

ENGLISH SUMMARY

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Merger control and criteria for mergers' clearance

Mergers and their regulation in our today's global market belong without any doubts among one of the most vivid and debated European topics. Healthy competition supports global growth and economic efficiency - one of the goals of European founding treaties.

The aim of this thesis is to analyze EC driving forces in its merger control in the light of different substantive tests and approaches used, to point out at some main differences in the Czech competition law and also to attempt to outline potential future course of action by EU in that field.

EU merger law has been one of the fastest developers over past years. From its first Commission Regulation No.4064/89 European merger regulation has been over past years facing large changes responding to enlargement of EU, even more globalized environment, influence of US anti-trust approach, etc. Mergers became not only bigger but also more sophisticated in recent years including horizontal, vertical and conglomerate mergers thus requiring new approaches and sophisticated methods. One of the fastest growing areas within merger regulation is changing approach to philosophy of adopted test which shall prove whether there is EU interest to ban such merger.

To understand those changes, it is important not only to review historical development of EU legislation but also to analyze the most influential cases among others also in the light of different economic theories which prevailed in different periods.

EC has applied different tests to determine whether intended merger can harm market competition or not. Traditionally, the dominance test has been used. The dominance test derives its roots from other 2 branches of anti competition behavior therefore there has been widely spread experience with its application. In some cases, however, its application led to clearance of mergers which would impede competition at the end. The reason was that it could not grasp under its definition some behavior for example collusive activities. One of the crucial elements of 2004 merger control reform was introduction of the new substantive test. Currently applied SIEC test (significant impediment to effective competition) has diverted the main focus of EC merger control from market dominance to its end-effect, i.e. main concern is whether market situation after the merger will or will not lead to distortion of the competition. Such approach requires larger use of economic analysis in this area than ever before. But whatever tool is used to support EC views, it must always be applied individually to each case and draw clear results otherwise EC can not base its decision on such evidence.

In several cases, Court of First Instance and especially European Court of Justice have not been satisfied with logical but hypothetical developments being presented as proof of evidence by EC. European Commission must model future scenarios but also must show higher burden of proof when it comes to unilateral effects, collective dominance, bundling, and similar market practices. Proving those practices is difficult especially thanks to the fact the EC must take prospective view. It seems that the new substantive test proved to better serve the goal of the merger control.

In general, Czech merger legislation complies with the European one although some discrepancies still exist (like definition of the relevant market). Despite the differences in historical experience, other system of laws and different roots as shown in GE/Honeywell case, the difference between EU and US merger control and its application is becoming smaller .

From regulatory perspective, the higher stability of markets would be preferred. One could expect the contrary in the near future – EU bodies are going to face challenges like new technology development (B2B, B2C, etc.) and current economic crises which leads to increasing economic nationalism. It is possible that facing such

challenges EC will assess differently a merger of 2 competitors with increasing market share and a merger that shall result in rescuing one of the companies. In my thesis I have examined past decisions and practices of EU bodies towards mergers' clearance criteria. Only future will show whether application of these criteria will change (and to what extent) in the light of these new challenges.