

UVOD U PRAVO TRŽIŠNOG NATJECANJA EU ZA EKONOMISTE

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Uvod u pravo tržišnog natjecanja EU za ekonomiste

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Pravo tržišnog natjecanja EU



- PTN EU i hrvatsko pravo
- Sporazum o stabilizaciji i pridruživanju- početak implementacije prava tržišnog natjecanja EU
- Pozitivnopravna vrela prava tržišnog natjecanja EU i njihov utjecaj na domaće pravo tržišnog natjecanja
- Uloga Komisije EU i Suda EU na oblikovanje prava i politike tržišnog natjecanja

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Sporazum o stabilizaciji i pridruživanju



- Sporazum o stabilizaciji i pridruživanju iz 2001 g.- početak procesa prilagode domaćeg zakonodavstva sa *acquisom*
- Relevantne odredbe koje se odnose na tržišno natjecanje su odredbe iz članka 40., 69., i 70.

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SSP – početak primjene prava EU u Hrvatskoj



- Članak 40. uređuje pitanja liberalizacije tržišnog natjecanja u gospodarskim sektorima gdje postoje prirodni monopoli
- Njime se od Hrvatske traži da *poslovanje državnih monopola postupno prilagođava tržišnim uvjetima da kada i ako to bude bilo moguće dođe do njihova postupna ukidanja.*

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SSP – početak primjene prava EU u Hrvatskoj



- Čl. 69. st.1. i 2. propisuju obvezu usklađivanja hrvatskog zakonodavstva sa pravnom stečevinom Zajednice te državnim potporama i tržišnim natjecanjem u “ užem smislu”.
- Članak 70. st. 1. SPP-a određuje da su : “ nespojivi s ispravnom primjenom SPP-a , u mjeri u kojoj štetno djeluju na trgovinu između Zajednice i RH: (i) **svi ugovori između poduzetnika, odluke udruženja poduzetnika ... Čiji je cilj ili učinak sprječavanje ograničavanja ili narušavanja tržišnog natjecanja**
- (ii) **zlouporaba vladajućeg položaja jednog ili više poduzetnika na teritoriju Zajednice ili Hrvatske ...**”

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SSP – početak primjene prava EU u Hrvatskoj



- Članak 70. st. 2. određuje da će se *svako postupanje suprotno prethodnom članku ocjenjivati na temelju kriterija koji proizlaze iz primjene pravila o tržišnom natjecanju u Zajednici, a posebno članaka 81., 82., 86., i 87.*

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Lisabonski sporazum i propisi o tržišnom natjecanju



- **Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007**
(Lisabonski sporazuma- nova numeracija)

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Članak 101. Ugovora o EU



- Article 101 (ex Article 81 TEC)
- 1. The following shall be prohibited as incompatible with the internal market: **all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States !!! and** which have as their **object or effect the prevention, restriction or distortion of competition within the internal market**, and in particular those which:
 - Posebni oblici zabranjenih sporazuma
 - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development, or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

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Članak 101. Ugovora o EU



- **KLAUZULA O NISTAVOSTI**
- 2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

- **PRETPOSTAVKE IZUZEĆA** (dva pozitivna i dva negativna uvjeta)

- 3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
 - - any agreement or category of agreements between undertakings,
 - - any decision or category of decisions by associations of undertakings,
 - - any concerted practice or category of concerted practices,
- **which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:**
 - **(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;**
 - **(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.**

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Zloupotreba vladajućeg položaja ex članak 82 – članak 102



- Article 102 (ex Article 82 TEC)
- Any **abuse by one or more undertakings of a dominant position** within the **internal market** or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.
- Such abuse may, in particular, consist in:
 - (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
 - (b) limiting production, markets or technical development to the prejudice of consumers;
 - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

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Koncentracije u pravu EU



- Pravna vrela za kontrolu koncentracija:
- Kontrola koncentracija u EU do 1989 temeljem članka 82. Ugovora o EU
- Prva Uredba o kontroli koncentracija Uredba 4064/ 89 iz 1989. godine

- TRENUTNO NA SNAZI:
- **Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)**

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Which mergers are examined by the European Commission?



- Regulation shall apply to all **concentrations** with a Community dimension A concentration has a Community dimension where:
- (a) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5000 million; and
- (b) the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million,

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Pojam koncentracije



- A concentration shall be deemed to arise where a **change of control on a lasting basis results from:**
- (a) **the merger** of two or more previously independent undertakings or parts of undertakings, or
- (b) **the acquisition**, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings.
- 2. Control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking

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When are mergers prohibited or approved?



- A concentration which would **significantly impede effective competition (SLC test)**, in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, shall be declared incompatible with the common market.

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When does the European Commission approve mergers conditionally?



- Koncentracije će se dopustiti pod pretpostavkom da su negativni učinci koncentracije manji od pozitivnih i uz izricanje strukturnih mjera i mjera praćenja poslovanja

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Postupak ocjene koncentracije u pravu EU



- 1/ prijava koncentracije (utvrđuje se je li riječ o koncentraciji i je li premašen “ treshold”, nadležnost Komisije)
- 2/ upućivanje državama članicama na odlučivanje
- 3/postupak ocjene u I fazi- dopuštene koncentracije
- 4/ postupak ocjene u II fazi- dopuštene, uvjetno dopuštene (strukturne mjere i mjere praćenja poslovanja), zabranjene koncentracije
- 5/ statistika (<http://ec.europa.eu/competition/mergers/statistics.pdf>)

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