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THE EUROPEAN UNION COMPETITION POLICY IN THE CONTEXT OF GLOBALISATION OF THE WORLD ECONOMY

Abstract

The aim of the article is to present the essence of competition policy and its implementation in the European Union in the context of ongoing globalisation of the world economy. The paper discusses selected factors that stimulate the process of globalisation, the main objectives and tools to support the functioning of the EU internal market, and the role of the European Commission as a body that enforces compliance with the rules of competition by companies and Member States.

Key words: competition policy, globalization, internal market

Introduction

Competition is considered the biggest and most effective driving force of free market development. It is regarded as the prerequisite for effective market functioning, being beneficial both to economic growth and consumer welfare. In today's world, mutual economic ties, an increasing role of enterprises operating on a global scale, as well as the interdependence resulting from the implementation of national economic policies and commercial links, pose a challenge to antitrust authorities. Intensified efforts in

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organisations, including the European Union via the European Commission and the Directorate-General for Competition, which is the guardian of respect for the rules of competition within the single internal market and towards third countries and the World Trade Organization, which – in addition to the liberalisation of trade – also takes part in projects related to the observance of competition rules on a global scale.

The purpose of this article is to present the implementation of the European Union competition policy in a globalised world economy. This article deals with issues such as the competencies of control authorities, operational procedures in case of infringement of competition rules, the implementation of the competition policy towards third countries, the role of the World Trade Organization in the coordination process of competition policy and instances of cases of recent EC decisions on the abuse of a dominant market position against companies whose headquarters are located outside the EU territories.

Professional literature, information documents and legal acts where used for the purpose of this analysis.

1. The Essence of Globalisation of the World Economy

The concept of globalisation of the world economy refers to the process of forming a single market for goods, services and production factors, thus as well for capital, labour, technologies and natural resources covering all countries and economic regions (Bożyk, Misala, Puławski 2001: 395). Hence, both national and international markets are combined into one single whole. From a theoretical viewpoint, globalisation means unlimited access to those markets for all interested entities irrespective of the country or economic region of origin. It also implies an increase in feedback between those markets (Bożyk 2006: 16–20).

The unification of economic mechanisms governing the functioning of national and international markets is a condition, as well as a result, of globalisation. Without the approximation of these mechanisms, globalisation would not have been possible. However, at the same time, those global uniform mechanisms of the world market would not have been possible without globalisation. Today those uniform mechanisms are founded on the mechanisms of free market and free trade. For this reason, globalisation is defined as a process of formation of a liberalized market of goods, services or production factors in the world as a whole (Bożyk 2006: 16–20).

Globalisation is characterized by a fundamental revaluation of criteria for the international division of labour and consequent deep qualitative changes in foreign

and international economic policies conducted by individual countries and groups of countries as well as international economic organizations. In the mid-twentieth century the dominant view was that the patterns of development of economic cooperation with foreign countries should vary according to the level of socio-economic development, possessed natural resources, demographic potential, the state of the balance of trade and balance of payments of a given country. Depending on the economic situation of a country in question, a diversified economic policy towards abroad is conducted with appropriate goals and using the right set of tools to implement the selected concept. Nevertheless, the changes taking place in structural transformation of global economy enforce constant adjustments to the shape of foreign economic policy. Whereas the range of external dependence that is taken into account becomes broader and deeper, which becomes particularly important in the conditions of progressing globalisation (Polak, Polak 2013: 12). The process of globalisation has dominated the changes in international economic cooperation and occasioned that profits and opportunities resulting from the process are not equally available, which results in progressive and dangerous for the future polarisation of people and countries into those who benefit from globalisation and those who merely witness its effects, but do not actively participate in the process (Polak, Polak 2013: 12–13).

One manifestation of globalisation is regional integration, which is a transitional form between doing business in a single country and on a global scale. In this sense, integration and globalisation can be perceived as complementary phenomena. Integration is largely a phenomenon programmed by a group of countries, which is reflected in worked out institutional solutions that determine the direction of its development. As pointed out by P. Bożyk, integration is a territorially restricted form of globalisation created "on demand" for the countries involved. While globalisation is a spontaneous process which has not been institutionally programmed by any country subject to mechanisms regulating the functioning of the global economy. Both integration and globalisation ensue as a result of the liberalisation of the economy. In the case of integration, the liberalisation refers exclusively to the flow of goods, services or production factors within a specific group while relations with third countries remain limited. In contrast, in the case of globalisation, liberalisation (Bożyk 2006: 16–20) refers to the flow of goods, services and production factors in the world as a whole and by definition, no limitations or restrictions whatsoever apply.

The actual profits which a country or an international organisation participating in the global system might draw depend on its position and international capacity, on its ability to exploit opportunities that accompany globalisation, as well as on its ability to selectively assimilate its achievements and control the mechanisms that govern it. It is also important that the profits derived by a country or international organisation

should "trickle down" to all levels of society (Polak, Polak 2013: 34; Lipiński, Orłowski 2001: 129–143).

Dynamic development of the economic globalisation process and the multidimensional consequences of this phenomenon should lead to the development of a well-functioning mechanism of competition, which is crucial for economic development. If globalisation causes the market to free itself of border barriers, it thereby eliminates all restraints on competition – both internal, within a given international organisation, and external competition, i.e. towards other states or other international organisations. Thus, the process of liberalisation of the flow of goods, services, capital and labour should be accompanied by the process of defining and implementing an effective competition policy.

2. The Nature and Objectives of the European Union Competition Policy

For the European Union as an international organisation, competition policy is instrumental to achieving the objectives of economic integration of its Member States. It is a natural consequence of the principles of free trade within the European single market. Competition rules were implemented by the European Commission, which - together with the Court of Justice of the European Union – is responsible for their observance. The legal basis for the functioning of competition policy are:

- Articles 101–109 of the Treaty on the Functioning of the European Union and Protocol (No. 27) on the internal market and competition, which states that the internal market as set out in Article 3 of the Treaty on European Union includes a system ensuring that competition is not distorted;
- the Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings ("the Merger Regulation");
- Articles 37, 106 and 345 of the Treaty of the Functioning of the European Union with regard to public undertakings, and
- Articles 14, 59, 93, 106, 107, 108 and 114 of the Treaty with regard to public services, services of general interests and services of general economic interest; Protocol (No. 26) on services of general interest, as well as
- Article 36 of the Charter of Fundamental Rights of the European Union (Honnefelder 2015: 1).

Through various forms of cooperation, the European Union intends to promote solutions that are applicable under acquis communautaire. The articles of the Treaty

regarding anti-competitive practices or agreements between businesses that could have an impact on the internal market of the EU and the functioning of the single European market, pursuant to bilateral agreements of the EU, are also applicable beyond the territory of its Member States (Michalski 2004: 433–443).

Articles 101–109 of the Treaty lay down competition rules within the common market. According to the rules, all agreements between undertakings that may distort or restrict competition are prohibited. Businesses of a dominant position are strictly prohibited to abuse their position or undertake actions that may adversely affect trade between Member States. The European Commission monitors cases of mergers and acquisitions on an EU scale and, in certain circumstances, it can prohibit them. State aid for certain undertakings or goods which might lead to a distortion of competition is illicit, although it may be allowed in some cases. Regulations on competition also apply to public undertakings, public services and services of general interest, however in cases when the objectives of those particular services are at risk of not being met, the rules of competition can be waived. The main objective of the EU competition rules is the protection of competition rules against distortions. Effective competition is not an end in itself, but rather the condition for the realization of a free and vibrant internal market and it is one of many tools for supporting common economic prosperity. Since the entry into force of the Treaty of Lisbon, the protection of competition against distortion is no longer directly mentioned in Article 3 of the Treaty, but in accordance with Protocol (No. 27) it is an element within the concept of internal market. This should not, however, entail significant changes in practice since the rules of competition have remained unchanged. The conditions of application of these rules and their legal effects have already been established in the long-standing administrative practice of the European Commission and the judicature of European courts and can thus be considered stable (Honnefelder 2015: 1).

Community law strives to defend the common market and stimulate competition within the boundaries of the vast economic area. It is not applicable unless trade between Member States is affected by certain practices of undertakings in question. Prohibition on restricting freedom of trade between Member States is central to all Community provisions (European Commission 2002: 10; Jurczyk 2012: 67–104). The EU's competition policy consolidates the industrial and commercial structure of the Union, which enables it to confront the competitiveness abilities of its most important partners and to place the EU enterprises in a position to succeed in markets around the whole world (European Commission 2002: 7).

3. The Authorities Monitoring Compliance With the European Union Competition Rules

In the Treaty establishing the European Economic Community and the Merger Treaty establishing common bodies of the EC, Member States designated the right of scrutiny to the European Parliament, the Council, the Court of Justice, the Court of First Instance and the Commission. The European Parliament is most frequently involved in the formulation of competition law only through the consultation procedure. Therefore, the Parliament is not as influential in this issue as the European Commission or the Council, and thus the main role of the Parliament is scrutiny over executive bodies. The member of the Commission in charge of competition policy is obliged to appear before the Committee on Economic and Monetary Affairs (ECON) in order to justify their policy and discuss individual decisions. Every year the European Parliament passes the resolution on the annual report of the European Commission on competition policy. As of 2011, the resolution is no longer merely a response to the results of the Committee's works conducted in the previous reporting period, but it also raises the most important current issues regarding competition law and its application. At the beginning of 2012 the Parliament, in the interest of better consumer protection, passed a resolution which calls for adoption of uniform legal framework regulating the issue of consumer collective redress (Honnefelder 2015: 4). The powers of the Council relating to competition are reflected in legislative prerogatives. The Council issues regulations after consultations with the European Parliament regarding the provisions of Article 81 and Article 82 in order to define the principles laid down therein. Other institutions, i.e. the Commission, the Court of First Instance and the Court of Justice, were entrusted with monitoring the compliance with competition rules and were given special entitlements. The Commission exercises general supervision over the observance – by Member States and individuals – of the terms of the Treaty and measures taken under those terms. Additionally, the Commission issues implementing provisions and interpretations. The Commission's activities are complementary to legal acts issued by the Council and it is the investigating authority at the preliminary stage of proceedings in cases regarding law infringement. The Court of Justice – and in some cases also the Court of First Instance affiliated to it – is a superior and supervising body over the Commission. The Court's role is to ensure the observance of law in the interpretation and application of the provisions of the Treaties and regulations adopted on the basis thereof. Any of the interested parties may appeal to these bodies against the decisions of the Commission other than recommendations and opinions.

4. European Union Competition Policy Towards Third Countries

The combination of a well thought-out market intervention which takes into account and promotes the spirit of competitiveness in the long run, along with a growing liberalisation of hitherto monopolised sectors, set the direction of actions undertaken on the grounds of the international harmonisation of law and competition policy. The European Union provided the scope of application of its regulations on competition by means of numerous bilateral agreements, the Agreement on the European Economic Area with EFTA states, as well as Association Agreements concluded with, *inter alia,* the countries of Central and Eastern Europe (European Agreements) (Michalski 2004).

An additional result of signing free trade area agreements with third countries is the enhanced EU competitiveness in the global economy. Those areas are designed to increase export opportunities for EU producers. In practice, free trade areas are also intended to ensure favourable conditions for the sales of EU goods and services in non-EU markets and their competitiveness on the EU market, while respecting the principles defined in the framework of the competition policy. Negotiations of free trade agreements are conducted with selected partners. The selection is determined by elements such as: the potential of their markets, the level of protection of EU goods and negotiations of free trade areas already being conducted by those countries with states and regions competing with the EU. Apart from standard free trade area agreements, the European Commission can make one of the three following kinds of agreements with third countries:

- the Economic and Trade Agreement, also referred to as the Partnership and Cooperation Agreement;
- the Association Agreement;
- Sectoral agreements, which refer to specific spheres.

Currently, the European Commission on behalf of the European Union and its Member States negotiates agreements with the following countries and regions: the Transatlantic Trade and Investment Partnership (TTIP) with the USA, an investment agreement with China, the Comprehensive Economic and Trade Agreement (CETA) with Canada, the Free Trade Agreement with Japan and the Association of South East Asian Nations (ASEAN), the Deep and Comprehensive Free Trade Area with Morocco, Tunisia, Jordan and Egypt, Free Trade Area with India, and the Association Agreement with Mercosur countries (Piątek, Kubel-Grabau 2015).

5. The World Trade Organisation as a Forum for Cooperation Within the European Union Competition Policy

Since it was established in 1995, the World Trade Organisation has played a significant role in the process of creating a rule-based international trading system. However, the objective of creating a multilateral trading system based on common principles has proved difficult to achieve in an increasingly multipolar world. Efforts to conclude another round of development-focused negotiations (the so-called Doha Development Round) remained fruitless, which in turn frustrated the efforts of many members of the WTO, including the EU, to find common ground, and induced several countries to prioritise concluding bilateral trade agreements (Bendini 2015).

The WTO is also a kind of ground for coordination of competition policy in relation to trading partners of the European Union. The most favoured nation clause is a cornerstone for the functioning of the WTO (Previously the General Agreement on Tariffs and Trade 1947 – GATT). It relies on granting the most favourable treatment to all countries, including countries not associated with the WTO. Translating the application of the abovementioned principle of reciprocity (the most favoured nation clause) into the area of competition policy, it would be expected that countries that are parties to the agreement conduct in accordance with the aforementioned principle analysing all cases of anti-competitive practices which have a direct impact on economic relations or undermine important interests of the country affected by the results of such proceedings. Another principle – national treatment principle – comes down to requiring all members of the WTO not to create competition barriers to goods and services of another member of the organisation in relation to their own (including the EU, which is a member of the WTO as of 1995). The interpretation of the aforementioned principles revolved around the concept that requires equality of competitive opportunities between domestic and imported goods and prohibits to use any measures that might adversely affect the conditions of competition facing imported goods relative to domestic products (Michalski 2004). On the basis of this principle, the mutual recognition of norms and standards was introduced in the EU within the single internal market.

The WTO put emphasis on the importance of an efficient flow of information, which provides a good basis for conflict prevention and prompt elimination of sources of potential disputes. One of the principal achievements of the WTO is the reinforcement of the Dispute Settlement Body authorized to resolve commercial disputes and enforce its own decisions (Michalski 2004; Hoekman, Kostecki 2002: 45). The Trade Dispute Settlement Mechanism is a system of predetermined principles

enabling the WTO members – irrespective of their political power and economic importance – to file a complaint involving alleged infringements of the WTO principles and to demand compensation for such violations. This mechanism limits unilateral defensive mechanisms which some countries had previously attempted to introduce, thereby provoking retaliatory measures from countries that were targeted, which in turn often led to open trade wars. Since the establishment of the WTO the EU is one of parties most frequently referring to the Dispute Settlement System of the WTO. The European Union was involved in 167 disputes, in 90 of which it was the plaintiff and in 77 cases it acted as the defendant. In further 141 cases, the EU filed requests to be granted third party status, which enables the WTO members to monitor disputes between other parties (data from 01.04.2014). The EU, represented by the Commission, has often strived for improvement and clarification of the WTO agreements by appealing to the panels and the WTO Appellate Body to issue rulings (Bendini 2015: 2).

The European Parliament closely follows the course of disputes in which the EU is involved. In the past, the Committee on International Trade of the European Parliament presented its standpoint on trade disputes, delivering reports and organising public hearings or tabling oral questions to the Commission and the Council – as, for instance, in the case of the ongoing dispute between the European Union and the United States regarding Airbus and Boeing (Bendini 2015: 2).

6. Proceedings of The European Commission in Cases of Competition Policy Infringement

Council Regulation (EC) No. 1/2003 of 16th December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty introduces a system of parallel powers under which the Commission and competition authorities of Member States may apply these articles. Acting together, national competition authorities and the Commission form a network of public authorities, acting in the public interest and closely cooperating with the aim of competition protection. The network is called the European Competition Network (ECN). The structure of national competition authorities varies between Member States. In some countries of the EU one body is in charge of investigating cases and making all kinds of decisions, whereas in other countries the functions are divided between two bodies – one is in charge of conducting investigation of given cases, while the other, often in the form of a collegial body, is responsible for deciding the case. Moreover, in some Member States, decisions

ordering the termination of an infringement and/or decisions imposing fines can only be made by courts. Subject to the general principle of effectiveness, Article 35 of the Regulation allows Member States to designate a national body of competition or national competition authorities and provide them with appropriate powers (European Competition Network 2015).

Cases can be handled by a single national competition authority, by several such bodies acting in parallel or by the Commission. In most of the cases the body that receives a request (complaint) or commences an *ex officio* procedure is also responsible for conducting that case. An authority is considered competent to conduct a given case, if a relevant connection exists between the infringement and the territory of a Member State in which the body in question operates to bring about an effective and complete termination of an infringement. Parallel actions of two or three national competition authorities may be appropriate in cases where an agreement or practice has significant impact on competition, mainly in their respective territories and when the action of only one body would be insufficient to terminate the infringement entirely and/or to impose appropriate sanctions. The authorities dealing with a case in parallel action endeavour to coordinate their actions to the extent possible. Meanwhile, the Commission is likely to be in the best position to carry out actions if agreements and practices affect the competitive structure in more than three Member States. Moreover, the Commission is particularly well placed to deal with a case if it is closely linked to other provisions of the EU community, which may be exclusively or more effectively applied by the Commission or if the interest of the Community requires the Commission to make a decision on developing a Community competition policy when a new competition issue arises to ensure effective law enforcement (European Competition Network 2015).

The competition authorities inform the Commission in writing before or promptly after commencing the first formal investigative measures in cases when they act under Article 81 of the Treaty (now Article 101 of the Treaty) and deem agreements between undertakings, decisions by associations of undertakings and any concerted practices which may affect trade between Member States as incompatible with the internal market, or when they act under Article 82 of the Treaty (now 102 of the Treaty) and consider that one or more undertakings have abused their dominant position in the internal market or in its considerable part. The information provided to the Commission can also be accessed by competition authorities of other Member States.

Two kinds of situations may occur:

1) the Commission is the first competition authority to instigate proceedings in cases for the adoption of a decision under the terms of the regulation and national competition authorities should no longer deal with the case, or

2) when one or more national competition authorities have informed the network that they are acting on a given case. In the initial phase of allocating of the case (approximately two months) the Commission can initiate proceedings after having asked for the opinion of the authorities concerned.

If a national competition authority is already acting on a case, the Commission shall explain in writing its reasons for taking over the case to the national authority concerned and other members of the network. The Commission shall notify the network in advance about its intention to transfer the case from national to the EU level (European Competition Network 2015).

An example of the application of competition policy in the global economy is the press release made on the 15 April 2015, in which the European Commission informed about the sending of a Statement of Objections to Google on its comparison shopping service. The Commission has also formally opened a separate antitrust investigation into Google's conduct as regards the mobile operating system Android. The company has been accused of abusing its dominant position in the markets for general internet search services in the European Economic Area (EEA) by systematically favouring its own comparison shopping product in its general search results pages. The Commission's preliminary view was that such conduct infringed EU antitrust rules because it stifles competition and harms consumers. Sending a Statement of Objections does not prejudge the outcome of the investigation. The separate antitrust investigation into Google's conduct regarded the mobile operating system Android. The investigation has been focusing on whether Google had entered into anti-competitive agreements or abused a possible dominant position in the field of operating systems, applications and services for smart mobile devices. EU Commissioner in charge of competition policy Margrethe Vestager said: "The Commission's objective is to apply EU antitrust rules to ensure that companies operating in Europe, wherever they may be based, do not artificially deny European consumers a choice as wide as possible or stifle innovation" (European Commission 2015a; 2015b).

Another example of the application of competition policy is the case of the Gazprom enterprise. The Commission opened formal proceedings against Gazprom on 31st August 2012. Then, on 22nd April 2015, it informed that it had sent a Statement of Objections to Gazprom alleging that some of its business practices in Central and Eastern European gas markets constitute an abuse of its dominant market position in breach of EU antitrust rules. On the basis of its investigation, the Commission's preliminary view is that Gazprom has been breaking EU antitrust rules by pursuing an overall strategy to partition Central and Eastern European gas markets, for example, by limiting cross-border gas reselling by its customers. This may have enabled Gazprom to charge unfair prices in certain Member States. Gazprom may also have abused its

dominant market position by making gas supplies dependent on obtaining unrelated commitments from wholesalers concerning gas transport infrastructure. Gazprom was given 12 weeks to reply to the Statement of Objections and could also request an oral hearing to present its arguments. The Commission fully respects Gazprom's rights of defence and will carefully consider its comments before issuing a decision in the case. Sending a Statement of Objections does not prejudge the final outcome of the investigation. The EU Commissioner in charge of competition policy said: "Gas is an essential commodity in our daily life: it heats our homes, we use it for cooking and to produce electricity. Maintaining fair competition in European gas markets is therefore of utmost importance. All companies that operate in the European market – no matter if they are European or not – have to play by our EU rules. I am concerned that Gazprom is breaking EU antitrust rules by abusing its dominant position on EU gas markets. We find that it may have built artificial barriers preventing gas from flowing from certain Central Eastern European countries to others, hindering cross-border competition. Keeping national gas markets separate also allowed Gazprom to charge prices that we at this stage consider to be unfair. If our concerns were confirmed, Gazprom would have to face the legal consequences of its behaviour" (The European Commission 2015).

Conclusions

The competition policy of the European Union is instrumental to accomplishing objectives of economic integration of its Member States. It is a natural consequence of principles on free trade within the single European market. Competition is an effective means to guarantee all consumers of Member States a certain level of excellence in terms of quality and prices of goods and services. It constitutes a kind of stimulus for enterprises to undertake more efforts aiming to achieve competitiveness and economic efficiency. Thus, competition consolidates the industrial and commercial structure of the European Union, which – as a result – allows to confront the competitiveness of EU's most important partners.

In the conditions of global economy, it is essential to mutually respect laws formulated in this field not only in the EU, but also in the WTO, which – despite being instrumental in the creation of the international trading system – is also an organization that serves as a ground for coordination of competition policy on a global scale with regard to trade partners of the EU.

Each country, whether a member of the EU or a third country or a trade partner, is obliged to comply with the EU regulations on competition. Similarly, each undertaking, regardless of whether its place of activity is within the EU area or not, shall also respect the rules formulated within the framework of competition policy.

The possibilities for cooperation of economic entities and national economies of individual Member States along with respecting the jointly developed principles can contribute to overall economic growth, not only of the European Union, but on a global scale as well.

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