Do We Need a Supranational Competition Watchdog?

In terms of sheer numbers, the prolific business mergers of late far surpass any past concentration trends, but due to their international character they have also taken on a new quality. Between 1994 and 1998, the value of mergers between companies from different countries rose from 130 billion dollars to over 600 billion dollars. This wave of mergers has swept through nearly all branches of business and industry, with particular force in banking and insurance, in the chemical industry, the motor vehicle sector, telecommunications and air traffic.

These mergers do not fit into the traditional pattern of strong or large enterprises taking over weak or small partners: big and strong partners are merging. They amalgamate for very different reasons. Some similar companies merge, some companies seek to supplement their production range, some look to regional expansion and others want vertical integration. The expansion trend may well be attended by concentration on a core business.

Increasing cross-border mergers have also underpinned the trend towards domestic mergers. In many cases, the wave of international and national mergers arouses misgivings that an ongoing concentration process worldwide could culminate in a global economy dominated by a few transnational groups. Even if it is accepted that international mergers in the age of globalization can no longer be regarded as anything unusual and that we have to get used to new orders of magnitude, it must be conceded that concentration processes call for close scrutiny. Because the harbingers of globalization - the dismantling of institutional obstacles to market access and freedom of establishment, the establishment of uniform norms, standards and procedures as well as the revolution in communications technology - weaken the influence of national political institutions without replacing them by a global power to perform the job of the state at a world level. One of the essential duties of the state is safeguarding competition.

As long as there is no world government, supranational tasks must be performed through cooperation among states or through the creation of international institutions. For the world economic order such an institution already exists, the World Trade Organization (WTO), but its paramount concern is to safeguard competition against state intervention. It is (still!), however, not a competition authority for safeguarding competition against the restrictive practices of businesses.

Nonetheless, policymakers are not helpless in the face of business concentration that jeopardizes free competition. The United States, for example, has a long tradition of monitoring competition and exercising merger control through the Department of Justice and an independent competition authority, the Federal Trade Commission (FTC). Since 1990, the Commission in the European Union has been empowered to prohibit the merger of companies, the takeover of whole, or parts of, companies as well as the establishment of joint production centres; prior to this, the instrument of merger control was confined to

Germany and the United Kingdom. In their decisions, the American and European competition authorities are only concerned with the consequences of merger projects for the American or European market, but they will automatically play an increasing role as global antitrust agencies, the more the regional markets coalesce into one world market.

Both competition authorities also claim the right to disallow mergers or approve them only under certain provisos, even when none of the merger partners is domiciled in the USA or the European Union. Far more crucial is the question of whether the planned merger will result in a dominant position on the American or European market. Two of the three big Swiss banks, for example, could not carry out their planned merger until the FTC had given its approval. When the American aircraft manufacturer McDonnel/Douglas was being taken over by Boeing, the EU Commission was even able to impose conditions on Boeing, although the FTC had approved the project. The US government in this case exerted considerable pressure on the EU Commission in favour of the merger partners, but ultimately confirmed European jurisdiction over purely American mergers where they do not comply with competition legislation and directives in the EU. The lessons from this case prompted the competition authorities to improve their cooperation, which has been ongoing since 1991.

Under European merger control regulations, notification of merger projects is obligatory if the worldwide turnover of all merger partners exceeds ECU 5 billion and the turnover of at least two of the partners within the EU exceeds ECU 250 million. Since the beginning of the nineties, the annual number of notifiable merger projects has almost quadrupled from 60 to 238 in 1998. Although the reasons for this increase are partly statistical, it confirms the impression that more and more businesses have caught the merger fever in the nineties as a result of globalization. The question is, however, whether the pace and scale of mergers should be regarded as disconcerting from the point of view of competition policy. If we look at the merger decisions by the EU Commission, the answer is no: conditional approval, let alone prohibition, continues to be a rare phenomenon. Of the 585 merger projects the Commission took decisions on between 1990 and 1997, over 90% were approved. In 37 cases the merger was approved under certain conditions and only eight projects were disallowed.

The reason why the rapid pace of mergers has rarely ,given rise to competition-policy objections till now is that with globalization regional market segments coalesce so that the number of competing enterprises on the relevant market increases and their market share diminishes. As a rule, though, market expansion affords enterprises economies of scale, which increases the optimal plant size. Efforts to capitalize on these economies of scale step up competition, lead to the withdrawal of suboptimal competitors from the market and allow the number of suppliers to fall again.

Competition intensifies particularly on markets that remain geographically limited. New suppliers can only offer their products on such markets if they also produce there. However, additional competition in turn forces suboptimal suppliers out of the market and thus promotes business concentration. A contrary trend can, however, result where factors of influence conducive to regional decentralization also favour enterprises' staying separate. One reason for the frequent demand to limit operations to the core activity and outsource non-essential activities is that the outsourced operations can be performed more cheaply by separate enterprises because these serve a broader clientele.

The assessment that merger mania is no cause for alarm because of keener competition in the wake of globalization should not mislead us into overlooking the subsequent decline in the number of suppliers as submarginal producers leave the market. The danger of market dominance has not been dispelled for all time by any means. In a deregulated and globalized economy competition policy can no longer resort to market opening, so thought has to be given today to the establishment of a supranational body to supervise competition and the institutional preparations have to be made.

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