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## **TRENDS IN DEVELOPMENT OF EUROPEAN UNION COMPETITION LAW**

### Abstract

This paper elaborates the market mechanisms and rules which appropriate application allows normal functioning of markets that do not limit, impair, or prevent fair competition. The research is focused on the basic role and purpose of competition law, which ensures proper functioning of the free market where the optimal allocation of resources is secured regarding the relation between supply and demand, rather than measures of state intervention. Competition law as an important branch of law is often being exploited for unnecessarily explaining the market concept, which is reflected in uncontrolled behavior of participants on the open market, resulting in strengthening of unfair competition, as well as endangering the welfare of consumers. Therefore, this paper represents a significant turnaround, since the research will be based on trends, focusing on the protection of market participants and consumer protection. In brief words, the paper deals with the general division of system of competition law, since the latter has its beginnings in the United States, but also because of the need for overseas trade, where it quickly has founded its application experiencing the greatest expansion in the countries of Western Europe. Paper also discusses personal, material, and the extraterritorial reach of the competition law, acquisitions, mergers, and the European Union's "four freedoms".

**Keywords:** *Competition law, European Union, commercial activities, case law, parallel behaviors*

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## 1. INTRODUCTION

This paper does not significantly elaborate on the period of European Economic Community existence, even though the latter is responsible for important economic and political goals set up in the Treaty establishing the European Economic Community. The paper deals more with the European Union since the significant actions for this study took place in it. Article 2 of the Treaty establishing the European Economic Community<sup>2</sup> provides the important goals, such as the creation of a common market, economic and monetary union, and implementation of common policies and activities in the Member States. Therefore, the significance of the common market is best illustrated by the fact that in theory and practice, it is often identified with the European Economic Community. That is the reason why the common market will be much more discussed.

Since this paper deals with the competition law, it implies that relevant sources should be mentioned, as well as the importance, scope, and entities in competition in the free market. The provisions of the competition law are contained in Title VI, Chapter 1, Articles 81 and 89 of the Treaty establishing the European Community,<sup>3</sup> but also in the Lisbon Treaty.<sup>4</sup> These provisions are contained in Title VII, in Articles 101 and 109, but its content compared to previous was not significantly altered. At first, the functioning of the common market depended on the behavior of economic entities, participants in the common market, so anti-competitive and antitrust regulations were established in order to avoid supremacy and domination. Therefore, the paper will present the key events regarding the competition law in the European Union in the last ten years, which aim to provide the opportunity for participants in the market (primarily for experienced European business people) to express opinions and make recommendations.

In fact, globalization, technological changes, and unfair competition are the biggest problems in developing countries, but also in the Member States of the European Union. It has been proven that, as economic globalization progresses, it brings challenges and opportunities that change the global scenario,

2 The Treaty of Rome was signed on March 25, 1957 and came into force on January 1, 1958. It established the European Economic Community and European Atomic Energy Community (EURATOM). [http://ec.europa.eu/archives/emu\\_history/documents/treaties/rometreaty2.pdf](http://ec.europa.eu/archives/emu_history/documents/treaties/rometreaty2.pdf). (23. 10. 2020).

3 R. D. Vukadinović, *Introduction to institutions of the European Union*, Center for European Union Law, Faculty of Law, Kragujevac, 2008, 320.

4 Treaty of Lisbon (Reform Treaty) is an international agreement signed in Lisbon on December 13, 2007, with the aim of resolving the issue of further institutional functioning of the European Union. It amended the former Treaties, without replacing them and came into force on December 1, 2009, by passing the ratification process in all European Union Member States (See: S. Šulek, "Lisbon signature", *Croatian word*, Subotica, 21 December 2007., 2).

being developing countries those who find more difficulties of adaptation. In accordance with the classical theory, the expansion of the global economy entails prosperity through work division and specialization according to comparative advantage in each country. This principle motivates international transactions, where the less developed countries can take advantage of the global market to get access to cheaper capital goods and technology. On the other hand, the challenges presented by globalization show a diminution in the ability of governments to establish regulatory and redistributive policies that limit social wellness. This situation got worse in most developing countries that do not have strong and efficient institutions capable to manage globalization as demonstrated by the financial crises of the nineties. Likewise, as it has been observed since 2008, developed countries also experience problems due to the malfunction of international financial markets causing the subprime crisis, a situation that has put the European Union in check, particularly Greece and Spain.<sup>5</sup>

Competition policy in the European Union is crucial for the internal market and therefore its development should be continuously monitored. Nowadays it becomes clear that the establishment of a single European market has led to growth and innovation in European territory, which was particularly beneficial to consumers. The laws on the protection of their rights were enacted, also the competition laws, so it has to be outlined that co-operation between bodies for the protection of competition in the frame of International Competition Network works properly, representing the important step towards the introduction of fair competition on a global scale. It definitely brings numerous benefits and improves the position of both sides - the consumers and suppliers.

It should be noted that the competition policy in recent years came to the fore because of the initiatives undertaken in the area of concentration, mergers, and acquisitions of companies, but also because of the abuse of dominant companies. Therefore, the company as a market participant needs to be defined, whereas relevant stand the competition law and competition policy. In the Treaty establishing the European Economic Community the concept of the company was not clearly defined, but the European Court of Justice has built the broader concept, starting from the type of commercial (economic) activities, which helped to establish the criteria for demarcation of public and private companies. If we take into account consumerism, it is clear that the role of competition policy becomes stronger and more efficient. It encourages the factors on the supply side, clearly defining the relevant markets, the impact of preventing monopolies, reflecting the improved international competition, specifically enforcing state aid in times of economic crisis, and contributing to the common market by protecting it from unfair competition.

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5 M. L. Fernández, "Challenges of economic globalization", *Revista de Relaciones Internacionales, Estrategia y Seguridad*, Bogota, Vol. 12, No. 1, 2016, 26.

## 2. THE CONCEPT OF COMPETITION

The competition has a full sense only if understood as a rivalry, where each seller tries to get what the others also look for, as the sale, profits, and share in a particular market. It depends on the selection of feasible combinations that with affordable prices offer the best quality of goods and services, and should be understood as a process of competition between competitors. Market participants do not offer the best quality and favorable price for altruism or because they take into account the interests of customers, they do so only because they can expect profit if the market outperforms its competitors. In a market where information flows freely, the competition has a regulatory function in the supply and demand process. Competition is also one of the basic principles of the market economy, which means that every business activity of a particular entity is the object of competitive pressure from the others. This means that competition encourages businesses to compete with each other in attracting consumers to their products and services based on the benefits achieved with lower prices, higher quality, and a wider choice of goods and services. There are only a few who can deny that the competition is desirable. Nobel laureate George Stigler vividly made an explanation by comparing it with the morning exercise, or physical exercise<sup>6</sup>, claiming that no one makes critics because it is extremely healthy, but almost everybody tries to avoid it. The conclusion is that each entity has the urge to avoid competition or competitive pressure, and most of them are willing to make efforts to destroy it, because of the goals and interests. Therein is the need for competition policy and protection of competitive pressure, without whom only the selected ones live, since there is no efficiency of economic and social progress. That is one more reason for the existence of state competition policy and law.

The European Commission and the administration of Member States are responsible for the issue of competition and further work in order to improve the effective and consistent application of competition law. Their cooperation is achieved through the European Competition Network (ECN). Today it becomes clear that competition is based on the functioning of a market economy, so the fact that people started to observe it in that way is no surprise. This means that it is a revelation, as represents a dynamic process reflected in constant entrepreneur's initiation to invest resources and efforts in the development of innovation fostering the technological changes. So, they created a new trend in which competition affects the increase of economic efficiency, which has led to the growth of the need for its even stronger protection.<sup>7</sup> Competition in modern market conditions

6 G. J. Stigler, "Mr. Perfect Competition", *Journal of Political Economy*, University of Chicago Press, Vol. 65, No.1, 1957, 1-17.

7 B. Begović/V. Pavić, *What is the competition and how is protected?*, Center for Liberal-Democratic Studies, Belgrade, 2010, 6.

leads to allocation efficiency, which means that in the appropriate amounts was produced exactly what was needed, and what meets the tastes of customers. Furthermore, the competition allows production efficiency, which means that the production of goods and services in the new modern conditions is achieved at the lowest possible cost per unit. In principle, the competition driven by new customer requirements allows dynamic efficiency, under which are understood the additional investments to upgrade the production process and products. This trend should be continued in order to ensure that needs which currently are not met, become satisfied at some future period, but at the lowest possible costs. Finally, it must be said that competition has an extremely important selective function, which separates successful and unsuccessful entities, with the latter leaving the industry, often going in bankrupt. This separation of healthy and less healthy businesses is crucial for maintaining economic efficiency and improving social welfare. The modern economy, but also other processes, have become highly dependent on the position of fiscal (tax) policy, so the long-term survival of inefficient businesses is very dangerous for the social well-being and welfare of taxpayers.<sup>8</sup> It could be concluded that free and unfettered competition that takes place in modern and regulated markets plays the role of selector who chooses the conditions and adjusts the factors that enable economic operators to remain active in their respective industries. The abandonment of economic channels under influence of competition sometimes might not be the best solution, because big decisions shall not be taken without a deep analysis of the reasons, and under the influence of the continued existence of various forms of harmful practices and procedures. The cornerstone of European competition law was set up by the Treaty of Rome, which first introduced the competition rules that are still in force. According to the consolidated version of the text of the agreement, the former<sup>9</sup> articles 81 and 82 (now substituted with Articles 101 and 102), prescribed what behaviors of participants in the market are considered to be contrary to competition and therefore have to be prohibited and incompatible with the common market. Moreover, the importance of the competition is even more extended considering the specific character of the European Union. The basic idea of the European Union, as some sort of superstate or postmodern empire whose foundations have been laid in Maastricht (Netherlands) in 1992<sup>10</sup>, represents the unique, free market. On the other hand, one of the most common consequences of monopolistic behavior is the segmenting of the market, elimination of competition, violation of market mechanisms, which ultimately will lead to the closure and autarky of

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8 M. Radičić/ B. Raičević, *Javne finansije: teorija i praksa*, Data status, Beograd, 2008, 134.

9 Consolidated version of the Treaty Establishing the European Union “Article 101 (ex Article 81 TEEC) and 102 (ex Article 82 TEEC), Official Journal of the European Union, 30 April 2010.

10 I. Totić/ M. Totić, “Ulazak Republike Srbije u Evropsku Uniju ili rizično putovanje prema evropskoj periferiji”, *Ekonomski vidici*, 2014, 3.

Member States national economies. Therefore, the preservation of competition at the European Union level in fact largely become a way of salvation of a single market, and ultimately of the entire European project.

### 3. COMPETITION LAW, POLICY, AND PROTECTION

Competition law is a branch of law that consists of rules which aim to protect competition as a process and to provide conditions so that companies (entrants), who participate in the free market, will not be able to, in any way, restrict, distort or prevent competition, which means that they allow market forces to operate normally.<sup>11</sup> In order to understand competition law correctly, and in a modern way, we should make a difference in comparison of the classical approach to the competition, as its ideal and perfect model. This can be attributed to the fact that this model was based on many assumptions, for example, in a large market where numerous of buyers and sellers are confronted on the basis of different, but complete, information on types of goods and services and mutual interests, and the existence of complete mobility of all factors of production. This quote shows that compared to the modern understanding of the concept of competition there are many misconceptions, and some should be abstracted. Definitely, one of them is tying of competition for the number of market participants – rivals, which often give a wrong conclusion—the greater number of competitors makes the competition much stronger. Of course, the generalization of competition on the basis of its intensity and relationship between the competitors is not good. This can be best verified by giving the example of one of the most intense market competition in the global plan, and that is the market of large, commercial passenger aircraft where there are only two manufacturers - Boeing and Airbus. However, the competitive pressure that they create on each other results in a large number of innovations and improvements of offers,<sup>12</sup> including lowering of costs, where the unfair competition, monopolies, and undue interference are unknown terms. Often, this means that the tender of a small number of large competitors in the competition process is far more intense than the tender of many small competitors.

Also, one of the misconceptions is the notion of competition as a static category, although it is basically very dynamic. The key of the problem is to take into consideration, in addition to actual, the existing competition in the observed time, and also potential competition, the one made up by all those potentially interested to join the single market, which is an essential and dynamic dimension of competition and market. New entrants are often perceived as weak, powerless

11 R. Whish, *Competition Law - Third Edition*, Oxford University Press, Oxford, 2009, 1-7.

12 J. Newhouse, *Boeing versus Airbus, The Inside Story of the Greatest International Competition in Business*, USA: Vintage Books, New York, 2007, 272.



in the face of strong, long-established, existing competitors, but it does not have to mean much because the new entry to the single market could be a good business move of a very strong and well-positioned company. The speed of new competitors entering in the single market depends on market barriers, because the Member States in its policies<sup>13</sup> may limit the number of competitors by directly assigning a monopoly to some of them, which prevent the others from entering and becoming competitors to those who have already done some activity. Although the single market is the basic idea of the European Union, in the present context exists an increasing number of those who seek monopolistic behavior, its segmentation, the elimination of competition, and distortion of market mechanisms. All this will eventually lead to the closure and autarky of national economies of the Member States of European Union, which is why the preservation of competition has become the need to preserve the single market, and ultimately, the preservation of the entire European project. So, in these present days, it is not strange that this branch of law has such great importance at the European Union level, and that in recent years it was developing rapidly and contributed mostly to massive changes in political beliefs and economic behavior of market agents regardless of the type of economy to which they belong to. Therefore, in parallel with the development of the market economy appeared the need to regulate rules of competition. Competition law is a part of public law, which is why protection provided to the application of competition law has the nature of public law. Competition law was made for the protection of public interests, and it restricts the freedom of contract and autonomy of parties, only applying to manufacturers, retailers, and service providers. Its goal is reflected in the provision of free market access to as many entrepreneurs as possible, in equal conditions, and also in providing of protection and strengthening of effectiveness of market competition. The effective market competition directly ensures the protection of consumer's interests, which secures the ban of its violation in restricting or preventing of entrepreneurial freedoms of trade in goods and services. Otherwise, it should be pointed out, that modern European competition law began to develop in parallel with the establishment of the European Community, because its grounds were contained in the Treaty of Rome (1957), which defined the precise goals of competition policy. Among many other goals, the most important one is to protect the interests of consumers, lower prices and improvements to the quality of products and services, and provision of an open market economy with free competition.

Free market competition plays a crucial role in the functioning of the European Union as a supra-national and multicountry community. The four basic market freedoms:<sup>14</sup> free movement of goods, services, capital, and persons, in synergy

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13 H. J. Hovenkamp, "The Antitrust Movement and the Rise of Industrial Organization", *Texas Law Review*, Vol. 68, 2009, 105.

14 C. Barnard, *The Substantive Law of the EU: The Four Freedoms*, Oxford and New York, Third edition, 2010, 89.

with the principles of non-discrimination and current regulative of protection of competition represent essential elements of European Union economic order. There should be no doubt that the establishment of a single or internal market represents the best intention in order to secure free movement of people, goods, services, and capital, as well as within the borders of any European country individually<sup>15</sup>. European Union with the aim of combating the effects of monopolies and oligopolies, agreements on prices and/or market share, and unwarranted government intervention, has the active competition policy<sup>16</sup> in direction of limiting or preventing the collapse of free market competition in the common market. Therefore, the European Union competition law contributes to the development and preservation of the internal market, by encouraging the trade between the Member States.

Otherwise, there are two known models of competition, of which the first one was developed in Great Britain in the XVIII century, and the second was an expression of American practice on territory of the United States at the end of XIX century. Although American lawyers have helped in competition matters in the creation of a number of articles of Contract of Association, the European model of competition is still significantly different from the USA model. The American model of competition solely deals with the prevention of distortion of competition in the private sector, while the European model deals with the prevention of distortion of competition in the public sector, or in the sector which is composed of companies and organizations that are subject to state aid, as well as special rights.<sup>17</sup> The European model of competition policy was quickly developing and founded its place also in German and British legislation, although in the other Member States has existed the opposition from different market participants to whom the competition was intended. Of course, they understood it as a threat, which meant that, as such, it did not suit their intentions and plans.<sup>18</sup> However, having the common goal of developing the modern industrial policy and growth of competitiveness of European economy, the European Commission<sup>19</sup> actively engaged in solving problems, firstly in declining industries, with the most common

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15 M. Totić, "The review of European Community and European Union through the prism of common market", *International review*, No. 3-4, 2019, 2.

16 A. M. Radulescu, *Cartel Deterrence Impact of Competition Policy on Price-Cost Margins*, Econometric study on the EU Manufacturing Industry, LAP Lambert Academic Publishing, 2010, 68.

17 S. Hicks, *The political system of the European Union*, Belgrade, Official Newspaper, 2007, 234.

18 M. Cini/L. McGowan, *Competition Policy in the European Union*, Basingstoke, Palgrave Macmillan, 2.edition., 2008, 7-32.

19 European Commission Report on Competition Policy for 2009, Publications Office of the European Union, Luxembourg, 2010, 2. [https://ec.europa.eu/competition/publications/annual\\_report/2009/en.pdf](https://ec.europa.eu/competition/publications/annual_report/2009/en.pdf) (04. 11. 2020).



use of two instruments, the use of state aids, and the control of its distribution in various countries of European Union. Finally, it should be noted that the competition policy of the European Union, among the single market, represents one of the most important and most successful integration achievements.

#### 4. COMPETITION LAW AND TRENDS

*Treaty on the Functioning of the European Union* in its preamble does not determine the concept of competition. On the other side, the jurisprudence of the European Court of Justice confirms that the latter deals more with the protection of competition rules in the European Union, since it is almost unattainable and difficult to precisely define the term of the competition. The cases like BPB Industries<sup>20</sup>, United Brands vs Commission<sup>21</sup>, Continental Can<sup>22</sup>, or Sirena S.r.l. vs. Eda S.r.l.<sup>23</sup> are the best confirmation of this claim. However, this does not mean that there should not be given at least an approximate definition, especially because of its role and importance in new competitive conditions. For that purpose, Gojder's definition is often used, where stands that competition is understood as a relationship between a number of market participants who at the same time sell goods or provide services of the same type, and a particular group of consumers that can be clearly defined.<sup>24</sup> This definition alludes to workable competition and on its effective protection that the European Court of Justice has designated as the required level for ensuring the basic conditions for achieving the objectives of the Treaty establishing the European Economic Community. In accordance with provision 2 of article 3 of this Treaty, the European Court of Justice has the task to determine the competition rules necessary for the operation of the internal market.<sup>25</sup> Modern competition policy of the European Union, which started

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20 Judgment of the Court (Sixth Chamber) of 6 April 1995, BPB Industries plc and British Gypsum Ltd v Commission of the European Communities, Case C-310/93 P. ECLI:EU:C:1995:10 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61993CJ0310>. (16. 12. 2020).

21 Judgment of the Court of 14 February 1978, United Brands Company and United Brands Continentaal BV v Commission of the European Communities, Chiquita Bananas, Case 27/76, ECLI:EU:C:1978:22 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61976CJ0027>. (16. 12. 2020).

22 Order of the Court (First Chamber) of 18 April 1975, Europemballage Corporation and Continental Can Company Inc. v Commission of the European Communities, Case 6-72, ECLI:EU:C:1975:50 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61972CO0006%2801%29>. (16. 12. 2020).

23 Judgment of the Court of 18 February 1971, Sirena S.r.l. vs Eda S.r.l. and others, Case 40/70, ECLI:EU:C:1971:18 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61970CJ0040>. (16. 12. 2020).

24 D. Gojder, *EC Competition Law*, Oxford University Press, Fourth edition, 2003, 8.

25 V. Trstenjak/ M. Brkan, *EU law (constitutional, procedural and commercial EU law)*, GV Založba, Ljubljana, 2012, 575-576.

after the signing of the Lisbon Treaty, includes not only the rules relating to the prevention of restriction of competition (anti-trust policy) but combines and rules that affect the structure and regulation of the single market.<sup>26</sup> The end of the XX and beginning of the XXI century was marked with the reform of competition law, particularly in the dimension of its implementation. The reform is reflected in Directive 1/03 related to the adoption of new rules for the application of Articles 101 and 102, and the rules on merger control, which entered into force on May 1, 2004, replacing the previous Directive 17/62.<sup>27</sup>

In the new system competition law became more actual also because of the fact that European Commission has established a European Competition Network by its close cooperation with national competition authorities of the Member States, which ensured the effective implementation of competition rules. European Commission recognizes this change as an opportunity for wider application of Articles 101 and 102, with the increasing role of private-law instruments of protection of interested subjects. This was confirmed in the first report of the European Commission on implementation of Directive 1/03, which was announced in April 2009. In these modern conditions, there is a fierce fight against cartel agreements, which are considered to be one of the most important policy objectives for the protection of competition in the European Union. It is inevitable to say that 2008 will be remembered for fighting against cartels and protection of consumers. During the mentioned year the significant growth effects of set fines were recorded for those companies that have repeatedly entered in the cartels, so the European Commission sanctioned a large number of entities by collecting a total amount of 2,271 million euro. Also, the strongest European companies like Microsoft and Intel were among the sanctioned.

In 2009 the financial and economic crisis has changed the directions and efforts of the European Commission regarding the stabilization of the financial system of the European Union. Member States on this occasion have focused their large amounts of state resources in the financial sector, so the European Commission was forced to conduct a thorough control of state aids. In the field of anti-trust legislation, the European Commission has in particular considered the facts relating to business problems and potential avoid of penalty payments in accordance with the current anti-trust regulations. The attention was based on the fact that competition law in the European Union includes norms that prohibit cartels and anti-competitive agreements between the entities. It also took charge of decisions by associations of undertakings and concerted practices under Article 101 of the *Treaty on the Functioning of the European Union* and standards that prohibit the abuse of dominant position under Article 102. Right

26 J. Čeranić, "The ratification of the Lisbon Treaty-the reform of the European Union, balance and perspective", *Foreign legal practice, Belgrade*, no. 3/2009, 22.

27 N. Misita, *EU: Competition Law*, Revicon doo, Sarajevo, 2012, 2.

to control the concentration refers to the merger, acquisition of control, and the formation of joint ventures. For example, the merger is a process in which two (or more) companies agree, first, the cease of existence in the current status, and second, to simply form by merging in currently existing conditions a new company and to stop creating specifically the commercial activities and business strategies.<sup>28</sup> There are many interpretations that the merger - the process is similar to acquisition or takeover, which is not true, and because of that, it is difficult to determine an approximate number of potential mergers that occur in a single fiscal year. Based on practice experience, by judging the number of cases in which the merger has successfully ended, it is assumed that this number is very high. In contrast to mergers, the acquisition is a business transaction between unrelated persons according to the rules and in accordance with terms set by the market, in which each company operates in its own interest. The acquisition is a business transaction or a procedure in which a company buys controlling interest or a share of 100 % in another company, that becomes directly converted to its own affiliation. By making the acquisition, one company buys the assets and liabilities of the other, while the acquired company loses all former rights, among which in the first place, its own independence.

The procedure in which bigger and more successful, or partially successful, companies buy smaller and unsuccessful companies, is a regular acquisition. It is a transaction in which the company that has a strong desire and a good opportunity to step up funding, without any limitations buys a publicly listed company. Otherwise, there is an inverse acquisition, when a smaller company gets more control in the management of a non-renowned company. The next reasons are very important for the implementation of mergers and acquisitions: the need to expand customer base and increase market share, to extend the geographical reach on new markets, to win new technologies, to market brands, to engage professional human capital, and to realize economies of scale.<sup>29</sup> The horizontal and vertical integrations are significant for such strong doubles. Horizontal integration results from mergers and acquisitions of competitors in the same industry with increased market share and market power of the new company. Vertical integrations are related to mergers and acquisitions of companies that face each other as buyer and seller. In both cases, market transactions include the initial investment by purchasing the existing company. There is also a term known as the greenfield investment – the strengthening of the foundations of a new legal entity, which usually, but not necessarily, allows, for example, the construction of certain facilities in some foreign country.

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28 B. Mašić/S. Mašić, “The strategy of mergers and acquisitions in the global environment”, *Singidunum*, Belgrade, 2010, 181-192.

29 D. Sorcerer, *Marketing communication strategies*, Center for the Faculty of Economics in Belgrade, 2010, 234.

Mergers and acquisitions have been for a long time the most popular strategy of economic growth of companies in the United States<sup>30</sup> because, since the beginning of the XXI century, almost 45% of acquisitions were conducted outside the state borders. In the last decade, this strategy has increasingly become a characteristic of many multinational companies of European Union Member States. The purpose of the joint venture is contained in the following questions: what is a joint venture and how it works, is it necessary, what are the chances of its success, what kind of risks it faces, and which legal consequences it has? It is significantly different from the merger because there is no transfer of ownership. Since the joint venture means cooperation, the critical aspect is not in the process, but in execution, therefore, a legal agreement must contain a clear position regarding each of the parties. This refers to the objective of strategic alliance, the commitments and size and type of assets (tangible and intangible) that the parties enter into a joint arrangement. Thus, the joint venture is confirmed with the concluded agreement between two or more participating parties who agreed on the execution of a particular business enterprise.

According to many opinions, competition law deals mostly with the issues related to the suppression of monopolies, an illegal agreement known as cartels, and abuse of dominant market position. That is why competition law is clearly regulated by special laws in the developed Member States. The laws provided all procedures of application of general competition rules, in particular those relating to the manner of determining the relevant market. It is very important for the measurement of market power of individual competitors - market participants, and for the selection of methodology to be applied in assessing of market dominance. It is crucial to clearly define, by establishing a dominant position, the measurement parameters of market power in order to objectively determine the market situation with market participants.<sup>31</sup> In particular, the question of monopoly and its dynamic efficiency. In this sense, a monopoly position is a powerful incentive for entities and entrepreneurs to invest primarily in research and development, and to increase their economic efficiency and capacity. The opportunity of becoming a monopolist represents a strong incentive for each subject. In these conditions the research and development are emphasized, but also the improvement of the production process and the offer, which are the culmination of investment. Therefore, it is very easy to explain the struggle for profits and monopoly position since they are conditions for the economic progress of mankind.

In short lines, monopoly represents the mechanism that enables economic

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30 J. Kontić/ Lj. Kontić, "Mergers and acquisitions in the banking sector", *Banking*, Belgrade, 5-6/2009, 90-105.

31 Lj. Madžar, Competition policy as a factor of integration of Serbia into the EU, *Business School*, Belgrade, No. 3/2011, 1-16.

progress. Since everything could not be protected, it is necessary to apply a new organization, a new way of providing services and communicating with customers.<sup>32</sup> Therefore, it is necessary to access the innovations that increase the productivity of production factors of monopolists and society as a whole. When everything could not be protected, only the superior business results remain to be achieved, which will be painless and will also eliminate competition. It means that competition is an initiator that will force competitors to activity, so they would not just tap in place. However, a large number of monopolies are not the result of superior business results, research, improvement of the development process, and offer improvements, but the result of government intervention. The latter is present in two ways, at first, when the government raises barriers and prevents the entry of competitors in the market or in production processes, and on the other side, when simply awards to the participant the exclusive right to perform certain activities.<sup>33</sup> This is typical for companies in oil refining and oil derivatives, or in the production and distribution of electricity.

## 5. THE COMMON MARKET OF THE EUROPEAN UNION

The Common Market as an institute was set up in 1957 when the Treaty of Rome marked the creation of the European Economic Community. Since then it is continuously one of the key policy areas of the European Union. Otherwise, its establishment can be viewed from several angles. From a political point of view, it represents a mean and an intermediate stage towards the realization of economic, monetary, and political union, so the timing for its implementation is determined by the political will of Member States. From a legal perspective, the establishment of an internal market entails the harmonization of legal and other regulations within the European Union, where the main goal is to prevent the removal of existing and introduction of new barriers for trade between the Member States. To achieve these goals, it is necessary to develop and implement a series of measures and regulations of secondary legislation, which ensure the functioning of the internal market in legal and technical terms. Finally, from the economic point of view, the Common Market is only one level of international economic integration towards the political membership as the ultimate goal (free trade area, customs union, common market, economic union, and political union).<sup>34</sup>

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32 B. Maričić/A. Đorđević, *Creating and delivering value to consumers*, Centre for Faculty of Economics in Belgrade, 2012, 130.

33 J. Hejzer/ B. Render, *Operations Management*, Centre for Faculty of Economics in Belgrade, 2011, 894.

34 N. Petit/ N. Neyrinck, "Behavioral Economics and Abuse of Dominance: A Proposed Alternative Reading of the Article 102 TFEU Case-Law", *The Global Competition Law Centre, Working Papers Series GCLC, Working Paper 02/10*.

An important event took place in 1985 when the European Commission took initiative to constitute a single market, and since then the substance of the European Union is composed of “four freedoms” (free movement of people, goods, services, and capital). On this occasion, though a little bit later (1987), Jacques Delors gave an interesting statement. He said that, regarding the size, it is the world’s largest common market without borders, and an invaluable asset to the recovery of operations and growth of competitiveness. The intention of the European Commission was to eliminate border barriers to trade relations and to ensure its better performance. By this, the respect of the right of competition and benefits that provides to citizens, consumers, and entrepreneurs were considered. In fact, the ultimate goal of the European Commission was better integration and opening up of the sector to competition. In early 2007 the European Commission has presented its vision of the future single market of the European Union, by which was considered the possibility of life and work in the other Member States and better access to quality products and services and greater choice at lower prices. In the framework of the Common Market lies a high level of coordination not only in trade but also in monetary, currency, and fiscal policies. Economic integration is a relatively new concept in the legal and economic theory, meaning any form of connection of state or national territories that result in the expansion of a single market for goods, services, capital, and labor, as well as increasing of competition. It is certain that these categories significantly affect the increase in the living standard of Member States, their growth and development as a direct participant in the integration process. This is one of the main drivers of integration within the European Union.<sup>35</sup>

The common market has become the main lever of the European Union, even though in the early ’80s, its continued development was virtually stopped, which consequently meant the inability of reaching the agreement and changing the situation in which the whole Europe was situated. It took quite some time for all Member States to realize that Common Market is the key to the overall success of the European Union and that according to its importance it is the basis of the project of European economic integrations. However, even today it still is not in the foreground in the eyes of some representatives of Member States. Still, there are numerous of those who see it with suspicion, fear, and who often are willing to directly open hostility which frustrates the European Commission, an institution that seeks to define its long-term strategic vision and regular updating of strategy to create the necessary framework to improve its functioning. This market has in many sectors increased the choice and protection with the reducing of cost. For example, in 2010, the price of international telephone calls was three times lower than in 1998. Consumers also benefit from an enhanced choice of

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35 N. Milović, *Common market and competition policy of the European Union*, tutorial, Faculty of Economics of Podgorica, 2012, 44.



electricity supply, because there are 14 European energy companies that are active in more than one Member State of the European Union. Consumers are protected by security products since within the Single Market all of them must meet certain criteria, standards, and technical specifications. As participants in the single market, the competitors define its positive sides of which more important are the easier access, greater competitiveness expressed by strengthening market mechanisms that lead to a higher quality of products, expand of product range and lower prices, the lower transaction costs incurred as a result of reduce administration and encouraging of technological progress.

The rounding of the institute of the single market has led to the expansive growth of trade within the European Union and to increased openness to the world. Domestic trade in goods and services in value is much greater than the value of foreign trade regardless of the fact that after the completion of the internal market the European Union has taken over the role of the United States, and became the world's first exporter of goods. The Gross Domestic Product (GDP) of the European Union in 2008 was 2.13 %, or 233 billion higher than what it would be if a single market was not introduced, which roughly corresponds to an additional 500 euro per capita income. From 1992 to 2008 this market has directly influenced the creation of 2.77 million new jobs. Trade between the Member States rose from 800 billion euro in 1992 to 2.800 billion euro in 2011. Exports from European Union in other, non-member countries have dramatically increased, from 500 billion euro in 1992 to 1,500 billion euro in 2011, which is about 8% of gross domestic product (GDP) of the European Union in 1992, to 12% in 2011. The single market has made the European Union more attractive to foreign investors, and the flow of foreign direct investment (FDI) between the Member States reached a very high level, helped by a new, shaped common market. The mentioned flow of foreign direct investment (FDI) increased from 64 billion € in 1992, to an amazing 260 billion € in 2010.<sup>36</sup>

## 6. COMPETITION LAW AND CONSUMER PROTECTION

European Commission, in addition to success in the field of anti-trust legislation and prevention of cartels, has another one revolutionary project. It refers to the protection of consumers, more precisely, the protection of their interests, seen as a policy that has increasing importance in European integration relied on competition law because adequate consumer protection can only be achieved if all three general types of markets (goods, labor, and financial markets) operate effectively, sophisticated and in an open manner, with special emphasis on the absence of possible market failures. Otherwise, the theory and practice determine

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<sup>36</sup> European Commission, Report on Competition Policy for 2011, Brussels, EC, 2012. [https://ec.europa.eu/competition/publications/annual\\_report/2011/part1\\_en.pdf](https://ec.europa.eu/competition/publications/annual_report/2011/part1_en.pdf) (03.11.2020).

the term of the consumer as a natural person who purchases certain products or uses services for personal purposes and the needs for its households.<sup>37</sup> Broadly speaking, consumers are also companies, enterprises, and other legal entities and entrepreneurs, if for some reason they have to buy products or use services for their own use. Today many commercial deformities condition a series of unequal market games that cause misuse and harm consumers. The leaders in that area are monopoly agreements, which include agreements on prices and market sharing, contracts, and integration of all kinds of arrangements that distort free competition. Because of that, consumer policy is directly related to competition policy. Consumer protection law is a young branch of law that appeared in the last decades of the XX century.<sup>38</sup> Since then, it is gradually developing following the process of enlarging of economic entities, capital concentration, and centralization of production. The consequence of these processes was endangering the position of consumers on market and reducing their economic powers related to sellers and other market participants. The forces of production of some market participants increased the degree of exploitation of many consumer categories. In the fragile environment, it has become immediately clear that much could not be done to prevent their exploitation, which consequently imposed the need to establish a separate system of coordinated legal norms.

When it comes to the protection of economic interests of consumers, the competition law, in addition to economic, also has the social character reflected in the protection of consumer's social status as an object of competition protection. Since the European Union is seen as the area in which law and economics are based on the idea of expanding human and economic freedoms<sup>39</sup>, in the Member States the consumer protection is regulated directly with special laws (safety, health and economic interests of consumers), and indirectly, by encouraging the economic efficiency and promotion of competition culture. A consumer protection policy is based on a mechanism that ensures the harmonization of national regulatory systems with standards set by the European Commission that consists of directives and guidelines governing the minimum required threshold for the protection of consumers in the legal systems of Member States. The above-mentioned directives were issued in parallel with the development of a single market, and each Member State, in accordance with the freedom of choice, incorporated them in its legal system. Selected and embedded directives are used for control of the integrated and harmonized single market. From the aspect of the European policy of consumer protection, the primary rights are:

37 [http://europa.eu/legislation\\_summaries/competition/firms/l26109\\_en.htm](http://europa.eu/legislation_summaries/competition/firms/l26109_en.htm). (24.10. 2020).

38 C. Tobler/ J. Beglinger/ G. Wessel, *Essential EU Competition Law in Charts*, Budapest: HVG-ORAC / E. M. Meijers Institute of Legal Studies, Leiden University, 2011, 34.

39 M. Totić, "Harmonizacija nacionalnih zakonodavstava sa pravom Evropske Unije (EU)", *Pravne teme*, 2016, 2.

1. the right to satisfy the basic needs which includes the provision of sufficient quantities of goods and services necessary to meet the biological, medical, educational, and social needs of the consumer;

2. the right of information provided to consumers of all relevant facts for the proper selection of products and services, as well as the enjoyment of the right to protection against unfair advertising or labels on the product that might lead to reasonable suspicion;

3. the consumer's right to choice allows consumers to freely make a choice in a variety of products and services at affordable prices and with guaranteed quality;

4. the right to hear the voice of consumers which is reflected in the required representation of consumer interests in process of adopting and implementing policies that protect consumers, as well as in the process of introducing new processes and services;

5. the right to security which means the protection of consumers from hazardous products, production processes, and services detrimental to the life and health of citizens;

6. the right to recover damages which is related to obtaining fair compensation regarding incurred damages as a result of misrepresentation of product features and services, poor quality of the product, or unsatisfactory service;

7. the right to an education that includes the acquisition of basic knowledge and skills necessary for the proper and reliable range of products and services, knowledge of basic consumer rights and responsibilities and manners of achieving that knowledge, and

8. the right to a healthy environment governing rules related to life and work in an environment that poses no threat to the health of consumers.<sup>40</sup>

It should be noted that the legal protection of consumers is not just the ensuring of fair competition and relationship between consumers and affairs, it also involves the application of principles for its implementation. Among many others the principle of horizontality, subsidiarity, and minimal adjustments are distinguished, representing the backbone of the European Consumer Protection Strategy for the period from 2007 to 2013. European Union Consumer Policy Strategy aims to achieve an equal level of safety and security at a global common market, as well as providing a higher level of integration of Common Market. It is consistently based on creating a transparent market that needs to provide specific opportunities to consumers for the choice of products and services, benefits in terms of price, quantity, diversity of supply, availability, security, and

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40 S. Taboroši/M. Bodružić/R. Daković, *Consumer protection, "Effects of Serbian integration into the European Union"*, Faculty of Economy, Finance and Administration, Belgrade, 2009, 110-111.

protection from serious risks and threats. This strategy insists on a high level of consumer protection, as well as on the continued development of rules for the proper implementation of consumer policy in the European Union. It involves the implementation of a system of legal norms, in order to provide a high level of consumer protection with legal means.

## 7. CONCLUSION

Modern trends related to market operations represent indicators that competition can be affected in several ways. One way is the abuse of dominant position made by one enterprise, or more of them, in the Common Market or in one of its essential parts. Another way is dominance which regularly and often has a negative impact on trade relations between the Member States. In fact, it is the abuse of power in the market that one subject has gained in some of the known methods. In economic terms, the dominant position is consistent with the monopolistic or oligopolistic market situation, in which one or a small number of companies have *de facto* power to independently determine the conditions to the process, and at the same time with no obligation to take into account the interests of other participants in transactions. According to the judicial interpretation, the companies in a dominant position have the power to act independently without regard to their competitors. That behavior enabled them to possess the technical knowledge, resources, and capital. Based on these performances, these companies have the power to set prices, control production or distribution, or even both. Also, the cartels are a known form of violation of competition law. In legal theory, which includes competition law, several types of prohibited cartels were mentioned. These are, at first, those who can directly or indirectly fix purchase or selling prices or other conditions in the exchange. In addition to them, there are also those who limit or control production, investments, technical development, or investment activity. At cartels, the source and legal grounds of misconduct are mostly in willingness among certain entities. Also, violation of competition could be met at factual actions that manifest the paradigm of market behavior. Accordingly, the prohibited conduct is not only the one that is considered as unfair, harmful, or discriminatory but also the one that disturbs the market structure.

In violation of competition rules, it is necessary to consider the importance of concentration in relation to economic life and the need for its regulation. There are many companies, participants in the competition game, which regardless of their size and capacity are able to operate in a satisfactory manner. This is especially true for those companies that perform a serious, substantial, and complex activity, or do not have sufficient funds, equipment, and trained working personnel. That is why they interconnect and agree to coordinate on the market. These types of connections are known as the *acquis communautaire* concentration, which

includes mergers, acquisitions, and joint ventures. Connecting businesses in that way disrupt their internal structure and adversely affects their behavior. In conclusion, the previously mentioned horizontal, vertical, and mixed connections pose a significant threat, because they exclude competition in the markets of supply or sale. The importance of concentration was also indicated at the time of existence of the European Economic Community in the White book, which covered the needed measures and instruments to achieve a Common Market. Later, the regulation of this issue was tried with the Merger Regulation, where the main goal was the abolition of internal borders. Many regulations on competition were adopted when the European Economic Community had a smaller number of Member States, so in the new conditions, the number of regulations had to be increased. The European Union currently has 27 Member States, meaning that once passed regulations could not resist the time and need to be revised. That is why the European Commission took serious actions to modernize the procedural rules and to revise the well-known articles 81 and 82 of the Establishing Treaty, and to expand the material rules on certain competition issues. The results of its activities are known.

The idea that it is necessary to respect the rights of consumers in order to establish the functional single market had a great contribution to the foundation of European consumer legislation. The main goal was that informed citizens, aware of their rights and social roles, become the drivers of economic change in direction of establishing of an open, fair, and transparent single market. Only such a market can provide them the opportunity to enjoy the right of free choice and exclude the rogue traders from the competition. Member States of the European Union, which occupy the central belt, are characterized by the action of strong state institutions for the enforcement of consumer protection, while the states as Slovenia, Austria, and Germany solve the mentioned area with the dominant influence of consumer movement.

## **TRENDOVI U RAZVOJU PRAVA KONKURENCIJE EVROPSKE UNIJE**

### **Sažetak**

U radu su izloženi mehanizmi i tržišna pravila čija pravilna primena omogućava normalno funkcionisanje tržišta koje ne ograničava, narušava ili sprečava poštenu konkurenciju. Istraživanje je fokusirano na osnovnu ulogu i svrhu prava konkurencije, koje obezbeđuje pravilno funkcionisanje slobodnog tržišta na kome je optimalna raspodela resursa osigurana u vidu odnosa između ponude i potražnje, a ne merama državne intervencije. Pravo konkurencije, kao važna grana prava, se često upotrebljava za nepotrebno objašnjavanje koncepta tržišta, koje se ogleda u nekontrolisanom ponašanju učesnika na otvorenom tržištu, što dovodi do jačanja nelojalne konkurencije i ugrožavanja dobrobiti potrošača. Stoga, rad koji je pred vama predstavlja značajan preokret, jer je istraživanje zasnovano na novim trendovima, sa fokusom na zaštitu učesnika na tržištu i zaštitu potrošača. Ukratko, rad se bavi opštom podelom sistema prava konkurencije, imajući u vidu da potonja ima svoje začetke u Sjedinjenim Američkim Državama, ali i zbog potrebe za prekookeanskom trgovinom, gde je ista veoma brzo našla svoju primenu u vreme najveće ekspanzije u zemljama zapadne Evrope. Rad se takođe bavi ličnim, materijalnim i vanteritorijalnim dometom prava konkurencije, akvizicijama, povezivanjem, ali i sa «četiri osnovne slobode» Evropske unije..

***Ključne reči:** Pravo konkurencije, Evropska unija, komercijalne aktivnosti, sudska praksa, paralelna ponašanja*