ABSTRACT

The control of market concentrations is a specific part of the right to competition and incorporates an ex ante assessment of transactions, and thus is the most delicate area of competition law. It directly affects business entities and their activities on the market without the existence of a factual activity or an act that directly violates the market competition. It is obvious from the aforementioned circumstance that the need for a balanced approach of the right to competition in the regulation of market activities is needed.

The comparison of the systems that are in charge of controlling the market concentrations between the United States and the European Union, and in this context, the Republic of Macedonia is imposed due to the significance of the United States antitrust system as the first

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system that set certain criteria for regulating the market concentrations which were followed by other developed legal systems. For this reason, the comparison of the regulation of concentrations is a good way to see the possible advantages and weaknesses of European Union law in this area.

**Keywords:** Law, Market, Concentration, Competition

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**THE REGULATION OF MARKET CONCENTRATIONS IN THE LEGAL SYSTEMS OF THE UNITED STATES AND THE EUROPEAN UNION**

The regulation of market concentrations in the United States began with the adoption of the Clayton Act in 1914, whereby Article 5 stated that "any acquisition that greatly reduces market competition or creates a monopoly" is prohibited. Clayton's law is still in force and it forms the basis for the regulation of market concentrations in the United States. In fact, since the origins of the regulation of market concentrations, this country has accepted the so-called test for significant reduction and obstruction of competition, unlike the European Union, which used the dominance test. When analyzing the institutions responsible for enforcing competition law, it can be seen that there are significant differences between the control of market concentrations in the United States and the European Union. Namely, there are several entities in the United States that have the authority to enforce the law in the field of concentrations. Thus, there are two bodies that are in charge for enforcing the right to competition - the Department of Antitrust of the Department of Justice and the Federal Trade Commission. However, such authorities also have state-level authorities who, regardless of the decision of the bodies in charge for controlling competition, may require blocking a certain concentration before the courts. For their part, they can adopt

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3 [http://www.justice.gov](http://www.justice.gov) and [https://www.ftc.gov](https://www.ftc.gov), 02.09.2015

legislation that effectively rejects the application of federal competition provisions. This situation is quite specific given that the European Union, unlike the United States which is a federal state, is distinguished by more power within the framework of competition law and market competition, which in no case can be violated and derogated by the states - members.\(^5\)

In such a network of participants that have a certain degree of competence within the control of market concentrations, the regulatory bodies of certain industries and sectors, such as the Federal Communications Commission, which use the competence for granting licenses for work in this sector as an opportunity for assessment of the possible anticompetitive consequences of a business entity that was created through a concentration.\(^6\)

Another significant difference in the setting of the systems for controlling concentrations in the United States and the European Union is the role of judicial authorities. In the US, courts are involved in the initial assessment of concentrations in that, that the decision taken by the aforementioned bodies must be approved by a federal court.\(^7\) From this we can rightly conclude that the US system has set up a very strong mechanism for controlling decisions on concentration assessment. In this circumstance and the dissatisfied parties, they are given the opportunity before a competent court to prove that a certain concentration is not dangerous to market competition. In addition, such a possibility of litigation can actually motivate both sides in the procedure-regulators and participants of the concentration to reach a certain agreement that involves undertaking certain measures for removing the dangers of market competition.

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\(^5\) Kovacic W. E., Mavroidis P. C., Neven D. J., “Merger control procedures and institutions: A comparison of the EU and US practice” 2014 г., стр. 9

\(^6\) Kovacic W. E., Mavroidis P. C., Neven D. J., “Merger control procedures and institutions: A comparison of the EU and US practice” 2014 г., стр. 10

\(^7\) Ibidem.
On the other hand, in the United States, there has been a practice of challenging concentrations before courts by private entities.\textsuperscript{5} Such a practice does not exist in the courts of the European Union, which can only control the acts of the Commission, although in theory the legal entities may seek redress for a certain concentration and challenge it before the national courts, given the direct effect of the Union regulations.

The presence of many regulators in the area of market concentration makes the evaluation procedure very specific. Thus, the participants in the concentration, as well as the system of the European Union, have an obligation to report a certain concentration exceeding the prescribed thresholds, but then there is a period of 30 days in which the two bodies actually decide which one to consider in the case and whether the concentration should cross in the assessment phase\textsuperscript{9}. This situation can lead to a clash between the two bodies, which have developed various practices for the allocation of cases, including the dumping of a coin.\textsuperscript{10} After this period, a second phase of extensive assessment of the concentration follows, and unlike the European Union, participants are not allowed access to their file, with the deadlines of this phase continually prolonging in practice.\textsuperscript{11}

It can rightly be said that this puts the regulatory bodies in a fairly privileged position and greatly jeopardizes the rights of the participants of the concentration who can be exposed to a lengthy procedure, and they are kept in complete ignorance about the course of the procedure. From this it can be concluded that the United States and European Union Evaluation Systems, although considered to be the most developed and leading, are, however, largely different to each other. The difference in the institutional infrastructure itself which is widely spread and developed in the United States is most evident, and it can


\textsuperscript{9}Kovacic W. E., Mavroidis P. C. Neven D.J.,“Merger control procedures and institutions: A comparison of the EU and US practice”2014 г.,стр.10

\textsuperscript{10}Kovacic W. E., Mavroidis P. C and Neven D. J.,“Merger control procedures and institutions: A comparison of the EU and US practice”2014 г.,стр.24

\textsuperscript{11}Ibidem.
be noted that this leads to greater uncertainty for the participants in the concentration because once the approved concentration can be banned from the state authorities or from the regulatory bodies of the certain industry. Unlike the United States, the European Union has a rather specified and formalized procedure set up by Regulation 139/2004 and the Implementing Regulation, which sets out in detail the deadlines and stages in the assessment of concentrations. Within the framework of the procedure for assessment of market concentrations in the European Union, the Commission also appears as an investigative body and as the body that makes the final decision regarding the concentration, while the procedure in the USA ends with a court decision as an objective third party. Hence, it can be said that the courts in the United States have a more active role in the application of the right to competition in this area, and in the United States there is a developed practice of litigation initiated by state authorities or private entities in deciding on the nature of a particular concentration and its impact on market competition.

Of course, the cooperation between the European Union and the United States in this field, which is covered by the 1991 Cooperation Agreement" and the "Good Practice" Practice Document in this area from 2011, should also be emphasized. According to these Good Practices, the goal of cooperation between the two systems is to achieve the same result and decision in procedures that involve international business entities that are subject to consideration of the two jurisdictions, which in today's globalized economy is a very common case. Such cooperation includes mutual reporting and communication in order to reach decisions that are acceptable to both parties.

REGULATION OF THE REPUBLIC OF MACEDONIA IN THE FIELD OF CONCENTRACIONES

The right to competition is a relatively new legal branch in the Macedonian legal system. By gaining independence, the Republic of

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Macedonia decided to build a new socio-economic system and build a market economy following the example of Western democracies. In addition, the European Union, with which RM, played a major role in the process of transition to the model of Western democracies. concluded a Stabilization and Association Agreement in 2001. By signing this agreement, with Articles 39, 69 and 70, the state committed itself to the development and application of comprehensive regulations to combat competition restrictions. The determination for the construction of a modern market economy imposes the need to build a consistent policy for the protection of competition. Such commitments are also highlighted in the Constitution of the Republic of Macedonia, where the right to free market and competition is guaranteed. Thus, Article 55 states: "The freedom of the market and entrepreneurship is guaranteed. The Republic provides equal legal position for all entities on the market. The Republic takes measures against the monopoly position and monopolistic behavior on the market. Freedom of the market and entrepreneurship can be restricted by law only because of the defense of the Republic, the preservation of nature, the environment or human health."

In 1999, the first Law on Protection of Competition in the Republic of Macedonia was adopted - Law Against Restrictions of Competition, and thus created conditions for the protection of market freedom and entrepreneurship in the country. The law came into force in April 2000, but "due to the complex character of the same, unsuccessful decisions with the existing valid positive regulations, and the absence of stronger enforcement measures in the implementation of the Law, it was insufficiently implemented and did not achieve its goal." Market concentrations for the first time within the Macedonian legal system were processed precisely with this law, which prohibited monopoly agreements, abuse of the dominant position on the market and business concentrations that lead to a significant reduction in

14 Sekretarijat za evropski prашања, "ДесетгодиниодпроведувањетонаСпогодбатаа(Name)за стабилизација и заасоцијација", 2014 г., страна 7
15 Македонскиот центар за европско образование, "Има ли РМ политика за защита на конкуренцијата?", 2014г., страна 2
16 Македонскиот центар за европско образование, "Има ли РМ политика за защита на конкуренцијата?", 2014г., страна 3
competition, while the competent body for implementing the provisions of this law was the Monopoly Administration within the Ministry of Economy. It can be concluded that the lack of any experience in this field, as well as the imposition of major powers on a body that was apparently not sufficiently equipped and lacked independence in operation, were one of the main factors for the perceived inefficiency of this law.

With the signing of the Stabilization and Association Agreement, the era of the modern legal-economic concept of the right to competition in Macedonia begins, with the Macedonian legal system completely reflecting the solutions that exist in the EU competition law. In Chapter VI of the Treaty (Law Enforcement and Law Enforcement) in Article 69 (Competition and other economic provisions), the Republic of Macedonia has committed itself to incorporate in its legislation the provisions of the primary law of the EU, ie Articles 81, 82, 86 and 87 of the EC founding treaties (according to the Treaty on the Functioning of the EU, the mentioned Articles are under numbers 101, 102, 106 and 107). As a result of this agreement, the Law on Protection of Competition (Official Gazette of the Republic of Macedonia No. 04/05) was adopted in 2005, which abolishes the Monopoly Administration and a new agency, independent of the executive power, ie the Commission for Protection of the Competition (CPC), as the main body implementing the Law. Thus, the control of market concentrations acquires a new institutional framework that is completely mirrored from that of the European Union. The Law was amended several times until 2010, when the law in force was adopted (Official Gazette of the Republic of Macedonia No. 145/10), which fully complies with the mentioned Articles 101, 102, 106 and 107 of the Treaty on the Functioning of the EU, as and the Concentration Regulation. On September 28, 2011, The Parliament of the Republic of Macedonia adopted the Law on Amendments to the Law on Protection of Competition (Official Gazette of the Republic of Macedonia No. 136/2011), introducing the institute, the silence means agreement in accordance with Article 18, paragraph 3 of the Law. Article 18 of the Law on Protection of Competition refers to the suspension of the realization of concentrations during the process of their assessment. In paragraph 3 of this Article, the Commission for Protection of Competition upon the request of the submitter of the
notification and deciding upon it with a decision may allow exemption from the obligations for suspension of concentrations. The request must be explained, and the Commission for the Protection of Competition also takes into account the effects of the suspension of the concentration on one or more of the participating undertakings or on a third party, as well as the danger to the competition caused by the concentration.

CONCLUSION

The regulation of market concentrations is one of the integral components of a modern competition protection system. In doing so, its ex ante nature requires the existence of high legal and economic experimentation in order to achieve a balanced and comprehensive approach that will be in line with the general objectives of competition law. As it can be seen from the historical analysis of the regulation of concentrations, regulators must be constantly referred to the markets and activities of market participants in order to build and develop an efficient system of regulation that will be adapted and appropriate to the actual conditions and dangers after the competition in the markets.

In conditions of strong globalization and connection of world markets, transactions leading to market concentrations are more common, they increasingly have an international character and, therefore, their control is more difficult. A product of such processes is the European Union with its sui generis legal system that is based on the ideal of the common, or internal market, as the fundamental value of the Treaties of the European Union. In fact, the first supranational regulatory system was created, which can be assumed to be an example of international cooperation in this area, given the increasing integration of the world market.

Since the beginning of the regulation of market concentrations in the Republic of Macedonia it can be established that lately began to engage in the creation of a legal and institutional framework for control of this area. The actual building of a system for regulating market concentrations and market competition in general begins with the process of integration and rapprochemen with the European
Union, and the guidelines and solutions that exist in its legal system are implemented.

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