of public power at the end of 2009 and the beginning of 2010 (budget deficit, unpaid expenditures, shrinking incomes) do not allow reduction of indirect taxes. Nevertheless, the increase in excise rates (from the beginning of 2010) and the government's intentions to raise the VAT are inappropriate. Such a policy regarding direct taxes, additionally depressing consumer demand, protects solely the fiscal interest of public power and creates conditions for deepening the economic drop. The conclusion again is that, on one hand, efforts should be directed to improving the tax management and specifying the controversial and ambiguous texts in normative regulations. On the other hand, the budget problems of the central power have to be solved in priority through reducing ineffective government expenditures and starting reforms in spheres like healthcare, education and social security.

In conclusion, it must be strongly emphasized that the global economic and financial crisis, spreading in all spheres of social and economic life, results on the parameters of the main financial plan of every country. Tax policy is one of the instruments which influence the income part of the budget as well as the disposable income of production structures. The tax policy reform under the conditions of crisis requires the creation of a stable economic environment, efficient tax control, strict discipline and improvement of the work of tax administration.

SUMMARY

Attention should be directed to improving the work of tax administration, to specifying controversial and ambiguous texts in the normative regulations like reducing ineffective government expenses and restructuring of spheres like healthcare, education and social security, under which the stable economic environment, effective tax control and strict financial discipline acquire priority importance as necessary prerequisites for a successful reform of Bulgaria's tax policy.

Keywords: budget, budget impacts, tax policy, tax rates.

РЕЗЮМЕ

Внимание должно быть направлено на улучшение работы налогового ведомства, на определение спорных и неоднозначных текстов в нормативных инструкциях, как сокращение неэффективных правительственных расходов и реструктурирование сфер таких, как здравоохранение, образование и социальное обеспечение, под которым устойчивая экономическая обстановка, эффективный налоговый контроль и строгая финансовая дисциплина приобретают приоритетную важность по мере необходимости предпосылки для успешной реформы налоговой политики Болгарии.

Ключевые слова: бюджет, воздействия бюджета, налоговая политика, налоговые ставки.

РЕЗЮМЕ

Увага повинна бути спрямована на поліпшення роботи податкового відомства, на визначення спірних і неоднозначних текстів у нормативних інструкціях, як скорочення неефективних урядових витрат і реструктурування сфер таких, як охорона здоров'я, освіта та соціальне забезпечення, під яким стійка економічна обстановка, ефективний податковий контроль і сувора фінансова дисципліна здобувають пріоритетну важливість у міру необхідності передумови для успішної реформи податкової політики Болгарії.

Ключові слова: бюджет, впливи бюджету, податкова політика, податкові ставки.

DAMAGE AS AN ELEMENT OF EUROPEAN COMPETITION LAW

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1.**INTRODUCTION.** Market can produce the harm. Usually, the producer of the harm is cartels, mergers, as well as joint ventures. Generally speaking, the main harm arising from hardcore cartels is that parties further down the supply chain pay more for the product than they do in a non-cartelized market. Several damages claims in relation to exclusionary conduct have been made in courts across Europe, in both follow-on and stand-alone actions. Existing participants may be prevented from competing. Potential competitors may be prevented from entering the market. Buyers in the market would be harmed by exclusionary conduct if the reduction in competition leads to higher prices, a reduction in choice, or a reduction in quality. Generally speaking, economy policies have been often faced to different co-operations among the companies. For example, any merger, acquisition, joint venture or setting up the cartel constitutes a concentration. It means that mentioned shapes could produce the problems. This is the reason why European Commission insists these subjects have to be subject of control review of the competition authority.

According the Report on competition in 2009 of European Commission, the European Union, as well as the rest of the world economy, has faced financial and economic crisis. It has been a great challenge for the economy, generally. In that situation, governments and central banks should have specially roles. Together with the experts, they have the task to define measures in order to minimize the impact of the crisis on the real economy.

Having regarding the competition policy, the European Commission has compared in 2009 with the same in previous year, the number of mergers, particularly with the elements of abusing the dominant position. In 2009, there were 259 transactions notified to the Commission which needed control. Commission made 243 final decisions, controlling the mergers constituted under two phases. Of these final decisions, 225 transactions were approved without conditions during Phase I, 82 decisions were approved without conditions under the normal procedure and 143 (or 63.6 %) were cleared using the simplified procedure. Thirteen transactions were cleared in Phase I subject to conditions. Furthermore, the Commission initiated five Phase II proceedings, with three decisions adopted subject to conditions. Two cases were withdrawn in Phase II and six cases in Phase I. According the Antitrust damage Report, prepared by European Commission in 2009, there is no prohibition decisions were taken during the year.

2.COMPANY AGREEMENTS – POSIBILITY TO DAMAGES. What it could be said about anyone specific kind of agreements among the companies? Pursuant to the Law, the merger could be defined as the restrictive agreement may even exist in the form of oral agreement. Practically any merger, acquisition (of either companies or their assets) or full function joint venture constitutes a concentration and must be subject to merger control review of the competition authority if the respective companies meet the jurisdictional thresholds.

The Competition Law, as a obligatory content, imposes heavy constraints on a company occupying a dominant position and potentially abusive actions encompass:

- ✓ Predatory pricing – low, high or targeted pricing;
- ✓ Discrimination – favoring some customers to the others;
- ✓ Rebate schemes that induce loyalty with customers;
- ✓ Refusal to supply;
- ✓ Tying and bundling.

Mergers often create or strengthen dominant position. Continuously, dominant position can produce its own abuse. The same situation is present regarding the cartels, also a kind of agreement among the companies. The Competition Law imposes heavy constraints on a company occupying a dominant position and potentially abusive actions encompass: predatory pricing – low, high or targeted pricing; discrimination – favoring some customers to the others; rebate schemes that induce loyalty with customers; refusal to supply; and, tying and bundling.

1. Figure: Fines imposed (not adjusted for Court judgments) - period 2006 – 2010, cartel statistic

Year	Amount in €*)
2006	1.846.385.500
2007	3.338.427.700
2008	2.270.012.900
2009	1.623.384.400
2010	3.057.214.832
total	**12.135.425.332**

*Amounts as imposed by the Commission and not adjusted for changes following judgments of the General Court and European Court of Justice, and only considering cartel infringements under Article 101 TFEU. Wherever prohibitions and fines concern infringements of Article 101 TFEU and of Article 102 TFEU, only those amounts have been considered which concern the Article 101 TFEU infringements.

The companies could lose profit due to their partners' abuse the dominant position. Companies that are already in the market could be in position to face to damages. Damage estimation in this situation would seek to identify what profit the victim would have made in the absence of the infringement, in the 'normal' course of business.39 On the other hand, companies, including mergers and joint ventures that were not already in the market may still be relatively close to the conduct. In that circumstance they need to be able to show they were indeed excluded by this conduct.

2.Figure: Ten highest cartel fines per case (since 1969)

Year	Case name	Amount in €*
2008	Car glass	1.383.896.000
2009	Gas	1.106.000.000
2007	Elevators and escalators	992.312.200
2010	Airfreight	799.445.000
2001	Vitamins	790.515.000
2007	Gas insulated switchgear	750.712.500
2008	Candle waxes	676.011.400
2010	LCD	648.925.000
2006	Synthetic rubber (BR/ESBR)	519.050.000

* Amounts adjusted for changes following judgments of the General Court and European Court of Justice

According the Court of Justice of the European Union the framework for lost profit should be noted under the national legal rules, which cannot exclude the possibility of obtaining reparation for pure economic loss (in the form of lost profit). But, the companies must be very careful due to this possibility would be incompatible with the right to damages guaranteed by Article 101 (see also *Manfredi* ruling). In legal terms, everyone has a right to seek compensation for loss caused by a contract or by conduct liable to restrict or distort competition that injured persons must be able to seek compensation not only for actual loss (*damnum emergens*) but also for loss of profit (*lucrum cessans*) plus interest … This institute is well-known as the principle of effectiveness.

In economic practice, profit and damage must be regarded on the other way. Loss of profit should be noted as a head of damage. From the economic view, total exclusion of loss of profit cannot be accepted. It is the same situation regarding the case of a breach of Community law. This principle is common having in mind the legal frameworks in many Member States. One of the example is the Czech Commercial Code, which in Section 381 highlights that: 'Instead of profit actually lost, the aggrieved (injured) party may demand compensation based on the *profit attained as a rule in fair business conduct* in the aggrieved party's line of business, under conditions similar to those in the breached contract'.

Generally speaking, a lost profit damages could be seen as a part of competition law. In that sense, different national legislations, for example Austria, Denmark, England, Finland, France, Germany, Greece, Hungary, Ireland, Italy, the Netherlands, Poland, Portugal, Spain and Sweden, offer a definition of a lost-profit damages as a possibility of claim by a victim of an exclusionary abuse of dominance. The conclusion is that a claim of lost profit could be signed by a competitor, regardless a legal basis (it means using the competition law, or civil tort law).

Profit, lost of profit, the payment of interest, as well as compensation is different elements which are needed in the competition law. One of the participants in mentioned institutes should be the claimants. In practice, claimants may not always be able to prove the fact these are of importance for them, for example the exact quantum and a causal link between the unlawful conduct and the alleged lost profit (so-called *lucrum cessans*). The main reason is the difficulties in establishing. The difficulties could be very different: incompetence, lack of resources, luck, or external conjectural economic factors. What is the European Court's opinion regarding mentioned theme? The European Court, having in mind a damages action, stated that: the evidentiary requirements in respect of loss of potential earnings are less stringent than those in respect of actual loss. Following that direction, it is necessary to examine the existence of damage, as well as the assessment of that damage in the light of the normal course of events and real probabilities, not theoretical ones.

Normally, in different national legal systems could be found different solutions. But, most legal systems take a relatively pragmatic approach when assessing lost profit. Courts must have serious role in whole problem. They usually have a high degree of discretion in awarding damages for lost profit. It could be noted that some courts have no restrictive policy, and the other may be less restrictive, for example the *Crehan* case, where English Court of Appeal took a much more restrictive view than the High Court.

One of the part of the competition law are the vertical agreements. The courts' experience shows a numerous cases in that area, but directly regarding the damages, for example, *Crehan v Inntrepreneur Pub* Company *(CPC) & Anor.* In that case the claimant was a public house landlord. In 1991, this subject entered into an exclusive contract with Inntrepreneur in order to lease two public houses on condition that he stocked only its beers. This co-operation is followed by two unsuccessful years. The claimant highlighted the following heads of damages:

- losses £57,000 (approximately €85,000) – in a period 1991-1993 (lease period),
- future profits £900,000 (approximately €1,334,000); estimated for the period 1993-2003,
- the value £360,000 (approximately €534,000), in 2003, based on the untied leases.
- Different levels of procedures accepted different approaches. The Court of Appeal took a more restrictive approach than the High Court regarding the recoverability of future profits that the claimant would have made.

3. ECONOMIC AND LEGAL ASPECT OF PROFIT AND DAMAGES. There are two ways for arising the harm to competitors, based on exclusionary infringement. Economists would like to highlight the following ways: increased costs, and reduced revenue.

In that case costs involve cash cost items. It means input goods and the other general items, for example the cost of financing the business. On the other hand, reduced revenue understands the infringing conduct affects the price or sales volumes.

What could be the effect of increased costs and reduced revenue? First of all, it is possible a reduction in profit or an increase in loss. Secondly, from a legal perspective, it is important to determine in each specific case whether this effect falls under actual loss (*damnum emergens*) or lost profit (*lucrum cessans*), as the evidentiary requirements may be different. But, in economic sense it means, as mentioned previous, it can be used for either or both. This framework can be illustrated graphically.

1. Figure: Economic framework for calculating the effect of the infringement on Profits

Counterfactual	Revenues	minus	Costs	=	Counterfactual profit
					Minus
Factual	Revenues	minus	Costs	=	Factual profit
					=
					Lost profit

Note: the term 'lost profit' used in this economic sense comprise both the legal concepts of actual loss (*damnum*

emergens) and lost profit (*lucrum cessans*); Source: Oxera.

If someone wants to explain previous figure, he should note that the damages are calculated as the difference between the factual and the counterfactual profit of the company. This is the why how it can directly quantify the damages. But, it does not specify who legally bears the burden of proof at each step of the quantification. Regarding the legislations, the burden of proof for some of the relevant factors falls upon the defendant.

Previous framework is not the only one that can be recognized in business practice. The institutes of profit, as well as lost revenue, would be shown on simpler way, particular for the company that has suffered reduced volumes due to being partially or fully excluded from a market.

2. Figure: Re-arranged economic framework for calculating harm from exclusionary conduct (equivalent to Figure 3), Source: Oxera and multi-jurisdiction team

Exclusionary conduct (reducing volumes for excluded firm)	Counterfactual revenues minus Actual revenues = Lost revenues
	Lost revenues minus Avoided costs = Lost profit

The lost revenue in Figure 4 is calculated as the difference between the counterfactual and factual revenues. But, there it couldn't be seen how the main harm from the exclusionary conduct has been to raise competitors' costs. That situation is best captured in Figure 3.

Comparing two figures previous mentioned, it seems that re-arranged expression number 2 has the advantage of requiring less detailed knowledge of the company's cost structure. The main reason for that conclusion is needlessness to calculate all the costs that the company would have incurred in the relevant period.

Keep in mind both aspects – economic and legal, as well as the practice, damages would be definitely involved everywhere. Two further practical considerations are as follows.

The effect on profits depends on different figures. Usually it is approximated by lost volumes, lost customers, or lost market share. Also, damages claims are based on an estimation of lost sales volume. This value would have a negative effect on profits.

It has already mentioned that the burden of proof is the claimant's duty, but it cannot always quantify each needed figure.

The following also shouldn't be forgotten. The different factors or variables required to estimate damages will vary from case to case. Often, they depend on factors such as the nature of the infringement, the legal framework in the jurisdiction concerned, and the nature of the burden of proof that has already mentioned. Often the following variables are relevant:

- ✓ factual and counterfactual prices;
- ✓ volumes;
- ✓ costs;
- ✓ the rate of pass-on between each stage of the supply chain;
- ✓ the discount rate;
- ✓ other financial parameters, for example inflation rates.

It is clear that the cartels are very important actor in whole process. A cartel often fixes the prices. In that situation factual and counterfactual prices charged by the cartelists are normally required variables that need to have values assigned to them. The result of the difference between two mentioned prices is the overcharge. A discount rate is then usually required to convert the stream of cash flows over the relevant period into a final damages value.

Let's back and look at some previous data. For example, a company usually calculates a profit using the scheme - the increase in its costs minus the increase in its revenues. In position where a cartel is in a main role, especially when anticompetitive increase in an input price, the increase in costs to the downstream purchaser can be equal to the overcharge.

3.WHICH PARTIES MAY BE HARMED BY A BREACH OF COMPETITION LAW? All discussions about any kind of harm would be unsuccessful without the definition of the parties involved in procedure.

According Article 101, the Court of Justice announces the statement that it is open to 'any individual to claim damages for loss caused to him by a contract or by conduct liable to restrict or distort competition', what can be seen in Case C-453/99 *Courage Ltd. v. Bernard Crehan,* 2001, and joined Cases C–295/04 to C–298/04 *Vincenzo Manfredi and others v. Lloyd Adriatico Assicurazioni SpA and others,* 2006. The Court of Justice has also stated that, in the absence of EU rules, it is for the legal system of each Member State to prescribe the detailed rules governing the application of the concept of causal relationship.

Definitely, it could be set out various categories of potentially affected parties in a typical supply chain that are presented through the competition law, particular bear in mind their relationship with the firms.

Firstly, it has to be mentioned a group of direct and indirect purchasers. Direct purchasers are the customers that purchase goods or services directly from the infringers. Regarding the damages, direct purchasers can suffer harm in a form of any overcharge harm, as well as they lose sales downstream as a result of higher prices upstream. This situation could be seen in different German and Italian cartel cases. Indirect purchasers, which are intermediate sellers, are customers that purchase goods or services from a supplier that is downstream of the infringer. Indirect purchasers are affected by the infringement if its effects are passed downstream.

End-consumers are the following participants in purchasing who can be harmed. They can purchase either directly or indirectly from the infringers. In cases where there is an overcharge and they purchase directly, end consumers will have suffered the full extent of the overcharge harm. In the other side, if they purchase indirectly, the extent of the overcharge that they face may have been diluted by successive layers of intermediate producers not passing on the full overcharge.

Customers would have purchased less of the product as a result of the overcharge, as well as purchased less-preferred alternative products. Customers may have suffered from reduced quality or choice.

Generally speaking, there are different kinds of customers. After the customers in basic sense and end-customers, it should be important to mention so-called 'counterfactual' customers. Counterfactual customers are the potential customers who would have purchased goods directly or indirectly from the infringers in the absence of the infringement. These participants could be defined also as the customers who are willing to pay the counterfactual price. The counterfactual customers have suffered harm too.

The list will not be completed without the suppliers who can also suffer harm. For example, cartels usually result in lower levels of output owing to the higher prices they fix. This situation would produce the following:

1. fewer inputs are required,
2. reducing the volumes sold by suppliers.

In this series, one of the serious and required participants is competitor. Competitors should be the companies that compete with the infringers directly. Actual competitors have been already included in the market. On the other side, there are potential competitors whose entry into the market. That group is prevented by the conduct. Some theoretical conclusions highlight that competitors are more likely to have suffered harm in cases of exclusionary anti-competitive practices than in cartel cases or in cases of exploitation.

5. LEGAL PRACTICE IN SOME EUROPEAN COUNTRIES. Best practice in developing countries shows different questions. There are a numerous cases based on damages, as well as the participants and their experience. Very important sense and explanation is made by the OECD, in 2008, through its report. For example, this organization analyzes the practice from France and judges' questions. The main problem based regarding the assessment the relevance, reliability and consistency of economic expert analyses. The questions would be shared into various categories, particularly:

1) is the expert qualified?
2) is the method reliable?
3) is the analysis of the expert relevant? and
4) is the analysis of the expert externally consistent?

The list of questions has been developed by a Judge at the Court de Cassation in Paris and Chair of the OECD Competition Committee.

On the other side, the English courts have developed procedures for the use of expert evidence in the civil courts. According the Civil Procedure Rules, the English judges made some useful principles. Quantifying damages the experts should explain economic and financial theory and techniques. It means that it is needed to consider the validity and robustness of economic and financial evidence. Using an analogy, economic evidence can be like a 'black box'. There is the other solution which is highlighted by the courts in some Member States. This opinion has the power to make a damages award on the basis of equity, or on the basis of a best estimate or within reason.

But, the courts and the judges are not the only one who has duty to solve the questions about the damages. The expert has a formal duty to help the court in their area of expertise. The experts would organize discussions. After that, as a final production could be a statement as a help for court. This helps the court to narrow the issues in dispute. Recent experience (case *Chester City Council v Arriva,* 2007) with original antitrust actions suggests that the system works satisfactorily in many cases, in that judges have expressed that they felt they could rely on the experts.

After many discussions and suggested statements the members of OECD set up some opinions. But, the courts have different access to suggestions. There are a lot of reasons why courts sometimes reject economic evidence, such as: requirements for high standards of proof, a lack of guidance from the authorities, a lack of understanding by the judges, and ineffective presentation of the evidence.

6. CONCLUSION. In recent years, econometrics has become a valuable tool for gaining antitrust approval for problematic mergers. The agencies themselves have used econometrics both to challenge mergers and to determine which transactions will have no anti-competitive effects. Unfortunately, econometric tools are often misused or, at the very least, not used to their maximum potential. It is incumbent on the merging parties to understand what these tools can prove, when to use them and how to use them effectively.

Econometric analyses can provide an empirical foundation for the definition of a relevant market. Once a market is defined, econometric analysis can be used to assess whether:

- competition between the merging companies has a significant or minimal impact on prices;
- competition with other firms imposes significant constraints on the prices of the merging parties; and past expansion has been successful in limiting attempted price increases.

Once the arguments are developed it is important to approach the regulators both at the right time and with the right attitude. Econometrics will not likely help you to avoid a second request or a second phase and therefore should almost never be presented prior to that phase of the government investigation. The complexity of the data almost guarantees further investigation to give the regulators sufficient time to absorb the arguments, test the assumptions, and attempt to replicate the results.

But the work itself should be done as early as possible, not only for your own internal use but to bolster your entire presentation to the government.

Approaching the government in a spirit of cooperation is the only successful way of implementing these tools. Econometrics is fact-intensive and "assumption-heavy" methodologies. Therefore, open and collaborative dialogue with the agency economists and accountants is critical for the agency to accept the conclusions of the merging parties' studies.

The effective use of econometrics, in combination with effective advocacy, maximizes the chances of obtaining antitrust approval for even the most problematic deal.

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SUMMARY
The article is devoted to the estimation of damage as an element of European competition law.
Keywords: legislation, damage, competition law, potential competitor.
РЕЗЮМЕ
Статья посвящена оценке опасности как элемента европейского закона о конкуренции.
Ключевые слова: законодательство, опасность, закон конкуренции, потенциальный конкурент.
РЕЗЮМЕ
Стаття присвячена оцінці небезпеки як елементу європейського закону про конкуренцію.
Ключові слова: законодавство, небезпека, закон конкуренції, потенційний конкурент.

COMPETITIVENESS OF LATVIA'S ECONOMY: PROBLEMS AND CHALLENGES

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Problems of comparative advantages and competitiveness of countries become increasingly important under global competition. It is especially important for small and open economies and Latvia is one of them. The Global Competitiveness Index of Latvia has decreased during the previous years and it means that there are serious problems. Latvia occupies one of the last places among the EU member states in this evaluation. The way to international competitiveness and to the knowledge-based society lies via innovations. European Innovation Scoreboard shows that Latvia remains in one of the last places among the countries surveyed. Latvia's innovation index has not substantially changed over the last years. So it is very important for Latvia to identify areas of its comparative advantages and to mark priorities for further development.

Contemporary world economy as an aggregate of economies of separate states and their economic and political relationships is characterised by a comparatively new trends of development brought about by globalisation. Contemporary world economy includes more than 200 national states as subjects of economical, political, cultural and other activities. The essence of globalisation is manifested in integration of global economy, which increases the interdependence of states. Globalisation permeates the most relevant socio-economic processes in the world and fosters economic growth, since it acts as a driving force enhancing labour effectiveness and productivity in the conditions of toughening competition. Production costs reduce, since investments are diverted to the countries offering lower labour costs, direct access to markets as well as experience of utilisation of technologies. At the same time, globalisation highlights new contradictions and problems in the world economy. Globalisation nowadays to a smaller or greater extent practically embraces all countries of the world.

The role of competition, which in fact becomes global and international, essentially increases. In the conditions of globalisation every manufacturer, which does not depend on a single market or source of resources, may be competitive. National governments promote the inflow of foreign investments so that through foreign investors countries could more successfully integrate into global economic processes.

The impact of globalisation on the particular country is to a great extent determined by its position in the world economy: whether its economy is big or small. The positive effect of globalisation is mostly received by the big and rich states. These are the states whose economies have competitive advantages, while developing states are exposed to the threat of becoming a source of resources to the advanced economies.