

# THE CONTROL OF CONCENTRATIONS

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## **Abstract**

*Concentrations of companies have developed in the last 40 years, as an effect of open borders within the European Union. The question from the point of view of competition is if setting up a new group or entity may have the same restrictive effects of an agreement. In addition, that may lead to monopoly or oligopoly, which prevents effective competition. Concentrations are situations when one or more companies acquire control of other companies, changing the structure of the companies involved and of the market. The most important forms of concentrations of undertakings are the holding by a company of the capital of another company or of other companies, the total or partial acquisitions by a company of the assets of other companies and the merger of two or more companies which are legally independent into a new company. Sometimes, where the concentration in an industry exceeds certain limits it can lead to monopoly or oligopoly structures, which restrict competition and jeopardise consumers' interests. The legal basis for EU merger control is Council Regulation (EC) No 139/2004. The regulation prohibits mergers and acquisitions which would significantly reduce competition in the Single Market, if they would create dominant companies and are likely to raise prices for consumers.*

**Keywords:** *economic concentrations, competition, fair competition, Commission*

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## **I. Introduction**

Another threat to ensure free and fair competition is the negative effect of the concentration of economic power.

Competition and interstate commerce within (inside) the European Union may be adversely affected not only by "cartels" (agreements between undertakings, decisions by associations of undertakings and concerted practices), but also by the "dominant positions" or "economic concentrations".

Therefore it was intended to control the strong economic position of those able to dominate the market, while pursuing the benefits arising from such a position.

## **II. Historical aspects**

At the beginning, there was nothing specified in the Treaty of Rome (EEC Treaty) on the issue of merger because there were no agreements between the parties (undertakings). Finally, Regulation of 21 December 1989 (Regulation 4064/89, OJEU L no. 395/1 of 30 December 1989) which was amended by Regulation of no. 1310/97 of 30 June 1997 (OJEU L no. 180/1 from 9 July 1997) was focused on concentrations.

Commission in Brussels has opposed, therefore, to eight mergers in eight years.<sup>2</sup>

The most controversial decision was the intention of purchasing of De Havilland by Aerospatiale and Alenia (dec. October 20, 1991).<sup>3</sup>

Some companies prefer to abandon projects (audit firms KPMG and Ernest & Young), while others impose their conditions (case Boeing-McDonnell Douglas).<sup>4</sup>

A concentration is achieved when two or more previously independent undertakings merge, or when one or more businesses that already have a firm control or one or more undertakings

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<sup>2</sup> Gerard Druésne, George Kremlis, *La politique de concurrence de la Communauté Economique Européenne*, Paris, Presses Universitaires du France, (1990) p. 59

<sup>3</sup> Alain Guedj, *Pratique du droit de la concurrence national et communautaire*, Paris, LITEC, 2000, p. 79

<sup>4</sup> *Ibidem*

acquire, directly or indirectly, through equity participation or purchase active elements, by contract or otherwise control all or parts of one or more businesses.<sup>5</sup>

Concentrations mean (from 1 March 1998), "creating a general enterprise performing on a lasting basis all the functions of an autonomous economic entity and which does not involve coordination of competitive behavior or between founding businesses or between them and competing undertakings". To be in full exercise, the subsidiary shall be truly autonomous, it must have all the attributes of a normal business, selling products and services, the existence of a market pricing freedom, independence leaders and employees and so on merger regime applies equally dominance.

### III. Regulation of concentrations of undertakings

The Treaty leading to the creation of the European Coal and Steel Community (ECSC), which ceased to exist in the meantime, apply to all merger cases mentioned in Articles 65 and 66, even if they have no effect on trade between Member States or States. A concentration of firms in a single Member State is therefore subject (eg, decision of November 5, 1981 Usinor-Creusot-Loirechiers Chatillon). Concentration must be composed of independent business units under Article 80 ECSC (coal and steel producers, distributors, other than those who sell to consumers or handicrafts).<sup>6</sup>

Prior authorization from the Commission is required to achieve a concentration "by merger, acquisition of shares or assets items, contracts, loan or any means of control." It is considered that an enterprise controls the other, if the first is able to determine the action of the two in the production, price, investment, supplies or sales.

Commission may grant authorization "if it recognizes that the operation will not be considered granted, persons or undertakings concerned the power"<sup>7</sup>:

- Determine prices, to control or restrict production or distribution or to hinder competition in a substantial part of the market of the products;
- To avoid competition rules resulting from the application of this Treaty;
- To establish a privileged position and access to raw materials or outlets.

Commission exempts from the requirement of prior authorization categories of operations of the importance of the undertaking concerned must have a good reputation under the current rules. This is especially operations that do not exceed a certain annual ceiling of coal and steel production (decision of 22 June 1967 as amended on 20 October 1978).<sup>8</sup>

EEC Treaty contains no provision expressly addressing concentration and the Commission considered that, although Article 85 does not provide control, Article 86 may be applied under certain conditions (memorandum of December 1, 1965 to focus on the common market).<sup>9</sup>

Article 82 (ex 86) EC may be applied if a company is using its dominant position to swallow other businesses or to control them, thus tending to hold the market in question a quasi-monopoly situation.

Commission first applied this theory in 1971 on a merger which emphasized the dominance of American Continental Can Company, the largest producer of metal packaging which already occupies an important place in Europe by controlling the majority of German society Lerbeca Schmalback-Werke and planning to buy a Dutch company that was the most important producer in the Benelux. Court of Justice annulled the decision of 9 December 1971 for not quite defined relevant market, but admitted the principle of application of Article 86, the company's merger control instrument.

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<sup>5</sup> John Tillotson, *European Community Law. Texts, cases and materials*, Londra, CPL, 1996, p.375

<sup>6</sup> Gerard Druesne, George Kremlis, *op.cit.*, p. 58

<sup>7</sup> *Idem*, p. 59

<sup>8</sup> *Ibidem*

<sup>9</sup> *Ibidem*

This law therefore allow the Commission to monitor concentrations, especially those made of the dominant undertaking, provided that the concentration us. It does not interfere in the internal organizational measures group, considering that you can not engage in self-development to large groups (case Michelin-Kléber Colombes).

A judgment of November 17, 1987 (the British American Tobacco Ltd) confirms that the acquisition by an enterprise of a competitor or its influence on may be incompatible with Article 86.<sup>10</sup>

The Court of Justice has recognized the applicability of Article 81 (ex 85) EC on November 17, 1987 judgment of the agreements under which an entity takes control over another competitor by purchasing shares or by creating structures to promote commercial cooperation between them, given that the agreement allows the company to influence more or less commercial activities of the others.<sup>11</sup>

On 21 December 1989 the Council adopted Regulation 4064/1989 (entered into force in September 1990 and as amended by Regulation 1310/1997), which establishes a merger control at Community level, the Commission having, in principle, the only role of determine their compatibility with the common market.

Regulation contains rules applicable to concentrations likely to significantly impede effective competition in the common market or in a substantial part of it.

Regulation was valid for community dimension merger transactions.<sup>12</sup>

A concentration with a Community dimension was taken into consideration if:

- The total turnover achieved globally by all the undertakings concerned is an amount greater than five billion Euro;
- The total turnover achieved by the individual in the community at least two undertakings concerned is an amount of more than 250 million Euro, unless each of the undertakings concerned achieves more than two thirds of the total turnover in the community, within a single or the same state.

A concentration thresholds is not yet reached a Community dimension where:<sup>13</sup>

- The total turnover achieved in the field of all businesses involved is a higher amount of 2.5 billion Euros;
- In each of at least three Member States the aggregate turnover of all the undertakings concerned is more than 100 million Euro;
- In each of at least three Member States concerned, the total turnover achieved individually by at least two of the undertakings concerned is more than 25 million Euro;
- The total turnover achieved by the individual in the community at least two of the undertakings concerned is an amount greater than 100 million Euro, unless each of the undertakings concerned achieves more than two thirds of the total turnover in the community within a one and the same member state.

Concentration that did not create a dominant position therefore having only effective competition would be significantly impeded in the common market or in a substantial part of it shall be declared compatible with the common market.

Merger that created a dominant position therefore only effective competition would be significantly impeded in the common market or in a substantial part of it shall be declared incompatible with the common market.

For the establishment of a joint undertaking constituting a concentration to have as their object or effect the coordination of the competitive behavior of undertakings that remain independent, such coordination is judged by the criteria of Article 81 (ex 85), paragraphs 1 and 3 EC, order to determine whether or not the operation is compatible with the common market.

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<sup>10</sup> Gerard Druesne, George Kremlis, *op. cit.*, p. 60

<sup>11</sup> *Idem.*, p. 62

<sup>12</sup> *Ibidem.*, p. 62

<sup>13</sup> Louis Dubouis, Claude Gueydan, *Grand textes de droit de l'Union Europeene*, Paris, Presses Universitaires du France, 1990, p. 674

#### IV. Procedures

To this end, the Commission shall consider especially significant and simultaneous presence of two or more founding companies in the same market as the joint enterprise in a market upstream or downstream of the market or on a neighboring market closely linked to the market, and given the undertakings concerned the possibility of their coordination, resulting directly from the establishment of the joint undertaking to eliminate competition for a substantial part of the goods and services concerned.

A concentration was achieved:<sup>14</sup>

- When two or more previously independent undertakings merge;
- One or more persons already controlling at least have a business;
- One or more undertakings acquire, directly or indirectly, either through equity participation or buying active elements, by contract or other means, in control of the whole or parts of one or more other undertakings;

Creation of a joint undertaking performing on a lasting basis all the functions of an autonomous economic entity constitutes a concentration.

Concentration with a Community dimension covered by the Regulation had to be notified to the Commission within one week from the publication date of the agreement or offer to purchase or exchange or the acquisition of control participation. The period begins with the emergence of the first of these events.

Regarding the annual number of notifications in 1994, for example, were 288 notifications to the Commission.<sup>15</sup>

Concentration consisting in a merger or establishment of joint control must be notified jointly by the parties to the merger or the establishment of joint control. In other cases, the notification must be submitted by the person or organization that acquires the whole or parts of one or more businesses.

Where the Commission finds that the notified concentration taken by this regulation, public notice of the name the persons concerned, the nature of the concentration and the economic sectors involved. Commission takes into account the legitimate interests of enterprises for their business secrets should not be divulged.

Total turnover comprises the amounts concerned resulting from sales of products and services by companies involved in the last financial year and corresponding to their usual activities, deduction made from sales discounts, as well as value added tax (VAT) and other taxes directly linked to turnover. Total turnover of an undertaking concerned does not take account of dealings between the enterprises concerned.<sup>16</sup>

Turnover, either in the Community or in a Member State shall comprise products sold and services provided to businesses and consumers, either in the Community or in a Member State.

As an exception, the concentration consists in the acquisition of parts, whether or not legal entities, of one or more undertakings, only the turnover relating to the parties that the transaction is considered by management or by the parties transferor.

However, two or more transactions as those listed in the first paragraph, which took place over a two year period between the same persons or undertakings shall be treated as a single concentration intervening since the last transaction.

Turnover was considered for credit institutions and other financial institutions (as defined in Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions, deduction made occasionally from VAT and other taxes directly related to these products) Relating to securities gains, gains from shares and

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<sup>14</sup> *Idem*, p. 676

<sup>15</sup> Loic Ernest, *Manuel de droit communautaire des affaires*, Paris, Eska Publishing House, 1996, p. 101

<sup>16</sup> *Ibidem*

other securities parts variable gain participation and party gains in associates, fees charged, the net benefit derived financial operations and other operations.<sup>17</sup>

The turnover of an undertaking concerned is the sum of the turnovers:

- The undertaking concerned;
- The undertakings in which the undertaking concerned, directly or indirectly, or over half of operating capital or of the power to exercise more than half of the voting rights or the power to appoint more than half the members supervisory board or directors or bodies legally representing the undertaking, or the right to conduct business enterprises;
- The undertakings which have in an undertaking concerned, the rights or powers listed in point 2;
- The undertakings in which an undertaking referred to in section 3 has rights or powers listed in point 2;
- Enterprises where several undertakings referred to in points 1-4 have been together for rights or powers listed in point 2;

This turnover was attributed equally the undertakings concerned.

Call upon the examination of the notification, since its receipt, if it concludes that the concentration notified does not relate to regulation and will make a decision about it, or if it finds that the notified concentration raises serious its compatibility with the common market and decided not to oppose it and to declare it compatible with the common market.

The decision declaring the concentration compatible evenly covering restrictions directly related and necessary to achieve concentration.

Where the Commission finds that the notified concentration raises serious doubts as to its compatibility with the common market will decide to start the procedure.

If the Commission finds that, following modification by the undertakings concerned, a notified concentration does not raise serious doubts, that she may decide to declare the concentration compatible with the common market.<sup>18</sup>

Commission decision that could join the conditions and tasks designed to ensure that the undertakings concerned comply with the commitments they have taken them on the concentration compatible with the common market.

The Commission may revoke the decision it has taken if the decision is based on incorrect information that is guilty of an undertaking concerned, if the decision was obtained by fraud, or where the undertakings concerned contravene a decision tasks side.<sup>19</sup>

The Commission shall without delay its decision the undertakings concerned and the competent authorities of the Member States.

A concentration could not be achieved even before being notified, or before being declared compatible with the common market.

There is no barrier to a takeover bid or exchange that has been notified to the Commission, because the one who gets no exercise their respective voting rights or participations side undertakes to preserve the full value of its investments and based on given an exemption by the Commission.

The Commission may, on application, grant a waiver of the obligations. Application for an exemption is justified. If the Commission decides upon request, shall take particular account of the effects that can cause suspension of one or more undertakings concerned by a concentration or on a third party, and the threat that concentration is the competition. Exemption may be enclosed conditions and tasks to ensure conditions of effective competition. It can be requested and granted at any time, whether before notification or after the transaction it.

If the Commission finds that the notified concentration after modifications by the undertakings concerned, the requirements set and criteria of Article 81 (ex 85) EC, paragraph 3, it shall take a decision declaring the concentration compatible with the common market.

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<sup>17</sup> Loic Ernest, *op. cit.*, p. 102

<sup>18</sup> Louis Dubouis, Claude Gueydan, *op. cit.*, p. 681

<sup>19</sup> *Ibidem*

Commission may assign its decision conditions and tasks designed to ensure that the undertakings concerned comply with the commitments they have made about it, in order to achieve compatibility with the common market. Decision declaring the concentration compatible evenly cover restrictions directly related and necessary to achieve concentration.

If the Commission finds that a concentration meets the criteria defined in Article 2, paragraph 3 or, in the cases covered by Article 2, paragraph 4, does not meet a criterion of Article 81 (ex 85) EC, paragraph 3, it shall take a decision to declare the concentration compatible with the common market.

If a concentration has already been made, the Commission may order, in a decision that should be based on paragraph 3 or in a separate decision, the separation undertakings or assets brought together or cessation of joint control or any other actions to restore effective competition.

The Commission may revoke the decision it has taken if :

- The declaration of compatibility is based on incorrect information for which one of the undertakings is responsible or if it was obtained on fraudulent;
- Whether the undertakings concerned contravene a decision tasks was next.

The Commission may, by means of a decision which shall promptly notify the undertakings concerned and on which it shall inform the competent authorities of other Member States, to return the competent authorities of the Member State concerned a notified concentration case.

Within three weeks (which starts with the receipt of the copy of the notification), a member state may notify the Commission (which inform the undertakings concerned) that a concentration threatens to create or strengthen a dominant position with the effect of preventing competition effective in a significant market within that members stat, which presents all the characteristics of a distinct market, or that a concentration affects competition in a market within that member state, which presents all the characteristics of a distinct market and which does not constitute a important part of the common market.

If the Commission considers that (considering the market for goods or services in question or of the geographical reference market) such a distinct market and that such a threat exists, or handle the case itself to preserve or restore competition actual or market or return all or part of the case to the competent authorities of that member state to apply national legislation on competition in the state remembered.

Where a member state informs the Commission that a concentration affects a distinct market within its territory, which constitutes an important part of the common market, return all or part of the case for this distinct market, if it considers that such distinct market is affected.

Decisions to return or refuse the return is taken:

- Within (usually) six weeks referred to in Article 10, paragraph 1, second paragraph, where the Commission has started proceedings under Article 6, paragraph 1, point b;
- Within a maximum of three months from the date of notification of the operation, when the Commission started proceedings under Article 6, paragraph 1, point c, without taking the preparatory steps necessary action specified in Article 8, paragraph 2, the second paragraph and paragraph 3 or 4 in order to preserve or restore effective competition on the market.

If, within three months, the Commission, despite a call to the member state concerned has not taken any decision to return or refuse the return provided or undertakings concerned did preparatory steps, it can decide the return of the member state.

Publication of reports or examination findings announced the operation of the competent authorities of that member state arising later than four months from the return of the commission.

The member state concerned may not take only the measures strictly necessary to maintain or restore effective competition on the market.

According to relevant provisions of the Treaty, any member state may file an appeal to the Court of Justice and ask the particular application of Article 243 (ex 186) EC by national legislation in the field of competition.<sup>20</sup>

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<sup>20</sup> Louis Dubouis, Claude, Gueydan, *op.cit.*, p. 682

Decisions pursuant to Article 6 § 1 must be made within a maximum of one month. This period starts the day after receipt of notification, or if the information is incomplete, from the day of receipt of complete information.<sup>21</sup>

This period was six weeks if the Commission receives a request from a member state or upon notification of a concentration undertakings concerned submit commitments pursuant to Article 6, paragraph 1 bis, in order for the parties to them consider making a decision based on Article 6, paragraph 1, point b.

Decisions taken pursuant to Article 8, paragraph 2 of the concentration notified to take action as soon as doubts arise covered by Article 6, paragraph 1, point c, being remote, mainly due to changes made by the undertakings concerned or at the latest within the period specified in Section 3.

Decisions taken pursuant to Article 8, paragraph 3 on merger transactions notified to intervene in a maximum period of four months from the date of starting the procedure.

Deadline set out in paragraphs 1 and 3 was suspended in exceptional circumstances the Commission, under the circumstances as one of the undertakings involved in the concentration is responsible, was forced to seek information by decision pursuant to Article 11 or to order an investigation, the decision pursuant to Article 13.

When the Court gives a judgment canceling the whole or part of a Commission decision, the time limits are set is reapplied from the date of the judgment.

If the Commission has decided under Article 6, paragraph 1, points b or c or under Article 8 paragraphs 2 or 3, the time limits specified in paragraphs 1 and 3 of this Article, the transaction is declared compatible with the common market.

When the Commission shall send a request for information to a person, an undertaking or an association of undertakings, she addressed simultaneously a copy of this request to the competent authority of the Member State in which the person is residing, undertaking or association of undertakings.<sup>22</sup>

In its application, the Commission states its legal basis and purpose, and the penalties provided, if inaccurate information would be provided.

Owners or their representatives must provide information required for business and legal persons, societies or associations which have no legal personality, the persons responsible to represent their status as law and serve to provide the information.

If a person, undertaking or association of undertakings does not supply the required information within a period specified by the Commission or provides incomplete in a way, the Commission shall by decision require. The decision shall specify specifying information required set a time in which the information must be supplied and indicate the penalties provided for in Article 14, paragraph 1, point b, and Article 15, paragraph 1, point A, and the appeal from the Court of Justice against the decision.

Commission may simultaneously a copy of its decision to the competent authority of the Member State in whose territory the domicile of the person or undertaking or association of undertakings.

Upon request, the competent authorities of the Member States using checks which the Commission deems necessary or which it has ordered by decision. Member States' authorities responsible agencies to start checking their powers under a written authorization issued by the competent authority of the Member State in which status checks should be made.

The warrant specifies the object and purpose of verification.<sup>23</sup>

Commission agents may, on request or from the competent authority of the Member State of the authority to assist agents in their tasks.

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<sup>21</sup> *Idem*, p. 683

<sup>22</sup> Louis Dubouis, Claude, Gueydan, *op. cit.*, p. 681

<sup>23</sup> *Idem*, p. 685

In performing its tasks, it may turn out the necessary checks on undertakings and associations of undertakings. Agents authorized by the Commission can control documents and other business records, take copies of or extracts or request documents and business records may request oral explanations on the spot and must have secured access to all premises, land and means of transport company.

Agents authorized by the Commission for such checks shall exercise their powers under a written mandate that indicates the object and purpose of verifying that the sanction provided, if required professional papers and documents should be presented in an incomplete way. Commission announces in writing in a timely manner, the competent authority of the Member State in whose territory checks are about task identity verification and authorized agents.

Undertakings and associations of undertakings shall submit to investigations which the Commission has set about the decision. Decision indicate the purpose and checked, fixed date will begin and indicate the penalties provided for and appeal to the Court of Justice against the decision.

The Commission shall give written notice in a timely manner, the competent authority of the Member State in whose territory the verification conducted its intention to make a decision. She decides after having heard and that authority.

Agencies competent authority of the Member State in which the verification can take place upon request of the Commission or to attend the Commission's staff in their work.

Where an undertaking or association of undertakings precludes verification ordered, it shall assist officials appointed by the Commission to be allowed to carry it out. Finally, Member States shall, within one year.

Commission, the competent authorities of the Member States and officials and other servants shall not disclose information that they collect from the application of this Regulation which, by their nature, have the status of professional secrecy.

General information may be published and studies do not contain individual information on undertakings or associations of undertakings.

Postponement decision may be taken provisionally without giving the persons, undertakings and associations of undertakings concerned the opportunity to make known their views beforehand, provided that the Commission give them the opportunity as soon as possible after decided.

Commission takes decisions only on objections on the subject and the people concerned were able to showcase their comments. The rights of defense are fully insured interested in the proceedings. Access to the file is open at least to the parties directly concerned, respecting the legitimate interest of undertakings, so that their business secrets should not be divulged.<sup>24</sup>

## V. Last developments

Application of Articles 81 and 82 (ex 85 and 86) having undergone significant changes since the entry into force of the Council Regulation no. 1/2003 (adopted unanimously on 16 December 2002) on the implementation of competition rules.

This new regulation marks the most comprehensive reform against concentrations (antitrust) in 1962.

Under the new regulation, a shift occurred from an authorization system (where all mergers must be notified to the Commission in order to obtain exemptions) to a system of statutory exceptions. Commission was abolished monopoly in this area, and the national competition authorities have taken this task with courts (courts, tribunals) national.

In short, the key changes proposed in this reform are<sup>25</sup>:

- Commission monopoly was abolished in application of art. 81, par. 3 EC, its direct application to come to the task fell courts and national competition authorities;

<sup>24</sup> Louis Dubouis, Claude Gueydan, *op.cit.*, p. 688

<sup>25</sup> Marc Blessing, *Arbitrating antitrust and merger control issues*, Helbing & Lichtenhahn, Zurich, 2003, p. 33

- The Commission shall have power to grant exemption decision. DG Competition will be involved especially in cases of negative decisions under Article 81 (ex 85) EC. In the absence of notification, the Commission will deal mostly complaints;
- To abolish the system of notifications, which will mean that the Competition Directorate will be issued by this task, being able to focus on serious breaches of the mergers regulation;
- Companies (enterprises) will meet with less bureaucracy, no need to notify concentrations in order to control their previously by the Commission;
- On the other hand, businesses will have to take full responsibility (and risk) agreements and their compatibility with art. 81 (ex 85) and 82 (ex 86) EC, they will suffer a further review by the courts and national competition authorities;
- National competition authorities should be involved together with the Commission to the newly created European Competition Network. This marks a radical change in the relationship between the Commission and national competition authorities. Distribution of cases will be based on individual circumstances, such as when analyzed by the most appropriate and competent authority;
- Will be an exchange of information and administrative assistance between competent authorities within the Network and intranet being created for this purpose;
- Will be improved cooperation between the Commission and the national courts for a uniform interpretation and application of legislation;
- Where national authorities started proceedings, the Commission may intervene and dismiss proceedings national competence. At the same time, the Commission states that it will treat NCAs from a position of equality, respect and solidarity;
- Will improve cooperation with national courts in the application of Community competition rules;
- National courts may request the Commission or the Commission transmitting information relative to the application of Community competition rules;
- Directorate General for Competition will continue to advise companies;
- The Commission intends to issue a series of notifications to the application of Art. 81 (ex 85) EC;
- A Commission Implementing Regulation will show how to conduct hearings for complaints and other issues where the Commission intends to issue a decision prohibiting or imposing fines;
- National courts and national competition authorities will respect the primacy of Community rules on competition (Article 3 of Regulation no. 1/2003);
- The new regulation will ensure convergence of the rules applicable under art. 81 (ex 85) EC and facilitate both the creation of the internal market and the consistent application of Community rules on jurisdiction, even after the abolition of the monopoly of the Commission;

In the future, the national competition authorities may submit written comments relevant competent national courts and if the courts accept oral can support their point of view before the courts. At the same time, the Commission may also issue opinions both written and oral. Articles 20 and 21 of Regulation no. 1/2003 will strengthen and expand the investigative powers of the Commission. We can mention here the opportunity to interview any person who has relevant (useful) on the case.

Between the International Chamber of Commerce and the Commission have established cooperative relationships and mutual consultations on the subject of the role of arbitrator (arbitration) in mergers.

It was concluded that the referee and the Commission can work as a tandem complementary and unique.

The existence of an arbitrator or an arbitral tribunal under the merger control process offers the following advantages<sup>26</sup>:

- Less stiffness (measures envisaged by the Commission impose drastic measures and rigid, and that lead to the dismantling of parts of the enterprise);
- More flexibility (to lead the undertaking to take into account the interests of other market participants);

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<sup>26</sup> Marc Blessing, *op. cit.*, p. 35

- More dynamism (arbitrator can adapt more easily to changing conditions);
- Less speculation on the future (merger control requires the Commission to make predictions about the future);
- Uncertainties of future market developments;
- More monitoring tasks (anti-competitive behavior observation periods sometimes involve more than 10 years, a task that can be performed better by an arbitrator);
- Cooperation (arbitrator will act as an extension of regulatory authority);
- Control (Commission will not lose control of the process);

## VI. Conclusions

Objectives of competition law have been adversely affected by the Lisbon Treaty.

The Treaty has changed the legal status of the provisions of competition law, which are no longer one of European Union's activities. Union Treaty on European Union (TEU) establishes the fundamental principles on which the European Union. Article 3, paragraph 3 of the TEU states that "The Union shall create an internal market". In the new legal view, references to a system of undistorted competition were removed from the main text of the Treaties.

Replacing these provisions, competition is mentioned in Protocol 27 on the internal market and competition.

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