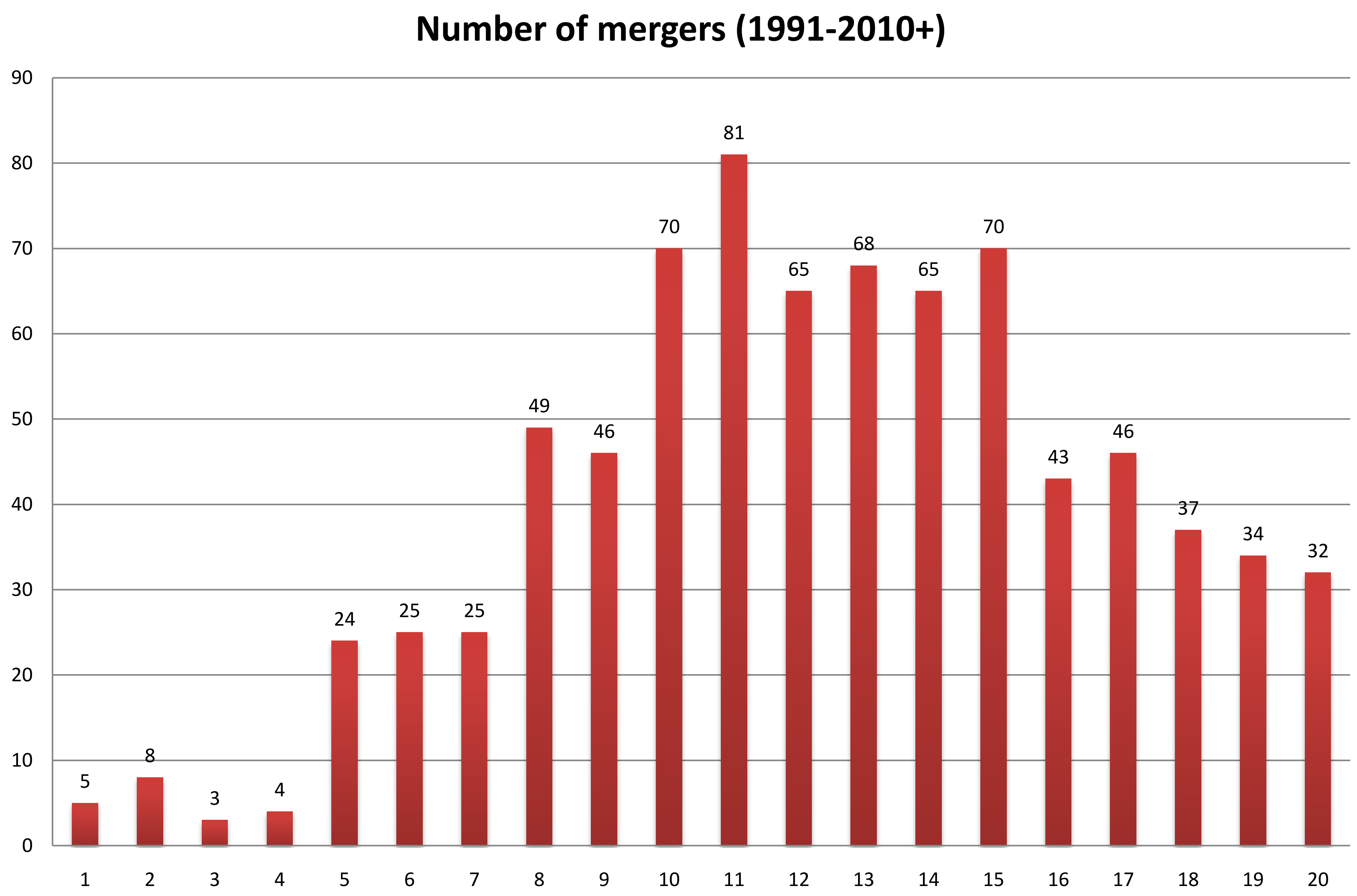
Recent developments in Hungarian merger control focusing on the change in the substantive test

SZILÁGYI Pál
14 December 2010
Zagreb

2nd Conference on Merger Control – Recent Trends in EU and Croatian Competition Law

Introduction

- Almost 20 years of merger control (~ EC/EU)
- Main features:
  - Prior notification
  - Authorisation by the NCA – Gazdasági Versenyhivatal
  - No „appeal to politicians”
  - Early application: territorial restriction of jurisdiction (economic activity (production of goods or provision of services) in Hungary)


Number of mergers (1991-2010+)
90
80
70
60
50
40
30
20
10
0
5
8
3
4
24
25
25
49
46
70
81
65
68
65
70
43
46
37
34
32
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

Some interesting features of Hungarian merger control

- Notification fee (4/12 M HUF ~ 14400/43100 EUR)
- „For a contract resulting in the concentration of undertakings pursuant to Article 24 to come into existence, the authorisation of the Hungarian Competition Authority shall be required." - Art. 29 HCA

Change of the substantive test

- Until 2009: dominance test; from 1 June 2009: new test; new test in the **HCO** : significant reduction of competition + dominance
- Art. 30 (2) HCO: "The Hungarian Competition Authority may not refuse to grant authorisation for a concentration where, with a view to the [advantages and disadvantages], the concentration **would not significantly reduce competition** on the relevant market [...], **in particular as a result of the creation or strengthening of a dominant position.**" (official translation by the authority)

SLC vs SIEC vs dominance

- the legislator equals SLC to SIEC in theory, but it explains the change in the following words: „*The SLC test compared to the dominance test allows to prohibit concentrations which do not create (strengthen) a dominant position if they significantly reduce competition, while on the other side allows to clear concentrations which create (strengthen) a dominant position if this is counterbalanced by efficiency gains.”*
- Cf. recitals (25)-(26) Reg. 139/2004

Case study: HTCC/Matel

- Concentration between two telecom companies
- On the Internet- and data-communication services market:

Undertaking	2004	2005	2006	2006 (combined)
Telecom group	40-60	40-60	40-60	40-60
Matel	10-20	10-20	10-20	25-30
HTCC	10-20	10-20	10-20	
GTS-Datanet	5-15	5-15	5-15	5-15
Other providers	15-20	15-20	15-20	15-20

Case study: HTCC/Matel (contued)

- The concentration combines the second and third player
- HHI raises to more 2500 with a change of 300-400
- Bidding study: HTCC and Matel express only a limited pressure on each other; GTS-Datanet exerts stronger pressure
- Not a merger of the closest competitors.
- No SLC, no dominance.
- Allowed

1st: 40-60%

2nd: 25-30%

3rd: 5-15%

HHI > 2500

ΔHHI: 300-400

Sophisticated economic analysis

- Customer and consumer surveys
- Large sample questionnaires
- Regression analysis
- Bidding studies

- It is clear that sophisticated economic analysis is not only present in SIEC/SLC test, but also under dominance.

Thank you for your attention!