company has a dominant position may be tempted to abuse that position to maximize revenues and to strengthen market position either by loosening and removing competitors or by denying access to a market new firms.

Basically, dominant firms may carry out actions that could harm other market participants, for example by charging excessively high prices or by giving discriminatory advantages to certain clients.

These practices are likely to distort competition, the European Commission being able to react against these companies, punishing them severely. Concentration of economic power is a threat to achieving the goal of true and fair competition.

The state has the obligation to take all the legal measures, in order to maintain the economical and social structures in order to protect the trust of its citizens[3].

The damage caused by the infractions in the business field has effects both over the public and private life and involves a series of consequences in numerous fields[4].

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