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Conglomerate effects of mergers – Note by Lithuania

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More documents related to this discussion can be found at
http://www.oecd.org/daf/competition/conglomerate-effects-of-mergers.htm

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1. Introduction

1. Conglomerate mergers are notified to the Competition Council of the Republic of Lithuania (Competition Council) on a regular basis. In terms of statistics, the Competition Council has seen no increase in merger notifications with potential conglomerate effects and does not see any indications for such increase in the nearest future. No sectors can be distinguished where mergers with conglomerate effects are more prevalent as compared to other sectors.

2. The Competition Council has experienced no pressure from the general public or policymakers to address perceived conglomerate concerns.

2. Assessment of Mergers with Conglomerate Effects

3. Typically, in experience of the Competition Council, conglomerate mergers have not raised competition concerns; and this was obvious without a detailed assessment. Nevertheless, in at least three cases a more detailed analysis was required. These cases are described below.

2.1. Case 1: Glass Merger

4. In the *Glass Merger*, the Competition Council was notified about the merger of two corporate groups, including *UAB „Kauno stiklas“* and *AB „Panevėžio stiklas“*[1]. The activities carried out by *UAB „Kauno stiklas“* included the production of coloured glass containers. *AB „Panevėžio stiklas“* was engaged in the manufacture of clear glass containers.

5. Two separate product markets were defined in this case: the production of clear glass containers and the production of coloured glass containers.

6. Overlapping TOP 10 buyers were asked about their possibilities to switch suppliers of the glass containers and about the instances of actual switching. The views of the competitors themselves were not specifically requested due to the fact that they were located outside of Lithuania. They were however informed of the merger investigation and had the possibility to submit their concerns.

7. The available information did not suggest any anticompetitive conglomerate effects of the merger: the buyers indicated credible supply alternatives and the competitors did not raise concerns.

8. Having regard to all these facts, the Competition Council made the conclusion that the merger would not have negative conglomerate effects to competition and the transaction was permitted.

[1] 17 February, 2017 Decision No. 1S-20 (2017) of the Competition Council: http://www.kt.gov.lt/uploads/docs/docs/2825_1d40af8cf08235e214fc4decf034c111.pdf

2.2. Cases 2 and 3: Mergers of Producers of Beverages

9. In the **first** merger of producers of beverages *UAB "Mineraliniai vandenys"* notified its intention to acquire 100 % shares of *ĮG „ALITA", AB.*[2] The defined product markets included: a) the production and sale of brandy in Lithuania; b) the production and sale of sparkling wine in Lithuania. Only the analysis of these two markets is relevant for the purposes of this note. The production and sale of brandy as well as production and sale of sparkling wine was carried out by both parties to the merger. The analysis showed that after the merger the merged entity would have [35-45 %] market share of brandy production and sale and would have [35-45 %] market share of sparkling wine production and sale.

10. In view of undertakings which provided their opinion on the merger, after the merger the merged entity would obtain well-known brands and would possibly use tying and bundling to foreclose competitors in the markets of vodka, bitter, brandy and sparkling wine. The Competition Council, however, could not identify brands that could be successfully tied to foreclose the competitors. The opinions provided by the market didn't indicate such brands either.

11. In the **second** merger of producers of beverages *AB „MV GROUP Production"* notified acquisition of *AB „GUBERNIJA"*. *AB „MV GROUP Production"* and a related company *UAB "Mineraliniai vandenys"* were selling various beverages including beer, beer cocktails, kvass and carbonated soft drinks.[3] *AB „GUBERNIJA"* was also producing and selling beer, beer cocktails, kvass and carbonated soft drinks.

12. The following narrowest markets were defined in this case (there could be no competition problems even if broader markets were defined): 1) the production and sale of kvass in Lithuania; 2) the production and sale of carbonated soft drinks in Lithuania; 3) the production and sale of light beer in Lithuania; 4) the production and sale of dark beer in Lithuania; 5) the production and sale of wheat beer in Lithuania; 6) the production and sale of beer cocktails in Lithuania.

13. The Competition Council selected 5 most popular trademarks of kvass and beer. Out of them, 2 trademarks belonged to *AB „GUBERNIJA"*. There were no trademarks belonging to parties to the merger among 5 most popular brands of beer.

14. The market share of the merged entity after the merger in the production and sale of kvass in Lithuania would be below 30 %. The market share after the merger in other defined relevant markets would be below 15 %.

15. Some of the undertakings which were questioned by the Competition Council indicated that after the merger the merged entity would obtain broader portfolio of goods and therefore it would be able to demand more favorable trading conditions for its products by forcing its customers (e.g. supermarkets) to also buy less popular products and thereby reducing the ability of other producers and sellers of alcoholic and non-alcoholic beverages to operate in the relevant markets.

16. The Competition Council took into account that European Commission's Guidelines on the assessment of non-horizontal mergers state that having a wide range or products after the merger is not problematic, unless at least one product is of major

[2] 5 December, 2014 Decision No. 1S-190/2014 of the Competition Council: https://kt.gov.lt/dokumentai/del-leidimo-vykdyti-koncentracija-uzdarajai-akcinei-bendrovei-mineraliniai-vandenys-isigyjant-iki-100-proc-imoniu-grupes-alita-ab-akciju.

[3] 23 March, 2018 Decision No. 1S-34 (2018) of the Competition Council: http://www.kt.gov.lt/uploads/docs/docs/3354_acee3924989448c52fddfb027ea04f6d.pdf.

importance and there are few alternatives. Against this background, the Competition Council assessed the portfolio of alcoholic and non-alcoholic beverages held by the parties to the merger and their competitors. After assessment of the portfolio the Competition Council concluded that only in one market there was more significant change of market share of the merged entity, i.e. the market share for the production and sale of kvass increased from below 5 % to [15-25%]. Acquisition of all the other trademarks did not significantly change the market shares of the merged entity.

17. The assessment was similar in **both cases**:

- The Competition Council concluded that it could not establish that after the implementation of the merger due to the possessed product portfolio the merged entity could restrict the opportunities of competitors to operate in the relevant markets or could significantly worsen the position of buyers in them. It was established that other competitors had product portfolios similar to that of the merged entity. Furthermore, the portfolio of the merged entity was substitutable with the brands of other suppliers.
- The Competition Council decided that practice of tying, bundling or other foreclosure of products was unlikely due to the strong power of retail chains in Lithuania.
- The Competition Council established that there were other strong market players in Lithuania: world-class producers of beverages managing popular brands and sellers with similar portfolio of beverages to that possessed by the merged entity.

18. The Competition Council made a conclusion that it was unlikely that the mergers would restrict the ability of competing undertakings to operate in the relevant markets. Furthermore, the Competition Council made the conclusion that it was unlikely that mergers would significantly worsen the situation of buyers of beverages.

19. The Competition Council therefore cleared these two mergers.

2.3. Sources of Information and Potential Theories of Harm

20. In the three cases described above the Competition Council used as evidence the following sources: *Nielsen* data (e.g. market shares of brands), opinions of competitors and other undertakings. In terms of legal and methodological framework, the use was made of the European Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of mergers between undertakings 2008/C 265/07. At least in the three described cases, the Competition Council during the notification process received sufficient information allowing it to identify potential conglomerate effects.

21. The need to take into account various available conglomerate theories of harm was limited in the three described cases. Only plausibility of tying and bundling was articulated as a theory of harm against which the mergers were checked.

3. Final Remarks

22. Currently, there are no indications that established notifications thresholds in Lithuania are not sufficient to capture transactions that may have substantial conglomerate effects. Furthermore, the Law on Competition of the Republic of Lithuania foresees that the Competition Council may oblige undertakings to notify a merger even when the thresholds are not reached. This possibility is available where it is likely that merger would result in the creation or strengthening of a dominant position or a substantial restriction of

competition in a relevant market.[4] This legal provision has been relied upon in the past by the Competition Council but not in the context of conglomerate mergers.

[4] Article 13 of Law on Competition which can be accessed on:

https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/49e68d00103711e5b0d3e1beb7dd5516?jfwid=q8i88mf0v