

Assessment of Horizontal Mergers in the Practice of the Croatian Competition Agency

Jasminka Pecotić Kaufman

jpecotic@efzg.hr

Conference on Merger Control, 14 Dec 2010

Overview

- Application of EU rules (Art 70 SAA)
- Selected practice of the Agency (Phase II decisions)
- Comments
- Conclusion

Stabilisation and Association Agt (SAA)

- Art 70 – application of *acquis* to restrictive agts and abuse of dominant position (+state aids)
- Effect on trade btw Croatia and Community
- Merger control not mentioned – why?
 - Prior to ECMR Art 101 and 102 applicable (ECJ)
 - ECMR applicable to Union-dimension mergers only
 - Reg. 1/2003 covers Art 101 and 102 only
- In practice *acquis* applied to agts+abuse+mergers / effect on trade not relevant
- Competition Act 2009: reference to Art 70 SAA

Selected practice of the Agency

- Cases decided under Comp Act 2003
 - Phase II decisions
 - 14 decisions in total
 - 5-years period (2004-2009)
- Substantive test
 - Comp Act 2003 – dominance
 - Comp Act 2009 - SIEC

Horizontal/vertical mergers

Horizontal	Vertical
<ol style="list-style-type: none">1. Konzum / Japetić2. Konzum/Mediator3. Phoenix Intl / Medifarm-Velebit4. EPH/Slobodna Dalmacija5. Styria Media Intl / G+J Intl Publish / Sanoma Magazines Intl6. Koncern Agram7. Slobodna Dalmacija / Šibenski list8. Konzum / Lokica9. MOL/INA10. Agrokor/Mlinar	<ol style="list-style-type: none">1. Agrokor / Belje2. Distripress/I.Granić/EPH/Veltrade/Adris3. Agrokor / PIK Vrbovec4. Agrokor / Tisak

Concentration

Acquisition of sole control	Acquisition of joint control	Joint venture
<ol style="list-style-type: none">1. Konzum / Japetić2. Konzum/Mediator3. Phoenix /Medifarm-V.4. EPH/SD5. SD / Šibenski list6. Konzum / Lokica7. MOL/INA8. Agrokor/Mlinar9. Agrokor / Belje10. Agrokor / PIK Vrbovec11. Agrokor / Tisak	<ol style="list-style-type: none">1. Distri-press/I.Granić/EPH/ Veltrade/Adris2. Koncern Agram	<ol style="list-style-type: none">1. Styria Media Intl / G+J Intl Publish / Sanoma Magazines Intl

Outcomes

Allowed	Conditionally allowed	Prohibited
<ol style="list-style-type: none"> 1. Konzum / Japetić 2. Konzum/Mediator 3. Phoenix/Medifarm-V. 4. Agrokor / Belje 5. Styria Media Intl/G+J Intl Publish/Sanoma Magazines Intl 6. Koncern Agram 7. SD / Šibenski list 8. Agrokor/Mlinar 	<ol style="list-style-type: none"> 1. EPH/SD 2. Distri-press / I. Granić / EPH / Veltrade / Adris grupa 3. Agrokor / PIK Vrbovec 4. Agrokor / Tisak 5. Konzum / Lokica 6. MOL/INA 	<p style="text-align: center;">-</p>

Relevant markets

Relevant markets

Food retailing (+wholesale)

Pharmaceuticals (wholesale)

Oil and gas (retail!)

Tobacco products (retail)

Meat and meat processed products (production, retail)

Newspapers (publishing, distribution, advertising)

Insurance

Media Act + Competition Act

Media Act applicable (40% mkt share threshold)

1. EPH/SD
2. Styria Media Intl / G+J Intl Publish / Sanoma Magazines Intl
3. SD / Šibenski list

Failing firm defence

Failing firm defence

Agrokor/Belje

Horizontal mergers - HHI

Case	HHI	Conditionally approved
1. Konzum / Japetić	1946 (after)	No
2. Konzum/Mediator	2437 (after; food retail, D-N žup.)	No
3. Phoenix Intl / Medifarm-Velebit	CR4 = 76,25% (after)	No
4. EPH/SD	3614 (before)	Yes
5. Styria Media Intl / G+J Intl Publish / Sanoma Magazines Intl	-	No
6. Koncern Agram	3000-3500 (after; non-life)	No
7. SD / Šibenski list	-	No
8. Konzum / Lokica	2382 (after; food retail, Š-K žup.)	Yes
9. MOL/INA	3744 (before)/5178 (after) (gas retail-highways)	Yes
	3744 (before)/4294 (after) (outside highways)	
10. Agrokori/Mlinar	2874 (before)/3427 (after) (food retail, Zg-before changes)	No (but voluntary changes)

Comments (I)

- Wide margin of discretion
- Robust economic analysis essential
- Concentrated mkts
- Emphasis on structural analysis
- Firms increasingly conscious of competition problems

Comments (II)

- SIEC-test applied even prior to Comp Act 2009
- Explicit analysis of unilateral/coordinate effects as of 2006 (Koncern Agram)
- Unilateral effects - relevant criteria (Agr/Mlin)
 - Low entry barriers
 - Increased mobility of consumers
 - Petrol stations as competitive constraint (?)

Comments (III)

- New US Horizontal Merger Guidelines
 - Unconcentrated mkt <1500 (1000)
 - Moderately concentrated 1500-2500 (1000-1800)
 - Highly concentrated >2500 (1800)
- Some misconceptions
 - HHI 3427=“relatively concentrated mkt”
 - Not possible to count HHI because no info on 128 firms (less than 2% of the mkt)
 - Downplaying the HHI

Comments (IV)

- Agrokor merger saga
 - Merger spree
 - Annual review of the retail mkt
 - Started after Konzum/Japetić merger in 2004
 - Horizontal / vertical mergers
 - Usual suspects
 - Food-retail market
 - Food-wholesale market
 - Last episode
 - Agrokor/Mlinar – voluntary decomposition
- Comparative practice - e.g. REWE/Meinl
 - Problems identified at lower levels of concentration
 - However, relevant that competitors not fully integrated but part of buying cooperatives of independent retailers

Comments (V)

- INA/MOL
 - Strengthening of dominant position + significant anticompetitive effects
 - Incumbent + high entry barriers
 - Divestment remedy (Crobenez)
 - However, not clear to what extent divestment alleviates the negative effects

Conclusion

- Complex assessment on a case by case basis
 - No instant formula
- Sophistication of assessment continuously increasing
 - But, still space for improvement
 - More rigorously structured competition assessment
- Lenient merger policy?
 - Absence of prohibition not proof of leniency
 - Shift of focus to appropriate remedies
- Mkt definition + mkt share + mkt concentration important but may not be decisive
 - Analysis of effects crucial - closeness of competition, competitive constraints...