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PUBLIC INTEREST CONSIDERATION IN COMPETITION POLICY

Razmatranje javnog interesa u politici zaštite konkurencije

Abstract

Welfare and protection of consumers, i.e., benefits for consumers based on a high level of competition between market participants operating on the same relevant market, are the main objectives of competition policies. In other words, this means that, as one of the goals of the competition policy, one should certainly bear in mind public interest, which is also the subject matter of this study. Efficient competition plays a major role in creating an encouraging and developing environment for all market participants; hence, it is very important that the restriction of competition be minimized. In this context, the study deals with the objectives of protection of competition, having in mind the protection of public interest. Also, the study defines the concept of public interest itself, explaining the role of protecting public interest from the perspective of protection of competition. Examples from practice are therefore used to further illustrate the mentioned concepts. The link between protection of public interest and protection of competition has not been analysed in detail in literature, although there is an increasing number of cases before commissions around the world where a national security test or a public interest test is taken into account when deciding not only in concentration cases, but also in antitrust cases.

Keywords: *protection of competition, competition policy, public interest.*

Sažetak

Blagostanje i zaštita potrošača, odnosno ostvarivanje koristi za potrošače na osnovu visokog nivoa konkurencije između tržišnih učesnika koji posluju na istom relevantnom tržištu osnovni je cilj politike zaštite konkurencije. Drugim rečima, kao jedan od ciljeva politike zaštite konkurencije svakako treba imati u vidu i javni interes, što je ujedno osnovni predmet ovog rada. Efikasna konkurencija ima pretežnu ulogu u kreiranju podsticajnog i razvojnog okruženja za sve tržišne učesnike, te je vrlo važno da ograničavanje konkurencije bude svedeno na minimum. U tom kontekstu, u radu su sagledani ciljevi zaštite konkurencije, imajući u vidu očuvanje javnog interesa, objašnjen je koncept javnog interesa, obrazložena uloga očuvanja javnog interesa iz ugla zaštite konkurencije i predstavljeni su uporedni primeri iz prakse. Veza između zaštite javnog interesa i zaštite konkurencije do sada nije detaljno analizirana u literaturi, iako postoji sve veći broj slučajeva pred komisijama širom sveta gde se test nacionalne bezbednosti ili test javnog interesa uzima u obzir prilikom odlučivanja komisija, ne samo u slučajevima prijave koncentracija, već i u slučajevima povrede konkurencije.

Ključne reči: *zaštita konkurencije, politika zaštite konkurencije, javni interes.*

Introduction

Many countries around the world either adopted or are in the process of adoption of legislation regarding protection of competition. People are becoming increasingly aware of the negative effects of anti-competitive practices. Such practices have adverse effects on purchasing power, companies' performances, economic growth and social development. Also, anti-competitive practices restrict competition and deteriorate customers' welfare by creating barriers to entry and leading to price increases. Altogether, these effects reduce efficiency and inhibit innovation, also affecting a country's public interests. In order to identify and sanction the effects of anti-competitive practices, it is necessary to establish adequate legal and institutional framework in the field of competition protection.

Application of the competition protection policy is important for efficient functioning of market economy, which is a basic precondition for both economic and political stability of a country. For these reasons, it is important that any restriction of country's market competition be minimized. Restriction of competition can be manifested in the form of agreements and concentrations that significantly prevent, limit and distort competition, as well as in the form of abuse of a dominant position. All forms of restriction of competition can be very dangerous for every single market in which they occur, both in the short and in the long term, and especially in the latter. Restriction of competition can lead to serious consequences for both market participants and consumers.

When public interest is discussed in terms of being a constituent part of the competition protection policy, the first thing that comes to mind is that, in every procedure conducted by the bodies responsible for protection of competition, the effects of the decisions on economic progress and welfare of the society, especially consumers' benefits, must be considered. This means that, in addition to assessing the impact of market participants' activities on fair competition indicators, potential effects on the improvement of production and trade in goods and services must also be evaluated. In other words, it is necessary to encourage technical or economic progress, while providing

consumers with a fair share of benefits, provided that market participants are not unnecessarily constrained. In this respect, any decision of the competent authority for the protection of competition should anticipatively consider the question whether public benefits arising from certain activities of market participants exceed public damage caused by the reduction of competition. On the other hand, it is necessary to consider the activities of market participants that can create benefits from the aspect of competition and, at the same time, be detrimental to the society as a whole.

The subject matter of this paper is research on the interdependence of public interest and competition policy. The aim of the paper is to point out the necessity of considering public interest in the conduct of the competition protection policy. In addition to introduction and conclusion, the work consists of three parts. The first part describes the objectives of the competition protection policy. The second part explains the concept of public interest, while the third is dedicated to a unified consideration of public interest and competition policy.

Objectives of the competition protection policy

Defining the competition policy, as a very young institution in Serbia, is not an easy task. If we tried to define it, we would probably include the following: "set of legal regulations and rules that enable improvement of competition, but also its regulation or protection, in such a way that its effects are not harmful to the whole society". This definition indicates that the regulation of competition, in any way, can lead to harmful consequences for society and vice versa, that some cases of regulation can improve the general well-being of society. Competition regulation, such as the prohibition of predatory prices, ensures the operation of a large number of companies on the market, and consequently a greater supply, quality and more favourable prices for consumers.

Professor Motta [22] defines competition policy through the following goals:

- Improving well-being (total surplus);
- Improving consumer welfare (consumer surplus);
- Protection of small enterprises;
- Promotion of market integration;

- Greater economic freedom;
- Fight against inflation;
- Equity and equality.

To these goals, Motta also adds other public factors that affect competition, such as the following:

- Social factors;
- Political factors;
- Ecological factors;
- Strategic factors (primarily industrial and trade policies).

On the other hand, highly quoted Robert H. Bork [6] defined competition several decades ago using five definitions. In his opinion, competition is all of the following: the process of rivalry; absence of restriction of one company's economic activity by another company; a market situation where an individual buyer or seller does not affect the market price by buying or selling; the existence of fragmented industries and markets; a state in which consumer welfare cannot be increased by moving to an alternative state through a court order. The last definition, the most commonly used by Burke, points to the importance of consumer welfare as public interest in the competition policy.

One of the basic goals of the modern competition policy is to facilitate efficient resource allocation and economic growth, increasing the usefulness of all participants in the economic process. In a competitive market, resource allocation functions in a way that ensures the production of the goods and services that consumers need, at the lowest possible cost and at prices that consumers are willing to pay. Such market is considered an efficient one. Still, the basic goals of the competition policy should not be related only to efficiency. In this respect, competition should be seen as a dynamic process of race among different market participants. Consequently, the objectives of the competition policy include consumer welfare, equal distribution of income, encouragement of development of small and medium enterprises, and others [20]. The main economic goal of the competition policy is the preservation and promotion of competitive process and its task is to encourage effective competition. Therefore, it should not be understood as something that protects small enterprises from large and vice versa.

In a highly competitive market, individual participants have a small market share, and therefore cannot influence prices, regardless of increasing or decreasing the produced quantity. Therefore, the legal framework of the competition policy provides an open possibility to apply the *de minimis* rule. This means that even if they violate certain competition rules, small firms do not produce any economic effect, and therefore such offences are not subject to investigation by competition authorities. Since in such competitive conditions the price is given, in order to maximize profit all companies will produce the quantity of products that will provide them with the lowest average production costs. In this way, production efficiency is achieved [4]. Moreover, a perfectly competitive market is characterized by the absence of entry and exit barriers, which is why price changes lead to the entry of new players or the exit of the existing ones, thus achieving allocative efficiency. A high level of competition results in reduction of prices, greater supply of products and services, and a constant pressure to lower production costs. Consequently, effective implementation of the competition policy is expected to provide benefits for consumers.

On the one hand, proportionally to their size, large firms can effectively influence competition on the market. Companies that have market power can act independently of other market participants. Consequently, they can also increase the prices that consumers pay, thus securing higher profits. In a business environment, in general, a desire to maximize profits always exists. On the other hand, the competition policy sees enormously high profit as a potential abuse of a dominant position [15]. If there is only one market participant, it will limit the quantity produced below the competitive level in order to increase the price. This will result in higher average production costs, since only the competitive level of production volume provides minimum costs per unit. This creates production inefficiency. In order to avoid this, appropriately designed economic policy should include competition protection measures, with the main aim of achieving a greater level of competition in all markets. Therefore, the legal framework of the competition policy is very important for successful development of a market economy [15]. However, the implementation of such policy

does not mean that companies cannot communicate and merge or that the possession of a dominant position on the market is punishable by itself. For that reason, one of the key factors in the implementation of competition policy should be informing and training company's executives. Knowledge of competition rules can ensure effective protection against distortion of competition, instead of exposing them to financial troubles, due to competition protection measures – penalties, that can reach up to 10% of the total annual income.

From the standpoint of the competition policy and analysis of individual cases, it is necessary to distinguish between static and dynamic competition in the market [25]. Static competition implies that there are no significant changes in the market. The products are offered at fairly favourable prices, but there are no significant improvements to existing products, nor is there introduction of new ones. In such circumstances, there is no significant drop in prices driven by innovations. Without innovations, all companies on the market have the same technology and the same business model, they achieve equal and very small profits, and in the long run prices are equal to marginal costs. Dynamic competition is driven by innovations. A market with such competition is characterized by different activities of competitors, resulting in significant product differentiation and quick responses to newly emerging changes, either in terms of specific innovations or the appearance of new market opportunities.

Bearing in mind the above definitions, it could be said that most of today's markets, in the conditions of global competition, have a dynamic character. Traditional static analysis focuses on determining market power in the relevant product market. Dynamic analysis looks at competition from a wider angle and is less focused on the current state, and more on the processes taking place in a particular market.

Modern competition policy is based on the synthesis of competition law and economics. This is due to the fact that the problem of competition protection cannot be seriously considered without understanding the economics, more precisely the way in which the relevant market operates. Competition policy is based on the belief that the competitive market contributes to the increase

of economic efficiency and social well-being. Therefore, it is not rarely seen that competition authorities intervene in certain markets in order to ensure competitiveness in them. Ideally, the market should function without intervention and regulation. However, this is not possible, primarily because not all of the markets are structured as highly competitive.

Based on all of the aforementioned, we can conclude that the basic goal of the competition policy is welfare and protection of consumers, i.e., providing benefits for consumers established on the high level of competition between business entities operating on the same relevant market. In other words, this means that one of the objectives of the competition policy must be to pay attention to public interest. In his speech in July 2001, European Commissioner for Competition Policy, Mario Monti, said that “the goal of competition policy, in all its aspects, is to protect consumer welfare” [21]. Strong competition brings lower prices and better quality of life to consumers, which is reflected in a greater supply of high-quality products and services.

Consumers always profit the most from the implementation of competition policy. Companies offering goods and services on the market should offer them the best value for their money. However, establishing a competition policy enforcement body requires a certain amount of costs. Logically, the question of cost-benefit analysis is raised, i.e., whether the benefits outweigh the costs. The key to success, which in this case means the justification of the existence and enforcement of a competition policy, in a particular country lies in the quality of its institutions, primarily the commission for protection of competition and the judicial system [28]. Due to great expansion of the competition policy in the world, the interest in more precise assessment of its effects is growing. Because of this, competition authorities in certain countries began assessing the positive impact of their activities, which is directly manifested through the increase in consumer welfare [17].

Competitive pressure constantly encourages companies to be more productive than others in order to offer their products at lower prices and achieve a higher market share, making them more competitive in comparison to other companies. Therefore, the goals of competition policy and

its basic role, which is increasing the level of competition, i.e., the creation and strengthening of competitive pressure, are evidently followed by the growth of productivity of individual enterprises, and therefore the entire economy, as well as the development of public interest, reflected in economic progress and consumer benefits.

The traditional competition policy is narrowly understood. Its goals are related to the prohibition of agreements that restrict competition, the prohibition of abuse of a dominant position, and the prohibition of non-competitive mergers. However, such perceptions have changed significantly over time and the protection of competition is now understood much more broadly and has a significant role in the conduct of business processes. Competition policy is nowadays understood as a conduct of business activities [19]. It implies enjoyment of equal rights, efficient economy, sound business logic and public interest.

What is public interest?

The law on protection of competition leads to the welfare of consumers and fosters fair competition among market participants. Essential characteristic of this area is a multidisciplinary approach, because the application of legal framework requires the perception of legal, economic, social and political dimensions. When the competition law is at the service of public interest, certain regulations of the law that define restrictive clauses may be suspended in favour of social and political objectives.

Numerous examples in countries around the world and in Europe, whose practice we mostly rely on, are based precisely on the consideration of the impact of a specific case on national security and public interest. Global practice already differentiates considerations related to economic issues from considerations concerning other objectives, such as social protection of employees, protection of public health and environmental protection. Areas of relevance to national security are rarely precisely defined in national legislation, but the competent body has always responded adequately when the threat to national security arose [24].

The concept of public interest, although widespread and often used in public appearances, primarily in

political philosophy, is not fully and precisely defined. It is very difficult to give a definition of public interest, if not impossible, since the conceptualization of this term requires an individual to have broad knowledge. The concept of public interest continually evolves through the development of social community, which makes every attempt to define it harder.

Broadly speaking, common to all previous attempts to define public interest is the opinion that the elected government should serve the people, where the people are the main consumers of benefits provided by state governance. Any attempt to find a more precise definition than the previous one was not successful and has justified the question whether public interest should be defined at all.

The dominant problem in defining the concept of public interest is its variability, depending on current social circumstances and the accepted social norms. For this reason, the accepted concept of public interest today does not necessarily have to be a concept that will be accepted in the following period. In accordance with the previous explanation, during the 1950s coal was used as a primary source of energy for heating people's homes and that did not cause any controversy. Today, this is definitely not the case in most countries, due to the accepted social opinion about environmental protection, which makes the concept of public interest evolve towards sustainable and renewable energy sources. This example illustrates how difficult it can be to define public interest and make that definition universally applicable. Contrary to the previous one, in certain cases social consensus on issues of a wider social significance can be easily achieved. An example is the fact that in all modern societies grand larceny and murder are defined as criminal acts and are severely punished because of the public interest to preserve order and peace in a society.

Consequently, the closest definition of the concept of public interest can be formed using deduction as an accepted logical method of conclusion. Deduction as a method of logical conclusion starts from a general case and leads to the individual one. On the other hand, the reverse logical process – induction, starts from the individual case and leads to the general one. Induction specifies a certain starting premise, which can be correct,

and causally leads to the conclusion that the same thing can be applied to the whole society. Ineffectiveness of induction is reflected in a very familiar example of the black swan [27]. Namely, in the Old World, before the discovery of Australia, it was believed that all swans in the world were white. The scene of the first black swan on the newly discovered continent points to the fact that, based on induction, by concluding from the individual to the general case, even with the correct starting assumption one can reach a conclusion that may be wrong, although it is based on the exact foundation.

It can be concluded that the closest definition of public interest can be reached following the path from a general to the individual case. However, in spite of unambiguous determination of the logical method of conclusion, in case of public interest, it is extremely difficult to define the general concept, primarily because of the basic characteristic of public interest – the variability which is caused by the development of a certain social community and accepted social norms. This does not mean that participants in public debates should avoid defining public interest, but that they should be cautious when trying to do that. They should consider the limitations of the conclusion based on experience or unambiguous observation of a phenomenon.

Given the continuous development of the concept of public interest, there is a need for any legislation in developed society that uses this concept not to be rigid, but to constantly adjust to the nature of the concept. This is the reason why public interest has to be understood as a decision made with the idea of achieving common good for society as a whole, especially in the area of health care, environmental protection and national security.

In 1988, the United States introduced a provision known as “Exon-Florio” in its Antitrust Law. It gives the President of the United States the power to stop foreign investments in domestic enterprises in order to protect national security, regardless of whether other regulations of the Law have been met. The relevant Committee on Foreign Investment in the United States (CFIUS - the U.S. Committee on Foreign Investment) has recently referred to this regulation and made decisions that completely ignored the loss of potential economic benefits, justifying this act by the protection of national security.

Making decisions contrary to the regulations of certain laws in order to preserve public interest is not exclusively the practice of modern state governance. However, under the influence of the global crisis and the growing protectionism of national economies, public interest can increasingly be used as the basis for a protectionist economic policy, where the state has an increasing share in market regulation. For example, in 2015 German Federal Cartel Office banned the merger of two supermarket giants, EDEKA and Kaiser’s Tengelmann, on the grounds that it could lead to the domination of regional markets [7]. However, the Minister of Economy subsequently overturned this decision due to concerns about employment, job security and workers’ rights [8]. On the other hand, without any proof of competition concern, the United States Government blocked the planned merger between semiconductor companies, Singapore-based Broadcom Limited, California-based Broadcom Corporation and Broadcom Cayman L.P., which it claimed to be a threat to national security [29].

Although the previously mentioned examples are exemptions to the rule, this practice can become a legitimate justification for easing or circumventing competition rules when it comes to decisions made by state policymakers. In accordance with the preceding, there are several dilemmas: can the consequences of such decisions be observed, what are the direct economic consequences of putting public interest before fair competition rules and how much time is necessary for them to be manifested? Keeping in line with the economic logic, any distortion of fair competition and regulatory impact on the free market can, in anticipation, lead to significant negative repercussions that occur in the long run.

Public interest, especially in the segment of national security, public health, environmental protection or macroeconomic stability of the entire economic system, has a primary place on the list of goals of decision-makers. However, the question is what scope and level of intervention is needed to save public interest. Lack of precise criteria, standards and justified decisions can result in the competition rules being endangered and ignored. In the long term, the negative social effects resulting from neglect of competition rules may be greater than short-

term gains based on the preservation of public interest. The preceding conclusion is especially apparent when negative effects generated by the regulatory intervention of competent bodies cannot be minimized or completely neutralized, which is why they are cumulated in the future.

Public interest and competition policy

Protection of competition practice is based on logical economic principles that all market participants abide by, and those principles are connected through an integral legal framework. They are accepted by all countries with developed fair competition practice. However, although these principles are universal, fair competition rules vary from country to country. These differences are the result of differences in economic policies, economy, tradition of competition protection, as well as social and political factors.

Two extremes can be identified in formulating the rules of competition protection. According to the first, totally unregulated markets are vulnerable to the presence of dominant market players, and strong pressure of regulatory bodies is needed in order to achieve market balance and welfare. In the second extreme, markets are in balance and the presence of a regulatory body would lead to inhibiting competition and innovation, while application of any rules would be counterproductive. In practice, most countries provided legal protection for the competition system positioned somewhere between these two extremes, meaning that intervention aimed at protecting public interest is occasional.

Competition policy clearly favours consumers, which is evident from the goal of the law on protection of competition that points to public interest manifested in economic progress and social welfare, consumer welfare above all. Due to that, the public regulatory body for protection of competition is often perceived as an antibusiness body which confronts large companies because of their real or alleged illegal behaviour [11]. Although this body can be viewed as acting against companies, through its policies it actually works towards improvement of the whole business environment, for all of the participants, both positively and negatively affected.

The main premise in competition policy is that the improvement of competition leads to the situation in which competitive companies compete providing high quality products and services at reasonable prices. Competition based on fair market conditions very quickly eliminates inefficient enterprises that have unreasonable prices compared to those of other market participants, as well as those enterprises that do not satisfy the level of quality that consumers expect. Fair competition is in line with greater welfare, as it leads to greater national income by positively influencing the growth of general productivity.

The last-mentioned premise assumes that consumer preferences or public interest are known, i.e., defined. For certain products and services, public interest is clearly defined in advance, while for others it is problematic to conceptualize it, and in those cases all power is concentrated in the competition regulatory body. For example, in the Republic of Serbia certain products, such as basic types of bread, defined as products for vulnerable social categories, are protected as such in order for basic human needs to be satisfied. In other words, producers of basic types of bread are limited by maximum retail prices in order for public interest to be achieved. On the other side of the spectrum, smartphones and other smart devices do not fit this category and, therefore, their retail price is not limited. Due to that, competitors on the modern smartphone market compete in quality, design, brand, product characteristics and especially prices, without any regulatory limits.

Based on this example, it is not clear whether the existence of predefined public interest leads to restriction of competition and, if it does, to what extent. What is the extent of regulation that has to be imposed, does protection of certain industries/markets lead to restriction of competition, and what damage to competition a society can tolerate for public interest are questions to be asked.

Overview of different practices regarding the safeguard of public interest in competition protection regulation

Many practical examples can be identified in the USA. In case of national security, a good example of prioritization of

public interest over the rules of protection of competition is the one where many investments of Chinese telecommunication companies in the USA were suspended. This investment wave was followed by the reaction of NSA, which wrote a report called “The counterintelligence and security threat posed by Chinese telecommunications companies doing business in the United States” and demanded the reaction of CFIUS. In this report, it is recommended that CFIUS forbids M&A transactions in which Huawei and ZTE were involved.

Although the realization of such transactions would lead to potential benefits for final consumers, such as better service quality and lower prices due to more efficient business operations, the national regulatory body made the decision to suspend them.

There are also other reactions of CFIUS aimed at protecting the USA interest. For example, it is thought that allowing significant acquisitions in the energy sector would have a negative impact on protection of national security. The proposal of acquisition of the Union Oil Corporation of California was initiated by the China National Offshore Oil Corporation (CNOOC). However, due to political pressure, CNOOC decided to bypass the planned transaction, due to anticipation of negative opinion of CFIUS.

Another example from the USA is the protection of steel market. In 2006, ArcelorMittal attempted to acquire the Laiwu Iron and Steel Corporation. However, this acquisition was stopped after a year and a half due to a negative review of the National Development and Reform Commission, which advocated the protection of steel market and its development potential [16].

Such practice has often been applied in Europe as well. For example, Germany was in similar position as the USA when, after a series of significant investments by Chinese companies in the technology sector, it decided to strengthen its regulations in order to establish more effective control over such processes [10].

The Australian Competition and Consumer Commission presents its National Competition Policy as a tool, rather than focusing on its goal. The purpose of implementing protection of competition is to improve productivity and achieve lower prices and better service quality, as well as to improve welfare and employment opportunities.

Although the National Competition Policy in Australia is created to serve public interest, individual cases can be subject to additional cost-benefit analysis.

The basic principle of the National Competition Policy is that a government should approve or deny restriction of competition only in cases in which it can be proven that the potential benefit for society is greater/less than the costs resulting from such a measure. The benefits include non-economic, as well as economic factors of public interest. Therefore, the factors that the Australian Competition and Consumer Commission [12] considers are the following:

- state legislation and policies related to ecologically sustainable development;
- social welfare and equity, including community service obligations;
- state legislation and policies related to occupational health and safety matters, industrial relations and access and equity;
- economic and regional development, employment and growth of investments;
- interest of all or a group of consumers;
- competitiveness of Australian industries;
- efficient resource allocation.

In the practical usage of the public interest test, decision-makers most often calculated factors of competitiveness, economic growth and development and employment, whose criteria for calculation are relatively well-known and clearly defined. On the other hand, non-economic factors, such as degree of social well-being, equality, social inclusion and environmental sustainability, do not have clearly defined criteria of measurement, and therefore are set aside. Even though these non-economic factors are formally included in the public interest test, their assessment is rarely used in making the final decisions that can affect public interest [14].

Australian regulations clearly prohibit companies' anti-competitive behaviour, but, at the same time, allow the competition authority to approve such behaviour (even in case of mergers that significantly weaken competition), only in cases where it can be clearly argued that this measure provides greater public benefit than damage caused by reduction of competition.

In this country, several bans on transactions occurred under the influence of the Foreign Acquisitions and Takeovers Act 1975. An example is the proposed Chinese investment in stockbreeding and the company S. Kidman and Co. Limited.

Botswana, although a developing country, recognized the importance of public interest, and incorporated it into its Competition Act. This Act aims to achieve maximum efficiency in preserving competitive markets, in line with the public interest of a company [9]. Also, in this Act the concept of public interest implies general social well-being, in contrast to personal or group well-being. In this definition, public interest represents the interest of a “higher rank” than an individual’s interest. Individual or group interest which could cause the reduction of well-being of other members of society cannot be in public interest, as it leads to the reduction of the well-being of the whole society. Only actions that promote the well-being of the entire society can be part of public interest, even when some individuals or groups in the society are exposed to damage.

The Botswana Competition Act turns to the Australian Competition Tribunal [1], which tests public interest, by asking the following question: “Is the proposed behaviour/measure likely to result in the improvement of public welfare that exceeds the likely public damage resulting from reduction in competition?”. In order to answer this question, it is necessary to identify and measure whether the effect of protection of competition is negative or positive for any individual or group of individuals. After full identification of effects, it is possible to determine the net effect on social welfare, which the Australian Treasury defines as the net impact of the change [14].

Recent cases of mergers of pharmaceutical international market giants have launched a debate in the UK on whether it is necessary to include a public interest test in competition law, which would allow the body in charge of protecting competition to invoke other legitimate public interests (besides the factors of public interests defined by the EU), primarily in cases of merging companies. The current policy on mergers allows the government to intervene in public interest. Thus, the merger of two large banks in the UK – Lloyds TSB and Halifax Bank

of Scotland was granted approval after the government intervention. Government representatives used a public interest clause, thus “overturning” the decision of the competition authorities to ban the merger of these two market players.

Following the United Kingdom, South Africa also included a public interest test in its competition policy. This test primarily relates to the merger policy, where public interest factors can serve to “overrule” the already obtained merger approval, or to “overturn” the ban on mergers. The public interest test used in SAR includes the following factors [26]:

- assessment of impact of mergers in a particular industrial sector or geographic region;
- impact on employment;
- ability of small businesses controlled by historically vulnerable people to become more competitive;
- ability of national industries to compete internationally.

In Switzerland, one of the most developed countries in the world, public interest factors are components of analysis that precede merger decisions. These factors are related to international competitiveness, competitiveness of a sector or a region, and the ability of small businesses to be even more competitive.

In the European Union, more precisely in the EU regulation of mergers, EU member countries are allowed to take appropriate measures to protect their public interest, which may not be included in the mentioned EU regulation. The only condition is that these measures must be in line with the general principles of and other rights extended by the European Union [18]. In the aforementioned regulation, the following three factors of public interest have been identified: general public safety, media pluralism and prudential rules.

The fact that goes in favour of the general public safety factor is that in the UK a series of measures were introduced in order to protect the domestic pharmaceutical giant AstraZeneca, which was considered very significant for public health, from acquisition by the competitive U.S. company – Pfizer [3].

An interesting example is the attempt by Gardner Aerospace Holdings Limited (whose parent company is Shaanxi Ligeance Mineral Resources Co., Ltd.) to purchase

Northern Aerospace Limited in the United Kingdom. Following consultations with the UK Government's Department for Business, Energy and Industrial Strategy, on June 18th, 2018, the CMA (Competition and Markets Authority) exercised an enforcement order under the Enterprise Act 2002, with the aim of preventing any actions related to the aforementioned acquisition. The potential buyer was blocked in the final stages of acquisition [5].

The last example of amendment to competition protection legislation came from Hungary, where in October 2018 the Hungarian Parliament adopted a law which requires approval of the competent minister for foreign investments in specific sectors of industry [2].

The Republic of Serbia defined the National Security Strategy [23], which represents the basis for the development of strategic documents in all areas of social life, as well as for the functioning of public bodies and institutions, in order to preserve and protect the safety of its citizens, society and the state. It is clear from this paragraph that the Commission should, when making its decisions, consider the basis defined by this Strategy. The Strategy provides an overview of the internal security policy, which specifies the following: "Internal security policy provides protection of the democratic political system, human rights and freedoms, public order and peace and the citizens' property security and other social values. In achieving internal security policy, legislative, executive and judicial bodies work together, with effective policies in the economic, social and health care fields, as well as other areas that have an impact on internal security." Hence, the Strategy views the health sector as one of the primary areas that form a particular level of internal security, which shows that one of the priorities of the State is the health and quality of life of its inhabitants.

The general objective and purpose of the national security system is the protection of national interests, protection of life and property of citizens being one of the most important among them. The Strategy attaches great importance to the health of the population – "The Republic of Serbia pays special attention to the health care of its citizens." It also states the following: "The Republic of Serbia is committed to develop and promote all aspects of security, especially human, societal, energy, economic,

environmental and other contents of integral security of the Republic of Serbia. Special importance is given to creating conditions for the development of human security, which emphasizes the protection of economic, environmental, health, political and any other security of the individual and the community."

Conclusion

Since economic or quantitative benefits of competition are widely known, they have become a primary and even the only element in the decision-making processes regarding competition policies. Nowadays, due to the constantly increasing importance of public interest, the mentioned quantitative factors need to be supplemented by qualitative ones. That way, it would be possible to fully understand costs and benefits of chosen competition policies. Taking into consideration the mentioned countries and their competition policies, qualitative factors should encompass the following elements:

- State legislation and policies concerning ecological and sustainable growth;
- Social welfare and social equality;
- State legislation and policies concerning public health and security, industrial relations and access to capital;
- Economic and regional development;
- Employment and growth of investments;
- Interest of consumers or group of consumers;
- Competitiveness of Serbian companies;
- Efficient resource allocation.

The presented examples clearly suggest that particular restrictions of competition may be justified on the grounds of public interest. In modern economy, there is no such thing as perfect or unrestricted competition. Hence, there are particular rules, obligations and rights that justify potential restrictions of different market behaviours that would lead to economic benefits for the whole society. Therefore, the question is not whether public interest should be taken into account when considering different competition policies, but rather the nature and level of any competition restriction, as well as its effect on the whole society.

The public body dealing with the protection of competition may, and sometimes even must, delicately restrict competition in cases when public benefits surpass the harm such actions may bring. Regardless of whether more significant burden is imposed on competition or public interest, final decisions regarding competition policies should take into consideration all costs and benefits of different options. The definition of competition policy could be used as a conclusion: it is a set of regulations and policies that allow competition to be regulated to the extent that does not lead to a general decline in social well-being.

The aforementioned suggests the necessity to clearly determine particular economic and social factors that should be considered when discussing each competition policy. It is also of great significance to insist on a transparent discussion of public interest in the domain of protection of competition, encompassing all parties involved. Transparent discussions should be complemented by serious responsibility of policy-makers and hence ensure timely and most appropriate competition policies, which would reflect the defined economic objectives of a society.

An additional question that goes beyond this study is whether public bodies for the protection of competition are in the position to precisely assess elements that surpass competition policies, such as public interest. Is there any other public body that is in a better position to make such assessments? This question is of great importance, especially having in mind that the assessment of public interest encompasses different political and qualitative factors that significantly affect the welfare of a society.

On the other hand, if one subject was to decide on competition policies, it would be possible to ensure consistency of those decisions, as well as expectedness of particular outcomes. The consideration of public interest would ensure balance between economic and general social benefits (ecological, health, security, etc.), which would then lead to a more detailed competition analysis encompassing other members of a society as well. Inclusion of other members of society would be an important step towards the revival of public politics in Serbia.

Different countries from different parts of the world, with different political and legislative systems and values, have been fighting for years for the protection of

competition and stability of their economies. In order to achieve these objectives, they established special rules, sometimes even not adjusted to the existing regulations, with the aim of protecting national interest. In Serbia, economic interests are still ahead of national security questions. Therefore, the country should also value non-material/qualitative factors of the economy, such as public health, environmental protection, social equality, etc., in order to provide all individuals living and working in it with maximum benefits.

We are to suggest the best possible practices on how to encompass public interest in protection of competition, while policymakers (government representatives, judges, sociologists and other parties involved) are to focus attention on either economic or non-economic factors in cases of dispute that will probably arise.

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