MERGER CONTROL RULES IN THE EU AND THEIR EXTRATERRITORIAL APPLICATION

ABSTRACT

The paper first endeavours to analyse the limits within which competition rules can be applied to the situations where the addressees of the measures taken by a competition authority are located outside the territory of the State; and second, whether a concentration of undertakings, initiated in the firm in the third countries, could be subjected to the EU jurisdiction. In particular, the author deals with the aspect of extraterritorial effect of the Merger Control Rules of the EU, as ensconced in Reg. 139/2004.

Key words: EU Merger control rules, legislative jurisdiction, enforcement jurisdiction, community dimension, supranational entity, extraterritorial application

I. BACKGROUND

Are there limits to the EU’s jurisdictional competence to apply its own competition rules to undertakings situated outside its territory? We have to distinguish between legislative jurisdiction and enforcement jurisdiction.

A. Legislative jurisdiction

As to legislative jurisdiction it is generally accepted in public international law that a State has power to make laws affecting the conduct of its nationals abroad. This power is commonly known as extraterritorial jurisdiction.

The European Union, as a supranational entity, has also the power to exercise extraterritorial jurisdiction. The EU Merger Control Rules, as set out in the Merger Regulation (EC) No 139/2004, apply to concentrations of undertakings initiated outside the EU territory, if the parties concerned have cross-border effects on the EU market.

In this article, the author will analyse the limits within which the EU competition rules can be applied to situations where the addressees of the measures taken by a competition authority are located outside the territory of the State; and second, whether a concentration of undertakings, initiated in the third countries, could be subjected to the EU jurisdiction.
of people within its territory, whatever their nationality (territoriality principle), and of its citizens, including when they are acting outside the national boundaries (nationality principle). This affirmation can be easily extended to the EC.3

The question which arises is: could this extended territoriality principle be applied to competition cases? If an anti-competitive agreement is concluded by undertakings outside of the jurisdiction of a State, but its effects are felt within that jurisdiction, could the competition law of that State be applied? A similar question could arise if the behaviour of a dominant position abroad would produce effects in a State where such behaviour could be qualified as abuse under the national competition law.

The EU has so far succeeded by bringing most of the cases it was confronted with under this extended territoriality notion or by using the “economic entity doctrine”. But cases can arise which would not be caught by these notions and where only a full fledged “effects doctrine” would be successful. The EC Court of Justice has not so far recognised, however, such a doctrine, notwithstanding on several occasion the European Commission tried to convince the Court of Justice that this would be the right approach.

B. Enforcement jurisdiction

As to enforcement jurisdiction, the doubts about the compatibility with international law of attempting to enforce a State’s competition law in the territory of another State without the permission of that other State are even greater than in the case of legislative jurisdiction. This does not only apply to final injunctions, including financial sanctions or injunctions to divert a part of the assets, but also to intermediate acts, like serving the act informing the undertaking that proceedings are started, requesting information, launching an investigation enquiry or trying to enforce provisional or conservative measures. This can give rise to acute conflicts between States or between a third State and the EC, with the risk that asserting such a jurisdiction can remain largely theoretical if the measures enacted cannot eventually be enforced.

3 It might be questionable however whether the notion of “European citizenship”, as defined in the EC Treaty, is sufficiently broad to give the EC the power of pursuing an EC-established company for anticompetitive conduct having taken place entirely outside the EC-territory.
II. THE THEORY

A. The One-Stop Shop Principle

Before analysing the issue of the extraterritorial application of the EC Merger Control Rules it is necessary to recall that in the European Union the control of concentrations is not a matter of exclusive jurisdiction of the European Community. As a matter of fact the EC Treaty, contrary to the rules concerning the prevention of anticompetitive agreements and abuse of dominant positions, does not contain any provision directly addressing the issue of the control of concentrations. The 30 years long history of efforts by the European Commission in order to obtain some jurisdiction in this field before Council accepted in 1989, by adopting Regulation (EC) 4064/89,\(^4\) to add this new tool to the Community competition policy instruments, shows how reluctant Member States have been to give up part of their sovereign powers in this field to the European institutions. The result achieved by Regulation (EC) 4064/89 has been a compromise. The Member States have kept their jurisdiction to control concentrations of undertakings below a certain level of economic importance, whilst the European Commission has been given the exclusive power to control and declare compatible with the common market concentrations above this level (the so-called “Community dimension”), no parallel jurisdiction being left to the Member States for this latter type of concentrations. The result was the so-called “one-stop shop principle”, so that undertakings whose concentration achieved the Community dimension did no longer have to bother, within the European Community, about domestic rules on merger control of the Member States. If the concentration was below the Community dimension, then the national rules of each Member States remained applicable, with the result that, according to the circumstances of the facts, parallel clearance procedures could frequently be carried out in two or more Member States.

This very sharp distinction between Community and national jurisdictions has found some correction in the most recent version of the Community legislation on merger control, Council Regulation (EC) 139/2004.\(^5\) Greater flexibility has been introduced allowing in certain cases for a referral of a concentration with a Community dimension to a Member State if it “threatens

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significantly to affect competition in a market within that Member State presenting all the characteristics of a distinct market” or if it “affects competition in a market within that Member State, which presents all the characteristics of a distinct market and which does not constitute a substantial part of the common market.”6 In other cases, to limit as far as possible parallel national clearance procedures, a concentration not reaching the Community dimension may be referred by the Member State or States concerned to the Commission if it “affects trade between Member States and threatens to significantly affect competition within [the Community] territory”.7 Although this greater flexibility is welcomed and finds its justification in the principle of subsidiarity, the distinction between Community and national jurisdiction based on the notion of Community dimension remains the basis of the system.

B. Criteria for a Community Dimension

The notion of “Community dimension” is an objective one. This dimension is reached if the combined aggregate worldwide turnover of the undertakings involved in the concentration exceeds 5 billions Euros, subject to two further conditions which establish the economic link with the European Union:

- two at least of the undertakings involved in the concentration must have a EU-wide turnover of at least 250 millions Euros and
- each of these undertakings must not achieve more than two thirds of its EU-wide turnover within one and the same Member State.8

Concentrations which do not fulfil the 5 billions Euros threshold can still reach the Community dimension if the combined aggregate worldwide turnover of the undertakings involved exceeds 2,5 billions Euros, but in this case the conditions establishing the economic link with the EU are more complex:

- the combined aggregate turnover of all the undertakings concerned in each of at least three Member States must exceed 100 millions Euros,
- in each of at least three of the Member States fulfilling the previous condition each of two at least of the undertakings concerned must have an aggregate turnover of more than 25 millions Euros,

6 Art. 9 (2) Reg. 139/2004.
• the aggregate EU-wide turnover of each of at least two undertakings concerned must exceed 100 millions Euros, and

• each of the undertakings concerned must not achieve more than two thirds of its EU-wide turnover within one and the same Member State.\(^9\)

The possibility of extraterritorial application of the EC merger control rules results directly from the objective criteria on which the definition of the Community dimension is based. It is obvious that a number of large concentrations carried out by undertakings incorporated in third countries or having their seat or headquarters there can easily reach the worldwide turnover threshold and therefore become relevant for the purpose of application of the EC rules. The further conditions to be fulfilled establishing the economic link with the EU warrant however that no Community jurisdiction will arise if the economic activity within the EU of the undertakings concerned is inexistent or minimal or concentrated in one specific Member State. Such lack of jurisdiction excludes automatically in these cases the possibility of extraterritorial application of the EC merger control rules.\(^10\) In such a case however it is not excluded that one or more Member States could individually pretend to apply their domestic legislation on merger control to such a concentration. In this case the issue of extraterritorial effects of their domestic legislation will be answered according to the views prevailing in each of such States. This is a situation which is likely to arise if the economic link of the concentration with the Member State concerned is particularly strong, albeit limited to that State within the EU.

The existence of conditions linking economically the concentration to the EU gives the possibility to rely, when applying EC merger control rules, on the “implementation principle”, developed by the European Court of Justice in the 1985 Wood Pulp case.\(^11\) We can leave aside the case where one at least of the undertakings concerned by the concentration is established within the EU, as this gives the EU a right to intervene on the basis of the “nationality principle”. But even if all the undertakings concerned are based outside the EU, the fact

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9 Art. 1 (3) Reg. 139/2004

10 As a concentration could in certain cases be construed as an anticompetitive agreement or in other cases as a behaviour realising an abuse of dominant position, it is not excluded that in such cases, if trade between the Member States is affected, jurisdiction to proceed against the undertakings concerned on the basis of Art. 81 or 82 EC could arise.

that they, or at least some of them, must have a turnover of a certain level within the EU,\(^\text{12}\) implies that there is necessarily an industrial or commercial activity “implemented” within the EU.\(^\text{13}\)

The philosophy set out in the previous paragraph is summarised in Recital n. 10 of Regulation 139/2004 which reads: “A concentration with a Community dimension should be deemed to exist where the aggregate turnover of the undertakings concerned exceeds given thresholds; that is the case irrespective of whether or not the undertakings effecting the concentration have their seat or their principal fields of activity in the Community, provided they have substantial operations there”. The action that the Commission has to take in the appraisal of the concentration with a Community dimension must be guided by the following principle: the concentration must be declared “compatible or incompatible with the common market” according as to whether it would “significantly impede effective competition, in the common market or in a substantial part of it”.\(^\text{14}\) The analysis carried out by the Commission during the examination procedure will therefore aim at identifying existing or potential restrictions to competition in the common market.\(^\text{15}\) The undertakings concerned would then be required to eliminate such restrictions by entering into adequate commitments vis-à-vis the Commission so as to render the concentration compatible with the common market.\(^\text{16}\) In case of a

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\(^\text{12}\) In this respect the notion of “turnover” used by the EC rules presents an advantage with respect to the notion of “assets value” used – for example – in the new Russian Federal Law on Protection of Competition as it necessarily implies a dynamic commercial activity of sales of products or provision of services. It makes it therefore more difficult for the undertakings concerned or the country from which they originate to object to the EU jurisdiction, even if the main activity of the concentration envisaged is primarily on markets having no bearing on the EU.

\(^\text{13}\) Some authors use for the “implementation principle” the notion of “effects-based approach”. I prefer to avoid this terminology to maintain to the “effects principle” its full extent, which encompasses also cases where there is no activity implemented within the EU directly affected by the merger, but other negative merger’s effects on competition within the common market, likely to occur as its logical direct consequence, are foreseeable, immediate and substantial.

\(^\text{14}\) Art. 2 (2) and (3) Reg. 139/2004

\(^\text{15}\) The terms “common market” are used in Regulation 139/2004 as a reference to the notion contained in the EC Treaty, particularly in Art. 81 and 82. It is however clear that this notion should be understood nowadays as referring to the “internal market”, or “single market” or even, as a consequence of the European Economic Area Agreement, to the EEA, covering the 27 EU Member States, Iceland, Norway and Liechtenstein.

\(^\text{16}\) Art. 8 (2) Reg. 139/2004.
concentration between undertakings based in third countries, fulfilling the
criteria for the Community dimension, but where the main activity of the
congression is outside the EU, the Commission must therefore limit itself to
appraising the impact of the concentration on competition within the common
market, without being led in its decision by policy considerations, particularly
of industrial policy, which should remain the responsibility of the countries
where the undertakings have their seat or their main activity.

III. THE PRACTICE

A. The Gencor Case

Notwithstanding the precisions given above and the objective criterion of
the Community dimension, which, a part from technicalities, would seem to be
hardly disputable, the question whether a concentration of undertakings based
in third countries could be really considered as subject to EU jurisdiction has
given rise to some dispute. In this respect the leading case, which has been
decided by the Court of First Instance (CFI), is the Gencor/Lonrho case,\textsuperscript{17}
which deserves a detailed analysis.

Gencor Ltd., a South African, and Lonrho Ltd., a British company, decided
to proceed to a merger of their subsidiaries Impala Platinum, controlled by
Gencor, and Lonrho Platinum Division, controlled by Lonrho, both incorporated
in South Africa and active in the platinum and rhodium sectors. The worldwide
aggregate turnover of the two merging undertakings was the double of the
Community threshold of 5 billions Euros and both had substantial commercial
activities within the EU as suppliers of these metals. The objective conditions for
the Community dimension were therefore fulfilled and a notification of the
intended concentration has been made to the European Commission according
to EC rules. The Commission found that the concentration raised serious doubts
as to its compatibility with the common market and initiated proceedings with
the undertakings concerned. Its concern was based on the consideration that the
merger would have created a situation of duopoly in the world relevant market
for platinum and other noble metals. Impala Platinum of Gencor and Eastern and
Western Platinum, the two companies constituting the Lonrho Division, would
have merged into one single undertaking supplying a very large share of the
world market, the only one other relevant undertaking in this sector being
Amplats, independent main competitor of Gencor and Lonrho and leading world

\textsuperscript{17} Case T-102/96 Gencor/Lonrho v. Commission [1999] ECR II-753.
supplier for platinum and other noble metals. The Commission reached the conclusion that, for a number of economic considerations, such an oligopolistic structure of the market would have had in the medium term a negative impact on the common market by restricting the output and leading to upward pressure on the prices. The undertakings concerned offered inadequate commitments of behavioural nature which could not be accepted by the Commission. Notwithstanding the positive assessment of the concentration envisaged communicated to the Commission by the South African Government, the Commission maintained its position and declared the concentration incompatible with the common market. As a result of this decision Lonrho communicated to Gencor its abandon of the envisaged concentration.

Gencor reacted by filing an appeal before the CFI against the Commission decision. A number of issues were raised, but the one which presents an interest for the purpose of this paper is the plea regarding the alleged lack of jurisdiction of the Commission.

Gencor submitted that the concentration concerned economic activities conducted within the territory of a third country. The main activity of the merging undertakings was mining and refining of platinum and other noble metals and this activity took place in South Africa. The commercial activities carried out in Europe by the undertakings or their subsidiaries could not be qualified as “implementing” the concentration, nor could they be considered as “substantial” if compared with the main activity carried out at home. The principle of proportionality should have required that the Commission decline its jurisdiction. As to the risk for competition arising out of the creation of a duopoly at world level, invoked by the Commission, it was entirely speculative. If it became real, it would have been a concern not only for the EU, but for the whole world because of the world-wide nature of the relevant geographical market concerned. Finally such a risk would not have been immediate, but rather the result of a long term development in case of a possible abusive behaviour by the duopoly, which could have been tackled with appropriate measures at the appropriate moment. The Commission decision to refuse clearance would give rise to a conflict with the South African Authorities which had approved of the concentration as a positive alteration of the industrial structure in that country. According to Gencor insisting on exerting jurisdiction under these circumstances would be incompatible with the public international law principle of territoriality.

The CFI took position first of all on the issue of the territorial scope of the EC merger control rules. It noted that the objective criteria for the Community
dimension apply independently of the location of the undertakings concerned, whether within or outside the EU. They do not make any distinction between production or sales activity and the figures relating to the turnover within the EU are undisputed. The fact that the concentration, if carried out, would necessarily entail the supply of a large part of the EEA market by the new entity, reinforces rather than questions the “implementation” nature of its sales activity. As to the requirement that undertakings based outside the EU should have ‘substantial operations” within the EU, as mentioned in a recital to the EC Regulation, such requirement does not differentiate between production and sales activities, but seems to give more importance to the latter by using the instrument of “turnover” to determine the level of interests which should be present in the EU to achieve the Community dimension. The Commission was therefore right in asserting its jurisdiction in the case at issue.

The CFI took also position on the issue of compatibility with public international law. The CFI recalled the principle of “extended territoriality”, according to which public international law recognises the power to legislate if the act objectionable finds its origin outside the territory of the legislating entity, but its direct, immediate and substantial effects are felt within that territory. Par. (90) of the CFI decision reads: “Application of the Regulation is justified under public international law when it is foreseeable that a proposed concentration will have an immediate and substantial effect in the Community.” The CFI shared the Commission analysis that the creation of a dominant duopoly on which the concerns of the Commission for the common market were based would have had such an immediate and substantive effect in the Community. The immediate effect resulted objectively from the alteration of the market structure where only two suppliers would have remained present as a direct consequence of the concentration, and not from a possible future abuse of a collective dominant position by the duopoly, which could have been controlled by using Articles 81 or 82 EC. As to the substantial effect, the Commission had convincingly established that the duopoly would create a lasting collective dominant position in the relevant world market and this would have affected competition within the Community far beyond the precedent levels of activity of the merging undertakings, as one should add to their sales the sales by the other independent entity constituting the duopoly. The fact that competition would be affected also in other parts of the world would in no case take away from the Community the right and the duty to defend competition within its own territory. The decision by the Commission was therefore consistent with public international law.
It is interesting to note that the CFI, after this clear statement, indulged in a further analysis showing that the Commission did not violate the principle of non interference or the principle of proportionality. This seems to indicate a willingness to accept that a “comity” approach should be followed when applying EC merger control rules to foreign undertakings to take account of the possible reactions of the third countries whose appraisal of the concentration was not shared by the Commission.

What conclusions can be drawn from this case? The decision is clearly based, as far as the issue of the Community jurisdiction is concerned, over the “implementation” principle, which finds its legislative expression in the economic conditions linking the envisaged concentration with the EU. The Commission had jurisdiction simply because the merging undertakings had a sales activity within the EU fulfilling the turnover requirement for the Community dimension.

When discussing the public international law aspect, the CFI seems however to make an opening for a broader “effects principle”. The refusal by the Commission to authorise the concentration is justified, from a public international law point of view, by the consideration that the duopoly necessarily emerging as a consequence of the concentration, would have constituted a change in the market structure such as to have “foreseeable, immediate and substantial effect” on competition within the EU. It is difficult to identify to which extent this principle is overlapping with the “implementation principle” (the decision contains e.g. the argument that the second undertaking in the duopoly, the one not implied in the concentration, has had and will keep an important share of the sales activity within the EU). One could however consider that, at least in a theoretical case, such an “effects principle” could be invoked if the Commission could demonstrate convincingly that the structural changes resulting from a concentration would inevitably at short term be the direct cause of substantial restrictions in the competition within the EU, and this even if such restrictions would not necessarily result in changes in the previous implementation activities, but would be of a different nature, eg new barriers to entry, shortage in the supply of products or services or the creation of a full functions joint venture operating in a third country.

B. Other cases

The Gencor/Lonrho case is not the only one where the Commission was confronted with the problem of applying the EC merger control rules to
undertakings based outside the EU. Here follows a summary list of these cases, some of which have been largely commented in the media because of the tensions they had occasionally created between the Commission and the US authorities.

In the case *Boeing/Mc Donnell Douglas* the Commission examined the planned acquisition of Mc Donnell Douglas by Boeing, both US based undertakings, in close cooperation with the American competition authorities which were carrying out a parallel examination under US law. The conclusions reached by the two authorities at a certain point in time diverged: by a majority decision the US authorities decided not to oppose the merger, while the European Commission maintained its objections and announced that it would block the concentration. This gave rise to a tension between the two authorities, largely amplified by the media. The matter was ultimately resolved in 1997\(^{18}\) after Boeing gave commitments to the Commission designed to preserve competitive conditions within the EU, which allowed the Commission to give conditional clearance to the merger.

In 1998 in the case *WorldCom/MCI II*\(^{19}\) the Commission gave conditional clearance to the merger between these two US undertakings operating in the telecommunication sector, subject to a commitment by MCI II to divest its Internet business activities. This case is a good example of parallel conduct of the examination by the EC and US competition authorities. It should be noted that the approval of the merger by the US authorities is still pending as the US Department of Justice is still examining the case.

In 2000 in the case *MCI WorldCom/Sprint*\(^{20}\) the Commission prohibited the merger between the two US-based undertakings MCI-WorldCom and Sprint, both active in the sector of telecommunication. The Commission argued that this concentration would have created a dominant position in the market for top-level universal Internet connectivity. In the course of the examination the undertakings proposed to divest Sprint’s interests in the Internet business, but this was not considered adequate by the Commission. Notwithstanding a letter of the undertakings announcing that they withdrew the notification of the planned concentration while reserving to notify a different plan for merger at the appropriate time, the Commission adopted a formal decision to prohibit the merger. The negative decision by the

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\(^{20}\) Case n. COMP/M.1741 *MCI WorldCom/Sprint* – Commission Decision OJ L [2000].
Commission was contested before the CFI, which eventually annulled the Commission decision.\textsuperscript{21} As the arguments developed have no bearing on the issue of extraterritoriality it does not seem useful to analyse that judgment in this context.

In 2001 in the case General Electric/Honeywell,\textsuperscript{22} despite prior clearance given by the US authorities, the Commission decided to prohibit the proposed acquisition of Honeywell by General Electric, both US-based undertakings. The Commission considered that the merger would create or strengthen dominant positions on several markets and it would have severely reduced competition in the aerospace industry and resulted ultimately in higher prices for customers, particularly airlines. The remedies proposed by General Electric were considered insufficient by the Commission to answer its competition concerns. This was a case where the tension between the Commission and the American competition authorities reached unusual political dimensions. The Commission stressed that this was one of the exceptional cases where the two transatlantic authorities had reached divergent conclusion on a same case, as it is inevitable even with the best cooperation procedure, as sometimes facts may be interpreted differently and the effects of an operation may be forecast in different ways.

\textbf{IV. SUPPLEMENTARY REMARKS}

For the sake of completeness concerning the issue of extraterritorial application of merger control rules in Europe there are a few supplementary remarks, mainly of theoretical nature, which need to be made.

As indicate above, Regulation 139/2004 has introduced greater flexibility by making it easier for the Commission to refer a concentration case achieving the Community dimension to a Member State if it “threatens significantly to affect competition in a market within that Member State presenting all the characteristics of a distinct market”, or if it “affects competition in a market within that Member State, which presents all the characteristics of a distinct market and which does not constitute a substantial part of the common market.”. If a decision to refer a case is taken in accordance with the procedure provided in Article 9 of Regulation 139/2004, the case is then dealt with by the national authority of the Member State concerned and the domestic law on

\textsuperscript{21} Case T-310/00 MCI v. Commission [2004] ECR.

\textsuperscript{22} Case n. COMP/M.2200.
competition of that State applies. Although it would be rather unlikely that this type of referrals would be requested and agreed by the Commission if the concentration at issue is between foreign-based undertakings, this possibility cannot be entirely discarded. In this case the assessment of the effect on competition in the common market would be replaced by the assessment on competition in the distinct market in the Member State concerned. As to public international law considerations, they would be assessed according to the views prevailing in the Member State concerned, where, however, the case law of the CFI mentioned above would certainly also play a role.

A greater likelihood that the issue of extraterritoriality could arise exists in the opposite case, the one foreseen in Article 22 of Regulation 139/2004, when one or more Member States may request the Commission to exert jurisdiction over a concentration, even though not fulfilling the Community dimension, by reason that it “affects trade between Member States and threatens to significantly affect competition within [the Community] territory”. In this case the EC merger control rules will apply to the concentration. Should the case concern a concentration planned between foreign-based undertakings, the public international law “effects based principle” should apply. In other terms the Commission would be expected to determine convincingly that the concentration will or will not entail a foreseeable, immediate and substantial effect for competition within the common market. In doing this analysis the Commission should also to a certain extent take account of comity considerations to smoothen possible conflicts with third countries. There is probably going to be frequently an “implementation” element in each of these cases, but it will not be possible to measure it as easily as it is the case when the existence of a Community dimension is determined. This seems to be a reason more to consider that an effects-based doctrine as described above would facilitate asserting the EC jurisdiction in cases where the Community dimension would by definition not be reached.

A final remark concerning cases where the control of concentrations is carried out by the competition authorities of the Member States. If the undertakings concerned are based in third countries each Member State will apply its own law and its own views about jurisdiction over foreign companies and compatibility with public international law. But the same approach will be followed if the undertakings concerned are based in one or more other Member States. Dealing with national jurisdiction, such concentrations, although internal with respect to the EU, are international in nature and call for the same treatment as those concerning third countries.
It should however be considered that in such cases Member States have the possibility and the habit of consulting each other in the network of the EU-competition authorities. It is therefore highly unlikely that conflicts or tensions of the type evoked above could arise among Member States for conflicting assessments of the clearance of an intra-Community concentration. Should such a tension arise, it is almost inevitable that this would imply the existence of a problem for the functioning of competition within the internal market, with the result that the various instruments put at disposal by Regulation 139/2004, particularly the referral to the Commission under Article 22, could be used.

Original in English

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PROPISI EU O KONTROLI SPAJANJA PREDUZEĆA I NJIHOVA EKSTRATERITORIJALNA PRIMENA

APSTRAKT

Članak predstavlja pokušaj da se analiziraju prvo, granice do kojih se mogu implementirati pravila o konkurenciji na situacije u kojima se preduzeća na koje treba primeniti mere donete od strane organa nadležnog za pitanja konkurencije nalaze van teritorije države, i, drugo, da li koncentracija preduzeća, inicirana u firmi u nekoj trećoj zemlji, može potpasti pod jurisdikciju Evropske unije. Autor se posebno bavi pitanjem eksteritorijalnosti, obuhvaćenog u okviru pravila o kontroli spajanja preduzeća EU, o čemu je reč u Pravilu 139/2004.

Ključne reči: pravila o kontroli spajanja preduzeća EU, zakonodavna nadležnost, izvršna nadležnost, dimenzija zajednice, nadnacionalna celina, ekstrateritorijalna primena.