ECONOMIC CONCENTRATION IN THE CONTEXT OF THE WORLD ECONOMY GLOBALIZATION

Berinde Mihai

University of Oradea, Faculty of Economic Sciences, 12, Dogarilor Street, Bucharest, Romania, Email: mihai.berinde@yahoo.com, Tel: +40 (0) 720 07 77 77

Abstract: *This paper has as main objective to emphasize the importance of a permanent control activity on the economic concentration operations. In order to assure an appropriate choice as concern the economic concentration to be submitted at the assessment procedure each country has its competence to establish its turnover ceilings opening the procedure in accordance with the priorities of its own economic policy. As a final conclusion, we stress that economic concentration assessment and competition policy as a whole are very dynamic activities asking permanent legal and procedural adjustments in order to take appropriately into account economic interests of the country as well as the evolutions registered on regional and global level. This approach is the most valid in the case of Romania taking into account its recent accession to the European Union and its more and more important involvement in the regional and global cooperation.*

Key words: economic concentration notification and assessment, abuse of dominant position, turnover ceilings, regional and global cooperation, competition policy, international trade rules

1. Introduction

Globalization is a specific process of the world economy evolution during the last period of time. This process is characterized especially by: more and more liberalized international trade; increase of market dimensions; setting-up of undertakings which are developing strategies for more important number of consumers etc.

Even from the beginning, in parallel with the globalization process, international practice established another concept which treated the economic issues at regional level. These two processes, regionalization and globalization have been considered initially in contradiction. But international practice proved that they are fully complementary. Indeed, it was proved that the solution at regional level of different problems opened the way for consensus at international level. At the same time, the establishment of international rules, within globalization process, has facilitated conclusion of regional agreements in order to find out appropriate solutions for specific existing problems among the countries from the same region.

During the time it was proved that both processes have positive and negative economic effects and under these conditions countries have been encouraged to define rules able to assure the development of these processes. This approach has been adopted exactly for avoiding that negative effects cancel the positive ones. A very good example in this context is the international trade liberalization. So, the elimination of tariff and non-tariff barriers in international trade had as direct result the price decreasing due to the cost reduction with custom duties and administrative formalities at the border. All these positive effects of trade liberalization would be compromised in absence of very strict rules for competition policy. Indeed, implementation within liberalized market of the competition rules had the role to avoid cartels or abuse of dominant position. Otherwise the positive effects of the liberalization were transformed in the negative ones and consumers had to pay increased prices which did not take into consideration the respective liberalizations. It was a simple example in order to demonstrate from the beginning of the paper how important is the competition in context of the liberalization of the economy.

As Porter said, "Competition is essential factor for the success and for failure of undertaking. It establishes appropriate activities of company which might contribute at its performance, as for example innovation, a culture and right implementation[123]". Economic concentration is a reality more and more well defined in the context of economic development, having in mind that it increases the dimensions of the companies and sets-up the prerequisites premise for an abuse of dominant position on the market, what is strongly against the competition rules. This is why the authorities of any country pay a great importance to the

[123] Porter M, Competitive Advantage, Teora 2001

assessment of economic concentrations implemented on their markets. The aim of this work is to offer a response at the practical needs imposed by economic concentrations. More exactly, the aim is to define in which extent the economic concentrations have to be assessed for administrative needs or they are imposed by economic realities and by economic priorities, in the context of economic regionalization and globalization.

2. Economic concentration concept at European level

The setting-up of the Single Market produced important changes in the field of competition rules applicable for economic concentrations at European level. All these changes imposed the definition of the legal framework for merging and acquisition rules in order to assure a fair competition on the market.

So, the European Council adopted the Regulation no. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)[124]. In accordance with this Regulation, a concentration shall be deemed to arise when a change of control on a lasting basis results from:

a) a) The merger of two or more previously independent undertakings, or

b) b) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings.

3. Economic concentrations submitted to control procedure

Following an economic concentration it may result undertakings acting on one or on many markets. In accordance with competition rules in place in Romania[125], economic concentration are illegal which, having the effect of creating or consolidating a dominant position, lead to or are likely to lead to a significant restriction, prevention or distortion of competition on the Romanian market or on a part of it. Under these conditions it is obviously that we need to define as well as possible the competent authorities to assess economic concentrations, the conditions for assessing economic concentrations and the criteria to be taken into consideration for such assessment.

3.1. Competent authorities

Each country has set-up a Competition Authority which has to be professionally independent institution in order to be able to adopt right decisions without any kind of administrative or political influence.

At EU level an economic concentration having a Community dimension is assessed by DG Competition, and authorizing decisions are adopted by Commissioners. It is evident that European Commission doesn't asses all economic concentrations, giving the competence for National Competition Authorities from Member States to play an active role in this field.

At the same time, by legal framework put in place, European Commission defined cooperation procedure between National Competition Authorities from Member States and DG Competition, in order to assure harmonized procedures for economic concentrations assessment. By this way it was avoided a complication of the assessment procedures and their transformation in administrative obstacles with negative impact on economy.

3.2. Conditions for economic concentration assessment

In the most part of countries we meet some turnover ceilings established for starting the assessment procedure for the economic concentration in order to authorize it. Having in mind these elements I present below turnover ceilings practiced in Romania and in European Union.

So, in accordance with Romanian Competition law[126] the assessment procedure do not apply to economic concentrations where the aggregate turnover of the undertakings concerned does not exceed 10 Million Euro, and there are not at least two undertakings on the Romanian territory, a turnover exceeding 4 Million Euro.

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[124] OJ L 24/29.01.2004
[125] Article 13, Competition law no 21/1996, republished
[126] Article 15, Competition law no 21/1996, republished

The economic concentrations exceeding these turnover ceilings are subject to control and must be notified to the Competition Council.

European Union is on the other side as concern turnover ceilings. In principle the specific Regulation has to be applied to all concentrations with a Community dimension[127].

1. In the case where Member States are involved in the merging procedure, a concentration has a Community dimension where:
   - The combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5000 million, and
   - The aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million,

unless each of the undertakings concerned achieved more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.

2. In the case where three or more Member States are involved in the merging procedure, a concentration has a Community dimension where:
   - The combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2500 million;
   - In each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EURO 100 million;
   - in each of at least three Member States included for the purpose of point b), the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million, and
   - the aggregate Community-wide turnover of each at least two of the undertakings concerned is more than EUR 100 million,

unless each of the undertakings concerned achieves more than two-thirds of it aggregate Community-wide turnover within one and the same Member State[128].

Comparing these two examples it is easily to see the big difference between the levels of turnover ceilings as they are mentioned in Romanian and European legislation.

It is also important to point out that taking into consideration dimension of Romanian market, the level established for turnover ceiling is the most reduced, comparing to other Member States.

Having in mind that this very low level has been established in 1996, before Romanian accession to EU, it is worth to assess if it is not appropriate moment to adapt it to European practice. The existence of such reduced level makes almost all economic concentration from Romanian market eligible for notification and authorization from the part of Competition Council.

Such situation leads to at least three negative effects, respectively:

a) Important delays in putting in place the economic concentration;
b) Excessive focusing of Competition Council on cases which are not very relevant from competition point of view under conditions where Romania became full member of EU. So, the authorizing procedure for economic concentrations is prolonged on an unjustified way;
c) Romanian undertakings are "punished" to remain at a reduced dimension and to compete with difficulty within Single Market.

3.3. Criteria for economic concentration control

All economic concentrations in which the turnover ceilings mentioned at point 3.2. are exceeded have to be notified at National Competition Authority or at European Commission in order to be assessed within an authorizing procedure.

[127] Article 1 (EC) Regulation 139/2004
[128] Pierre Martjissen, European Law Compendium, Club Europa 2003

In order to establish if an economic concentration operation is or not compatible with a normal competitive environment, the competent Authority has to take into consideration following criteria:

a) necessity to maintain and develop a real competition on the market taking into account the structure of all markets in question and the existing or potential competition among undertakings;
b) Market share held by the undertakings, their economic and financial power;
c) available alternatives for suppliers and users, their access to markets and supplies, as well as any legal or other barrier to entry on the market;
d) The supply and demand trends for the relevant goods and services;
e) The extent to which end-users' and consumers' interests are harmed;
f) Contribution to technical and economic progress.

Economic concentrations susceptible of leading to a significant restriction, prevention or distortion of competition on the market or a part of it may be allowed if parties involved in the economic concentration can prove they meet cumulatively the following conditions:

a) The concentration is to contribute to the increasing economic efficiency, enhancing production, distribution or tough lower real prices. Technical progress or increasing export competitiveness;
b) The positive effects of the concentration compensates for the negative effects restricting competition;
c) To a reasonable extent, consumers benefit from the resulting gains, especially through lower real prices.

Taking into account the mentioned criteria it is obviously the assessment of an economic concentration represents a very complex process which is asking administrative, legal and economic approaches. Economic approach became more and more important due to the development of regionalization and globalization of the world economy. This is why European Commission and the most part of National Competition Authorities set-up the Chief Economist institution in order to assure an accurate assessment taking into account all economic instrument as: macroeconomic indicators; a right definition of relevant market affected by economic concentration; a professional assessment of markets; a professional approach of international trade rules.

Lack of knowledge or of the capacity to assess all these economic aspects may lead to wrong decisions which affect seriously the economic development of a country. Indeed, an excessive division of economic operators through an administrative approach and the failure of economic criteria, reduce undertakings' capacity to compete with other stronger competitors.

4. Concluding remarks

The present paper has as objective to point out the main evolutions registered in the world economy towards a global approach and the manner in which this approach might be developed in order to assure a normal competitive environment and the protection of consumers' interests. This is why, I insisted in this paper on the need to make more and more professionally the assessment procedure of economic concentrations taking into account their economic effects for promoting economic development.

Main conclusions resulting from this paper are:

a) Globalization and regionalization are two realities of the world economy which are developed on the base of relatively strict rules in order to maintain a normal competitive climate which is mandatory for a healthy economic development.
b) Assessment and authorizing procedures are not mandatory for all economic concentrations. The aim of these procedures is to avoid to set-up new dominant positions on a market which could become an abuse of dominant position in the next step.
c) Each country may establish its own turnover ceilings for opening the assessment procedure for economic concentrations, taking into account the objectives of its economic policy.

d) Definition of the minimum turnover ceiling has to be done in accordance with economic priorities of each country and with already existing international practices.

e) Establishment of very low turnover ceilings creates important difficulties in the assessment procedure of economic concentration and leads to economic and competitive negative effects.

f) Economic approach in the assessment procedure of the economic concentrations is becoming more and more important because this procedure is a very complex one asking a very high professionalism in order to take into account all economic circumstances in which economic concentration has been achieved.

All aspects mentioned in the present paper allow me to conclude that competition is a very dynamic activity asking permanent legal and procedural adjustments in order to take appropriately into account economic interests of the country as well as the evolutions registered on regional and global level.

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