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The Detection of Cases of Violations of Economic Competition and Modern Program of their Settlement

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Abstract- *The paper addresses the issues of detection of cases of violations of economic competition by various undertakings (enterprises) such as the prohibited agreements, abuse of dominant position or other discriminatory practices, more efficient treatment in courts of such cases and easier resolution of initiated cases. Besides the national laws governing the protection and development of unfair competition from anticompetitive practices, market regulators, in particular national authorities for protection of competition tend to find easier methods of detecting violators of the market rules. Among the programs that apply in the EU two are the most important: the leniency program and the program of the settlements. Also during analyses and easier detection of cases there are two economic indicators which alerts for possible violation of competition. The paper treats the functioning of these programs and other indicators implemented by the national authorities of competition.*

Keywords- *competition; anti-competition practices; cartel agreements; concentrations*

1. INTRODUCTION

The creation of a market economy and the free operation of market mechanisms is an important objective for sustainable economic development. The realization of this objective imposes the need for decision-makers to create such economic policies tailored by appropriate legislation, which will affect economic growth through competitive market on one side and the other side to eliminate behaviors that undermine the free market (Gavil, A. I., Kovacic, W. E., and Baker, J. B., Cases, Concepts and Problems in Competition Policy. 2002)[6]. Implementation of the law on protection of competition from institutions for the protection of competition, other laws of commercial law as well as the development of genuine competition policy (anti-trust) for the purpose of its promotion between competitors in the market and increasing competitiveness is continuously working for benefits all market players (Bernad Fillips, OECD 2007). It can be said that the protection and development of competition achieved through two main pillars Competition Law and Policy Competitions (Mark A. Dutz and Maria Vagliasindi, 2000). In the context of competition law include: control of cartels, controlling the concentration and control of abuse of dominant position (Monti, October 2002)[9]. Whereas within the competition policies are included: Economic activities of economic regulators as well as economic policies where the competition is violated (Steven M. Sheffrin, Economics: Principles in action, 2003)[11]. National authorities to protect and promote economic competition in the implementation of laws for the protection of competition and the development of competition policy (anti-trust) encounter difficulties detection of cases of violation of competition in particular forms of prohibited agreements (cartels) or abuse of a dominant position of enterprises with sensitive impact on the market EU Directives, in particular article 81, 82 and 87 which deal with cases relating to prohibited agreements, abuse of dominant position, merger, dissolution or merging of enterprises with spar impact on the market and the treatment of state aid (Regulation 1/2003, on the implementation of the rules on competition laid down in Articles 81, 82 and 87 of the Treaty). The discovery of these cases is not easy, especially when dealing with secret agreements which are considered as actions which mostly affect trade, consumer, competitive enterprises and its economy. For this purpose the national authorities of EU member states on protection of competition, in addition to compliance procedures regarding the beginning of the investigations which are established by laws also apply modern programs of their discovery. These programs enable increased efficiency of handling cases, easier detection and resolving them, where this benefit at the time of treatment, reduce costs and reduce penalties for violators of the laws. Some of the programs and useful indicators used in the EU countries, which consistently use the competition research experts are: leniency program (Leniency application), the use of tools program (Settlements), the HHI index, SNIP test, the damage theory and the index of the profit margin.

2. LENIENCY POLICY-PROGRAMS

Leniency policy together with investigative tools available to the competition authorities in the EU countries have been very successful tools in the fight against cartels (agreements), their detection and setting penalties. Basically softness policy, companies involved in a cartel self report and submit evidence and to have those actions have a kind of immunity for setting the fine or reduction of fines from the Competition Commission. Leniency policy has a deterrent effect on cartel formation and it destabilizes the work of existing cartels because it creates mistrust and suspicion to potential members of the conclusion of prohibited agreements between the participating members of the cartel. In order to enjoy total immunity from a company under the mitigation policy, should it before inform the Commission to enter into this agreement, should provide sufficient information to allow the Commission to launch an inspection on the premises of companies with suspicion of being involved in cartel. If the Commission is already in possession of enough information to launch an inspection or has taken such inspection a company must provide evidence that enables the Commission to prove cartel violation. However, in all cases, the company must fully cooperate with the investigation throughout the Commission, ensuring cause of all evidence in the possession in order to be assigned punishment and immunity for registration. The company cannot benefit from immunity if it had taken steps to coerce others about the agreement and if it is the first one that signed it, immunity can enjoy other participating companies unless of course they notify the case to the Competition. Committee Companies that qualifies for immunity may benefit from a reduction of fines if they provide evidence to be considered "reliable and value-added for decision ". If such evidence is complete enable so finding of violation of competition, companies can enjoy reductions in certain proportion and that, to that of the first companies have announced cartel, reduction may be: a) 30 to 50% b) for the second from 20 to 30% and c) subsequent companies up to 20% (European competition network). To take advantage of the notification, companies can approach the Commission, directly or through their legal advisers. To apply for this program to relieve them they can contact the responsible persons of Competition authorities in particular and address the information treated as confidential and stored confidentially by the Commission (OECD, Report on Regulatory Reform, Volume II, 1997).

3. PROGRAM FROM USING TOOLS-SETTLEMENTS

Settlements used by the Competition Commission to speed up the procedure for making a decision related only to a cartel agreement, the parties accept the objections of the competent authority of competition, and in return (versus-reward) receive a reduction of the fine for up to 10 %. These programs (the gentleness and use of tools) share the common goal of detecting and preventing of the market- cartel offenses including self-reporting by the offenders and cooperation with authorities through whose promise made by the Competition Authority for treatment with mild cases and reduction of sentence. The solution is a tool that aims to simplify, speed up and shorten the procedure leading to the adoption of a formal decision, saving human resources department of the cartel. Using tools are mutually beneficial to the Competition agencies, courts and course participants signing cartel agreements. Benefits may be in many ways: a) Saving time and resources, b) Momentum and cooperation, c) transparency, d) proportionality, d) closure, e) security. Types of settlement systems in place or envisaged in each jurisdiction are dependent on the legal and procedural framework of the relevant jurisdiction. Cartel enforcement regimes vary across the world, and type of settlement system that can be used successfully in any jurisdiction is necessarily dependent on a variety of factors, including: type of enforcement regime; cartel participants to be applied; penalties available; broader legal framework, constitutional and policy.

3.1. Interaction Of The Leniency Program And Settlements

Using the tools for the detection and treatment of cases dealing with prohibited cartel agreement and softness programs they are often intertwined with many of the same benefits and, in some jurisdictions, share common goals (The World Bank, OECD: A Framework for the Design and Implementation of Competition Law and Policy, Chapter 6, at 93, 1998). Settlements are not an investigative tool, but an effective instrument, use of tools and tenderness are closely related, but serve different purposes. Complementary, the softness and the program means the program make cumulative reductions of fines and facilitate the resolution of cases. The last decade has begun to spread the programs of softness around the world. Today over 40 jurisdictions apply certain types of leniency program allowing participants in the cartel report itself cartel behavior, to cooperate with the Authority and receive immunity from prosecution or a reduction in fines. Key issues included in the use of these tools are: transparency, predictability and security. Transparency is vital for an effective payment system that the cartel." Transparency "and related terms" predictability "and" security "are the basic principles in the implementation of anti-cartel policy (Mark A and Maria Vagliasindi 2000). Parties, through these programs want to know in advance what will be the benefits of self-reporting case, what risks they to enter into discussions to resolve cases and how we would have acceptable solution.

3.2. How it Works in Practice the Use of Settlements?

Three steps can be identified in the process of settlement: The first consists in the presentation of violation that the Commission sees the various companies involved in the cartel. Secondly, things are dealing with a series of

discussions aimed at clarifying certain points, which culminates in finding a common understanding between the Commission and the parties; each party describes the violation in order to influence the decision to reduce the fine. Thirdly, it includes full disclosure of the cartel by the commission and setting the maximum amount of the fine related to the conduct of the company, and reductions of sentences. The main issues usually addressed during discussions of the use of means for selecting a case- cartel are: who will enter the solution? What the offense will cover solutions? It would require an admission of guilt in order to solve? What cooperation will give the party solution? Are there other works of the cartel and, if so participants can report? Which would be a punishment or penalty? Key elements to use the tools to solve the cartel are: 1) Admission of guilt or factual basis, 2) The punishment or imposition of a fine, 3) Cooperation with participants in the cartel, 4) agreement not to bring further charges from the competition authority and reconciliation for non-processing of the case to the Court. Key procedural elements of the cartel which should be taken are: a) the beginning and the initiation of the use of these tools cartel, b) the role of judges and public archiving of documents, c) the confidentiality of the discussions and resolution of the cartel, d) withdrawal from a cartel agreement) acceptance of infringement upon the conclusion of a cartel agreement and f) voluntarily, the court, acceptance and review.

Using the tools cartel agreements can provide great benefits to the authorities, to the participants of the cartel, courts, victims and the general public by persuading members of the cartel through transparent promise, proportionate to accelerate, secure, and final provisions - to collaborated at the beginning and accept responsibility for their cartel behavior.

4. INDEX - IHH

The Herfindahl's Index, also known as the Herfindahl-Hirschman's index or (HHI) is the index which measures the size of the firm in relation to relevant industry and an indicator of the firm's participation in this industry. This index is named by economists Orris C. Herfindahl and Albert O. Hirschman (Herfindahl–Hirschman Index" USDOJ. Retrieved 4 May 2012). This index applies competition law, anti-trust and also in the wider managements. This index indicates participation in the company’s market scale and measures its concentration in the market. The growth of this indicator (Herfindahl index) shows that we have to deal with competition falling and at the same time increasing the company's market power, which does not have enough competition, and vice versa reduction of this indicator shows that there is sufficient competition and falling the market power of the company. Specific measurement tool of market concentration is the degree to which a small number of firms account for a large percentage of the product market. HHI is used as a possible indicator of market power or competition among firms. The higher the HHI has to be a specific market, the more concentrated is the product of that market in a small number of firms

4.1. Ssnip-Test (Small Increase But Significant Of Non-Transitory Prices)

In the analysis of competition test "low growth but significant non-transitory price" used to justify intervention to the competition authorities that have market power companies. It serves to define the relevant market in a consistent manner it is an alternative "ad hoc" for determining the relevant market arguments relating to the similarity of the products and their prices SSNIP test is crucial in competition law in order to determine the dominant position and concentrations on the block. Competition regulatory authorities and other actors in the anti-trust law tend to prevent damage to the market which is done through: cartel, oligopoly, monopoly and other forms of domination in the market. Historic- origin of this test is believed to be proposed for the first time in 1959 by economist Morris Adelman of the Massachusetts Institute of Technology. Me 1982 US Department of Justice in the concentrations regulation has also included this test SSNIP as a new method for defining the market and direct measurements of market power. In EU is used for the first time in the case of "Nestlé / Perrier in 1992 and officially recognized by the European Commission (Competition Directorate) in the document that has to do with the" definition of the relevant market "in 1997. Example: The test consists of small non-transitory increase observation of prices (in percentage from 5 to 10%), and this increase would provoke a significant number of customers to purchase the product father, on the other substitute products. In other words it helps in the analysis of the increase in price and increase profits on the one hand and on the other side so indirectly affects products which may be replaceable. In economic terms, SSNIP test calculates elasticity of demand for a firm, and how to change the prices of the company and affected for in its bid (the enterprise).

4.2. Theory of Harm

Principles of damage based on the actions that companies take individuals and their actions cause harm to others. For the first time these principles have been articulated by the Englishman John Stuart Mill in 1859. Later this theory applies in the economy and in particular in the field of competition. Competition authorities tend to limit the damage to competition from anti-competitive behavior. n some specific jurisdictions and laws they seek to quantify potential or actual damages in order to prove a violation of the law by companies, and calculate administrative fines or use for advocacy purposes . Based on this theory when taking decisions in administrative procedures national courts treat this theory and then bring meritorious decisions. This theory is used as a kind of argument by the competition authority in imposing any penalty for anti-competitive behavior (abuse of dominant position). Often for this purpose engage external experts to which

justified the harm caused or not (Friedriszik and Roller, 2010). Competition damage the treated part of the overall damage to the economy and the damage caused to the customer, it is also the focus of competition authorities in case of handling cases.

4.3. The Profit Margin Indicator

In traditional and modern economies, all firms try to maximize the profit which is the difference between total revenue and total expenditure. In situations where dominant companies achieves maximum profits by increasing product prices offered in the market and no reduction in costs or an increase in the production cost price, this indicator can be taken as an element during the investigation of a company which alleged abuses of a dominant position or market power (Boundless economics. "Marginal Revenue and Marginal Cost Relationship for Monopoly Production", 2014). The marginal cost (MC) changes in the total cost associated with changes in inputs. The marginal cost is the difference between total production costs when moving to a unit.

5. CONCLUSIONS

A market economy is functional and successful operation has as a condition of all laws. These laws are necessary to realize the benefits of the market economy and free trade. Competition law protects market avoiding and preventing not only improper practices of private entities, but also from state interference through normative acts performed by him. To be successful in implementing this policy, the law enforcement activities of the competition institutions should be characterized by independence, transparency, professionalism and effectiveness. Competition Policy as one of the foundations of the market economy can be effective, as long as they are clear priorities set by policymakers. Basic mission of competition policy is to eliminate possible market distortions, thus creating a competitive market development, which will continue to lead development and general welfare of society. The Competition Authorities, which enforces the law on protection of competition, protection and development of competition, should be oriented in two main directions: a) Continuous fighting illegal agreements control of concentrations and market analysis and market competition and b) Follow-up the laws and other legal acts which as such can create favors to certain monopoles and their improvement. It is necessary that the authority for protection of competition have regular cooperation with economic regulators (regulator for energy, telecommunications, media, and procurement) in order to create fair competition. The Competition Authority will cooperate with regulatory bodies in examining concrete cases, taking the best expertise of regulators areas and respecting relevant legislation. It is particularly important to become much greater advocacy on the importance of competition and recognition with the law on protection of competition, as well as to prepare secondary legislation in this field. To strengthen the effectiveness of law enforcement in specific cases, the authority will implement administrative measures against competition violations, using effective sanctions and penalties provided in cases of abuse of dominant position, cartels and control of concentrations. In this context it is very important to work on increasing and improving investigations in specific cases, application of modern programs for the detection and treatment of cases and the use of various economic indicators to investigate and deal with cases of violation of competition. All these actions will create a favorable environment for further development of free competition and its protection as one of the fundamental condition for sustainable economic development and protection of consumers' health.

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