



Minority shareholdings

Is the “gap” significant?

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All views expressed are strictly personal and do not necessarily reflect the official position of the European Commission



Measuring the gap

- The issue of « enforcement gap » widely debated after Ryanair/Aer Lingus
- The debate on the impact of non controlling minority shareholdings (« ncms ») goes well beyond the remits of this case
- VP Almunia, 10 march 2011: *“I have instructed my services to examine the anticompetitive effects of minority shareholdings and see whether it is significant enough for us to try to close this gap in EU merger control”.*



Non-controlling minority shareholdings in the EU: what is the magnitude of the issue?

What we have done:

- (i) an extensive review of the literature
- (ii) a review of the experience of competition authorities in relation with non-controlling minority shareholdings (« ncms »)
- (iii) an empirical analysis of ncms

A preliminary basis to decide whether further reflection on the « gap issue » is warranted



The economic literature

- Unilateral effects:
 - Usually below those of full mergers (if control rights and/or access to information are limited) but increase with size of the stake
 - may be significant, in particular when substantial economic control (below « decisive influence »)
- Significant effect on competitors' ability to coordinate (in certain settings)
- Sparse literature on non-horizontal effects



Case studies EU-Commission (i)

- More than 50 cases (1991-2011)
- 20 cases giving rise to concern → all cleared with remedies:
 - Horizontal unilateral effects: e.g Exxon/Mobil, Generali/INA, Abbot/Guidant
 - Coordinated effects: e.g Exxon/Mobil, Veba/Viag, IPIC/MAN Ferrostaal
 - Vertical (foreclosure) effects: e.g Vivendi/Canal+/Seagram, IPIC/MAN Ferrostaal
 - Elimination of potential competition: e.g Toshiba/Westinghouse, RCA/MAV Cargo



Case studies EU-Member-States and US (i)

- A significant number of cases in some jurisdictions: between 5% and 15% of all merger notifications in the UK, D, ÖS
- Main sectors: energy/petrol (D, US), media/press (D, UK, US), advertising (US), telecoms (US)
- A significant proportion of cases raised concerns:
 - Ex Germany: 11% of notif. \geq 20% of prohibitions (1990-2010)
- Whole range of theories of harm, including vertical (mainly in D, also in the US)



Empirical analysis of non-controlling MS in the EU

Evaluate the actual extent of the phenomenon in the European economy (before contemplating any action):

- How frequent are these transactions?
- Are they economically relevant (e.g. size of the stakes and the parties) ?
- Which sectors and Member States are particularly affected?
- Any indication that these cases might be worth scrutinizing?



Empirical analysis

- In-house study
- access to two database (information on companies' ownership structures and transactions)
- Part I - "Mapping" of transactions in the EU over the last six years
- Part II - A "snapshot" on the existing stocks (selected sectors and/or Member States)



“Mapping” Exercise

- Some preliminary findings:
 - Non-controlling minority shareholdings are a relatively common practice in the European Economy especially in some MS/sectors
 - Significant number of large transactions involving big companies
 - Main sectors: financial services (incl assurances), energy, construction, retail
 - MS: Italy, Germany, France, Spain (target location)
 - Potential impact on competition?
- Findings to be subject to further scrutiny (before any disclosure)



Conclusion and Way forward: is there a gap in EU competition law?

- Literature confirms that, under certain conditions, ncms may have an anticompetitive effect
- Existing legal tools at EU level do not cover all possible anti-competitive effects deriving from acquisitions of minority shareholdings
- Experience with cases falling under the Commission's jurisdiction suggests that anticompetitive nsms transactions do exist in the real world.
- Experience of Member States and 3rd countries with jurisdiction on ncms shows limited but relevant enforcement activity
- Empirical analysis: preliminary findings seem to suggest that issue is relevant



Conclusion and Way forward: is there a gap in EU competition law?

- Need to complete current phase of fact findings before decision is taken to open public debate
- If case action is required, different possible options:
 - Ex ante control (including notification obligation and stand-still provision);
 - Ex-post control: power to the Commission to examine, on an ad hoc basis, acquisitions of ncms;
 - Modification of article 8 (4) to solve Ryanair/Aer Lingus types of situations.