*Revija za evropsko pravo: VIII (2006) 1.*
*©Centar za pravo EU, Kragujevac*

Mr. Sinisa VARGA, LL.D.*

UDK340.5:061.1EC

str. 41-54.

Izvorni naučni rad

# THE EU LAW ON CONTROL OF CONCENTRATIONS

## Abstract

***Existence of a dominant, even monopolistic, position on a market is not forbidden in the EU competition law. But since a dominant market position may be abused it is necessary to put under control concentrations of capital and business i.e. acquisitions of dominant market position. This article deals with substantive EU law on control of concentrations especially regarding the concept of concentration with Community dimension.***

***Key words: concentrations, EU, competition law, dominant position, merger, merger Regulation.***

***Ključne reči: koncentracije, Evropska unija, pravo konkurencije, dominantni položaj, spajanje, Uredba o koncentracijama.***

## INTRODUCTION

Dominant position on market may be acquired through a fair market contest where a successful player won its competitors by better quality of its goods and services, lower prices, greater productivity, better work organisation and allocation of resources, higher savings, innovations, more skilled marketing etc. Although the consequence of it is obtaining a dominant market position and

---

* Assistant professor on the Faculty for legal and business studies in Novi Sad, Serbia.

potential danger of its abuse, such market behaviour is economic desirable, legally valid and in business reality very rare. In the contrary there are concentrations that may be defined as an economic process two undertakings unite its activities or parts of its activities through, that as a result has creation of a unique economic unit. Under this are understood mergers and acquisitions of shares and taking control over other undertaking. These concentrations are being done in short period of time by union of already existing business subjects and their properties that don't show any quantitative change in industry because it's done existing capital concentration but qualitative consequences are clearly visible in changing of market structure by reducing of market players number that at the same time means decreasing of competitors number that may significantly reduce a degree of competition on market and endanger operation of effective competition, especially if the case is of horizontal mergers that for effective competition are the most harmful. Because of that this manner of concentration is necessary put under control. In the EU competition law it's been done by the ***Council Regulation No 139/2004 of 20th January 2004 on the control of concentrations between undertakings***, OJ L 24 of 29th January 2004, p. 001-022 (the ***Merger Regulation***). Merger control system established by this Regulation "ensures that the process of corporate reorganisation will not result in lasting damage to competition between enterprises and that consumers should share in the resulting economic benefits"[1]. Under control of concentrations in the EU competition law falls merger between previously independent undertakings and acquisition of control including (so called ***concentrative***) joint ventures.

Drafters of the ***Treaty Establishing European Community*** left out provisions on control of concentrations intentionally. It wasn't oversight – ***ECSC Treaty***[2] contained provisions on control of concentrations. We consider that there are more reasons for leaving out provisions on control of concentrations in the ***EC Treaty***. First, creation of the common market should cause restructuring of European undertakings in order to be made business organisations of a Community dimensions that are able to use advantages of the common market fully and at the same time to compete to strong American and Japanese companies. Second, setting out of concentrations control was really legally challenge because it should make a balance between a need for creation powerful undertakings capable to raise competitiveness of European economy and a need that a process of reorganisation of undertakings within the

---

[1] Anna Papaioannou & Ulrich Diez & Stephen Ryan & Dan Sjöblom, Green Paper on the Review of the Merger Regulation, "***EC Competition Policy Newsletter*** No 1/2002", p. 65.

[2] Treaty Establishing European Coal and Steel Community of 18th April 1951.

Community doesn't result by distortion of workable competition as well as a balance "between the public interest as expressed in a competition test aimed at protecting consumer welfare from anti-competitive harm...against the necessary private interest of investors in getting their deals done"[3]. Anyway, after the ***EC Treaty*** was concluded it was remained a gap in the law that was fulfilled on 1989 by adoption the ***Council Regulation No 4064/89 of 21st December 1989 on the control of concentrations between undertakings*** OJ L 395, 30/12/1989, p. 001-012, amended by ***Council Regulation No 1310/97*** of 30th June 1997, OJ L 180, 09/07/1997, p. 001-006.. Until 1989 the problem of the gap in the law was resolved by an extensive interpretation of Articles 82 (ex Article 86) and Article 81 (ex Article 85) of the ***EC Treaty***.

## APPLICATION OF ARTICLES 81[4] AND 82[5] OF THE EC TREATY ONTO THE CONTROL OF CONCENTRATIONS

In the area of control of concentrations Article 82 of the ***EC Treaty*** has been first time applied in ***Continental Can*** case[6] where the Court held that Article 82 prohibits the acquisition by a dominant firm of most of the shares in a potential competitor in the product dominated where this would virtually eliminate competition. It was about an attempt of an American transnational company ***Continental Can*** that through its German subsidiary ***SLW*** acquires control above ***TDV*** a Dutch competitor of ***SLW***.

However, application of Article 82 of the ***EC Treaty*** onto control of concentrations has been able "only if at least one of the firms was already dominant and the merger strengthened its position"[7]. It means that Article 82 of the ***EC Treaty*** was inapplicable in so far the same has been done by undertakings which are not in dominant market position. Therefore by

[3] Philip Lowe, Review of the EC Merger Regulation - Forging a Way Ahead, (European merger control conference, Brussels 2002), p.3.

[4] Article III-161 of the Treaty Establishing a Constitution for Europe, OJ C 310 of 16th December 2004.

[5] Article III-162 of the Treaty Establishing a Constitution for Europe, OJ C 310 of 16th December 2004.

[6] C 6/72 Europemballage Corporation and Continental Can Co. Inc. v. Commission ("Continental Can") [1973] ECR 495; [1973] CMLR 199.

[7] Valentine Korah, An Introductory Guide to EC Competition Law and Practice, (Oxford 2000), p. 301.

application of Article 82 of the ***EC Treaty*** in the field of control of concentrations was able to sanction only strengthening already existing dominant position whereas acquisition of it remained out of the Article 82 range. Also Article 82 of the ***EC Treaty*** was inapplicable onto joint ventures agreements.

The Commission considered that scope and capability to apply Article 81 of the ***EC Treaty*** on the control of concentrations was even more restrictive that possibilities to apply Article 82 of the ***EC Treaty***. For application of Article 81 of the ***EC Treaty*** on control of concentrations is important case ***Laval/Stork*** (the ***Commission Decision of 25/07/1977***, OJ L 215, 23/08/1977) where the Commission found that establishment of the joint undertaking doesn't represent a concentration and falls under Article 81 (then 85) of the ***EC Treaty***. Pursuant this rule (that was later woven in the EU law on control of concentrations) where competitors establish an common undertaking by agreement and after that stop to carry out an activity that will do new-established their common undertaking, thus they are not competitors regarding the activity any more neither to the common undertaking nor mutually on the given relevant geographic market and where effectively and irretrievable lost any possibility to return on the relevant market again all the time of existence and function of their subsidiary then it is the concentration that doesn't fall under provisions on prohibition of restrictive agreements whereas in contrary if after realization of a joint venture agreement on establishment of a subsidiary, establishers continue to carry out the same business activity as their subsidiary on the same geographic area then it is the concentration that co-ordinate their market conduct because it falls under provisions on prohibition of collusive tendering. In the ***Laval/Stork*** case competitors were restrained workable competition by agreement uniting production of compressors and turbines without irretrievable modification of production and commercialization structures of undertakings the parties in agreement this way that they are not able to be even potential competitors to new-established subsidiary. In the ***SHV/Chevron*** case two oil companies united their distribution networks left it to their common subsidiary but they irretrievable retired from the area of distribution the oil and oil derivatives. On the ***SHV/Chevron*** is not applied Article 81 of the ***EC Treaty***. It is important case ***Philip Moris***[8] where the Court stated that the acquisition of a minority shareholding in a competition that led to control might infringe Article 81 of the ***EC Treaty*** if the acquisition restrict competition. The judgement left a very unsatisfactory situation and business came to accept the need for merger control at the Community level.

---

[8] C 142&156/84 BAT v. Commission [1987] ECR 4487.

Actually, application of Articles 81 and 82 of the ***EC Treaty*** onto control of concentrations caused legal uncertainty and the Commission has been submitted the first proposal of the Regulation on control of concentrations 1973. It hasn't been accepted unanimously. However, the need for particular regulation in the field still has been obvious and as a consequence of that need, after long negotiations where should brought into accord interests of Member States which had developed law on control of concentrations such as Germany or United Kingdom which didn't want to leave this legal area and control of concentrations surrender to bodies on the Community level and other Member States whose law on control of concentrations wasn't developed enough, the ***Council Regulation on control of concentrations*** was adopted on 21st December 1989 and was entered into force on 21st September 1990. The Regulation was amended 1997.

## THE MERGER REGULATION

The ***Council Regulation No 139/2004 on control of concentrations between undertakings*** establishes completely independent system of the legal norms within the EU competition law. In other words, all the Council or the Commission Regulations that have been already mentioned are in function of application Articles 81 and 82 of the ***EC Treaty***. The ***Council Regulation on control of concentrations between undertakings*** is not in function of enforcement the anti-trust rules from establishing Treaties thus the legal basis of the ***Council Regulation No 139/2004*** is Article 308 of the ***EC Treaty***.

The ***Council Regulation No 139/2004 on control of concentrations between undertakings*** regulates cases where dominant position on market is a result of merger or acquisition of control above an undertaking. It was probably considered that in practice is rarely that an undertaking have been so much successful to win its competitors alone or (if it's although been happened) it needs longer period of time and it represents less danger for free contest on market than mergers or acquisitions of control.

Provisions comprised in the ***Council Regulation on control of concentrations between undertakings*** apply on concentrations with a Community dimension. Therefore it will be first examined the concept of concentration i.e. what is it concentration and afterwards how to establish does such concentration have a Community dimension.

## The Concept of Concentracion

The concept of concentration within the EU competition law is defined as covering only operations that bring about lasting change in the structure of the undertakings concerned.

The determination of the existence of a concentration is based upon qualitative rather than quantitative criteria, focusing on the concept of control.

The Council Regulation No 139/2004 on control of concentrations between undertakings (also known as the Merger Regulation) defines two main categories of concentrations:

- those arising from a merger between previously independent undertakings and

- those arising from an acquisition of control.

## Mergers between previously independent undertakings

A merger between previously independent undertakings occurs when two or more independent undertakings amalgamate into a new undertaking and cease to exit as separate legal entities. A merger may also occur when an undertaking is absorbed by another, the later retaining its legal identity while the former ceases to exist as a legal entity.

There are three essential merger effects. First, property conveyance, issuance of shares and cease of the undertaking(s) and in connection with last one, protection of creditors.

A merger also occurs where, in the absence of a legal merger, the combining of the activities of previously independent undertakings results in the creation of a single economic unit. This may arise in particular where two or more undertakings, while retaining their individual legal personalities, establish contractually a common economic management. If this leads to a ***de facto*** amalgamation of the undertakings concerned into a genuine common economic unit, the operation is considered to be a merger. A prerequisite for the determination of a common economic unit is the existence of a permanent, single economic management. Other relevant factors may include internal profit and loss compensation as between the various undertakings within the group and their joint liability externally.

Enterprises involved in the single economic unit remain legally independent.

The ***de facto*** amalgamation may be reinforced by cross-shareholding between the undertakings forming the economic unit.

## Acquisition of control

Acquisition of control may be acquired by one undertaking acting alone (sole control) or by two or more undertakings acting jointly (joint control). Control may also be acquired by a person in circumstances where the person already controls (whether solely or jointly) at least one other undertaking or, alternatively, by a combination of persons (which controls another undertaking) and/or undertakings. The term 'person' in this context extends to public bodies including the State itself as in ***Air France/Sabena***[9] case and private entities as well as individuals.

The control acquirers by purchase of securities or assets, by contract or by any other means, which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking.

The content of control can be:

ownership or the right to use all or part of the assets of an undertaking,

rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

The object of control can be one or more undertakings which constitute legal entities or the assets of such entities or only some of these assets. The assets in question, which could be brands or licenses, must constitute a business to which a market turnover can be clearly attributed.

The acquisition of control may be in the form of sole or joint control.

## Sole control

Sole control is normally acquired on a legal basis where an undertaking acquires a majority of the voting rights of a company. It is not in itself significant that the acquired shareholding is 50% of the share capital plus one share as in case IV/M.296 ***Credit Lionnais/BFG Bank*** or that it is 100% of the share capital as in case IV/M.299 ***Sara Lee/BP Food Division***. In the absence of other elements, an acquisition that does not include a majority of the voting rights does not normally confer control even if it involves the acquisition of a majority of the share capital. At the other side the sole control may be acquired in the case of a qualified minority where specific rights are attached to the

[9] IV/M.157 – Air France/ Sabena of 5th October 1992, in relation to the Belgian State.

minority shareholding. These may be preferential shares leading to a majority of the voting rights or other rights enabling the minority shareholder to determine the strategic commercial behaviour of the target company, such as the power to appoint more than half of the members of the supervisory board or the administrative board. A minority shareholder may also be deemed to have sole control on a ***de facto*** basis where the shareholder is highly likely to achieve a majority at the shareholders' meeting, given that the remaining shares are widely dispersed as in the case ***Arjoumari/Wiggins Teape Appleton*** (IV/M.25 of 10th February 1990, [1001] 4CMLR 854) where the Commission considered that the acquisition by ***Arjoumari*** of 39% of the share in ***Wiggins Teape*** enabled it to exercise decisive influence because the remainder of the latter's shares were widely dispersed.

### Joint control

Joint control exists where two or more undertakings or persons have the possibility of exercising decisive influence over another undertaking. Essentially for joint control is that undertakings or persons controlling another undertaking must reach agreement on major decisions concerning the controlled undertaking since otherwise each of the undertakings or persons controlling another undertaking may block any action which determine the strategic commercial behaviour of an undertaking.

The clearest form of joint control exists where there are only two companies or persons which share equally the voting rights in the controlled undertaking and none of them has a casting vote as in case IV/M.272 ***Matra/CAP Gemini Sogeti*** (17th March 1993). Equality may also be achieved where both companies (or persons) have the right to appoint an equal number of members to the decision-making bodies of the controlled undertaking.

Joint control may exists even where there is no equality between the companies or persons in votes or in representation in decision-making bodies or where there are more than two companies or persons if minority shareholders have additional rights which allow them to veto decisions which are essential for the strategic commercial behaviour of the controlled undertaking as in the cases T 2/93 ***Air France v. Commission*** 1994 ECR II-323 or IV/M.010 ***Conagra/Idea*** (3rd May 1991). The veto rights may be set out in the statute of controlled undertaking or conferred by agreement between undertakings or persons controlling another undertaking. The veto rights themselves may operate by means of a specific quorum required for decisions taken at the shareholders' meeting or by the board of directors to the extent that the parent companies are represented on this board. It is also possible that strategic decisions are subject to approval by a body, e.g. supervisory board, where the minority shareholders

are represented and form part of the quorum needed for such decisions. These veto rights must be related to strategic decisions on the business policy of the controlled undertaking such as changes in the statute, an increase in the capital, liquidation, appointment of management, determination of budget, business plan, investments. It is not for a minority shareholder to have all mentioned veto rights. It may be sufficient that exists only some or even one such right. Veto rights normally accorded to minority shareholders in order to protect their financial interests as investors do not confer joint control on the minority shareholder concerned as in case IV/M.062 ***Eridania/ISI*** (30th July 1991).

Concentration in the terms of the acquisition of control there is where an operation leads to a change in the structure of control. This includes the change from joint control to sole control[10] as well as an increase in the number of shareholders exercising joint control. All of this because decisive influence exercised alone is substantially different from decisive influence exercised jointly. From the same reason, an operation involving the acquisition of joint control of one part on an undertaking and sole control of another part is in principle regarded as two separate concentrations under the ***Merger Regulation***[11].

There are three exceptional situations where the acquisition of a controlling interest does not constitute a concentration under the Merger Regulation.

First, the acquisition of securities by companies whose normal activities include transactions and dealing in securities for their own account or for the account of others is not deemed to constitute a concentration if such an acquisition is made in the framework of these business and if the securities are held on only a temporary basis. In order to fall within this exception, the following requirements must be fulfilled:

the acquiring undertaking must be a credit or other financial institution or insurance company the normal activities of which are described,

the securities must be acquired with a view to their resale,

the acquiring undertaking must not exercise the voting rights with a view to determining the strategic commercial behaviour of the target company or must

[10] "Moving from joint to sole control was found by the Commission to be a concentration" (Penelope Kent, ***Nutcases European Union Law***, (London 2000), p. 133). The author cites the case Re ICI/Tioxide (IV/M.023, [1990] OJ C 304/27; [1991] 4CMLR M 792).

[11] IV/M.409 ABB/Renault Automation of 09th March 1994.

exercise these rights only with a view to preparing the total or partial disposal of the undertaking, its assets or securities,

the acquiring undertaking must dispose of its controlling interest within one yea of the date of the acquisition, that is, it must reduce its shareholding within this one-year period at least to a level which no longer confers control. This period, however, may be extended by the Commission where the acquiring undertaking can show that the disposal was not reasonably possible within the one-year period;

Secondly, there is no change of control, and hence no concentration within the meaning of the ***Merger Regulation***, where control acquired by an office-holder according to the law of a Member State relating to liquidation, winding-up, insolvency, cessation of payments, compositions or analogous proceedings;

Thirdly, a concentration does not arise where a financial holding company[12] acquires control provided that this company exercises its voting rights only to maintain the full value o its investment and does not otherwise determine directly or indirectly the strategic commercial conduct of the controlled undertaking.

## Joint venture

Parallel with the question of the acquisition of joint control above an already existing undertaking, the question of establishment the joint undertaking(s) through accomplishment of joint ventures also falls, at least partly, under the EU law on control of concentrations. Differently from any other way of acquisition of control, joint venture are characterised by peculiar legal effect – creation of a new business subject, that leads to contemporary existence of a new business organisation and at least two parent companies.

It doesn't consider that any joint venture is a concentration. Actually one of the biggest problem within the EU law on control of concentrations is regard to discern joint ventures which fall under ***Council Regulation 139/2004*** from those joint ventures which fall under Article 81 (ex Article 85) of the ***EC Treaty***. ***Merger Regulation*** makes difference between ***concentrative*** joint ventures, which create

[12] Fourth Council Directive 78/660/EEC, OJ L 222, 14th August 1978, p.11, defines financial holding companies as "those companies the sole objective of which is to acquire holdings in other undertakings, and to manage such holdings and turn them to profit, without involving themselves directly or indirectly in the management of those undertakings, the foregoing without prejudice to their rights as shareholders". The directive as last amended by Directive of the European Parliament and of the Council No 51/2003, L 178 of 17/07/2003, p. 16.

autonomous business subject on a lasting basis and ***cooperative*** joint ventures, which have as their object or effect the coordination of market conduct the undertakings remaining legally independent. ***Merger Regulation*** applies onto ***concentrative*** joint ventures only. On the occasion of examination is it the ***concentrative*** or ***cooperative*** joint venture, the Commission especially takes in account do undertakings controlling another undertaking in greater extent continue to carry out a business activity on the same, rising, falling or market that is close related to the market where operate joint venture. It is also evaluated does the joint venture as a direct effect has a such co-ordination of the competitive behaviour of the parents enabling them to eliminate competition in respect of a substantial part of the goods or services in question. "The creation of joint venture performing on a lasting basis all functions of an autonomous economic entity (which does not give rise to coordination of the competitive behaviour of the parties amongst themselves or between them and the joint venture) constitutes a concentration..."[13]. This differentiation is not of a small practical importance since the legal regime for concentrations is much milder in comparison to the legal regime prohibiting restrictive agreements. Is the joint venture of a ***concentrative*** or cooperative nature, the Commission assess towards circumstances in each particular case but it is important to have in mind that "the concept of 'an autonomous economic entity is a fiction"[14]. A joint venture cannot be independent of its parents when they control it jointly. However if the parents transfer to their joint venture all resources necessary to carry on all functions of a business organisation independently, then conditions are made fore their retirement from the relevant market in a long term[15]. Long term in the Commission's consideration is five years. Parents don't have to left relevant market if they don't carry on the same business activity as their joint venture.

Confinement between ***concentrative*** and ***cooperative*** joint ventures in the EU competition law is taken over from German competition law where under ***concentrative*** joint ventures are understood those joint ventures which carry on all production and market functions the same as 'real' undertakings whereas ***cooperative*** joint ventures are functional business entities which supplement business activities of their parents and have for them just an auxiliary role.

---

[13] The part within brackets is deleted by virtue on Article 1(3)b of the Council Regulation No 1310/97 .

[14] V. Korah, An Introductory Guide to EC Competition Law and Practice, (Oxford 2000), p. 304.

[15] V. Korah, op.cit., p. 305.

## CONCENTRATIONS WITH A COMMUNITY DIMENSION

***Council Regulation No 139/2004 on control of concentrations between undertakings*** applies only to concentrations with a Community dimension. Concentrations with a Community dimension are determined pursuant to laid down thresholds thus a concentration has a Community character if an aggregate world-wide turnover of all undertakings concerned is more than EUR 5,000 million and the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. A Community dimension may nevertheless pertain where undertakings concerned:

have a combined aggregate world-wide turnover of at least 2.5 thousand million Euros,

in each of at least three Member States the combined turnover of all undertakings concerned exceeds 100 million Euros,

in each of the three Member States (where relevant) the aggregate turnover of each of at least two of the undertakings concerned exceeds 100 million Euros;

unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one of the same Member State.

The laid down conditions whether in first or in corrective variant have to be fulfilled cumulative. The function of the threshold regarding world-wide turnover is measurement of an economic power of undertaking(s) whereas the function of thresholds regarding Community-wide turnover is determination of significance and relating of concentration to European market. Condition repeating in both primary and corrective variant in regard to undertakings must achieve more than one third of its aggregate Community-wide turnover in another Member State in order to the concentration can be deemed with a Community dimension is set with a view to avoid control of the concentration by Commission if the concentration concerns to the economy of one and the same Member State predominantly.

The method of calculating turnover is prescribed in Article 5 of the ***Merger Regulation***. Discounts and turnover taxes, transactions between parties and within groups are to be disregarded. The relevant turnover is that of the undertakings concerned, which, in merger, are the merging corporate groups and, in acquisition of sole control, the acquiring company and acquired or target company or activity.

The legal effect the laid down thresholds is confinement of the competencies between the Commission and Member States institutions in the area of control of concentrations. Concentrations bellow the prescribed thresholds may be investigated by Member States' competent bodies under national competition law but the Merger Regulation wouldn't be applied.

**Summary**

Under the control of concentrations in the EU competition law falls mergers between previously independent undertakings and acquisitions of control including (so called ***concentrative***) joint ventures.

The ***Council Regulation No 139/2004 on control of concentrations between undertakings*** establishes completely independent system of the legal norms within the EU competition law.

The ***Council Regulation No 139/2004 on control of concentrations between undertakings*** regulates cases where dominant position on market is a result of merger or acquisition of control above an undertaking. It was probably considered that in practice is rarely that an undertaking have been so much successful to win its competitors alone or (if it's although been happened) it needs longer period of time and it represents less danger for free contest on market than mergers or acquisitions of control above undertaking(s).

Provisions comprised in the ***Merger Regulation*** apply on concentrations with a Community dimension only.

Doc. dr Siniša Varga*

## PRAVO KONTROLE KONCENTRACIJA EVROPSKE UNIJE

**Rezime**

Odredbe Uredbe Saveta o kontroli koncentracija između preduzeća (Council Regulation No 139/2004 of 20th January 2004 on the control of concentrations

* Fakultet za pravne i poslovne studije u Novom Sadu.

between undertakings, OJ L 24 of 29th January 2004, p. 001-022) se primenjuju na koncentracije sa komunitarnom dimenzijom. Pojam koncentracije je određen tako da obuhvata samo one ekonomske pojave koje uzrokuju trajnu promenu strukture kako pojedinačnih preduzeća uključenih u proces koncentracije tako i strukture tržišta na kome se proces koncentracije vrši. Uredba Saveta o kontroli koncentracija između preduzeća se stoga ne odnosi na poslovno-tehničku saradnju između dva ili više preduzeća, ukoliko ona ostaju samostalna. Koncentracije komunitarnih dimenzija se određuju prema propisanim vrednostima prema kojima koncentracija ima komunitarni karakter ukoliko je ukupan promet na svetskom tržištu veći od pet milijardi evra i ukupan promet na tržištu Evropske Unije svakog od barem dva preduzeća veći od 250 miliona evra pod uslovom da nijedno od tih preduzeća ne ostvaruje više od 2/3 prometa na zajedničkom tržištu unutar jedne te iste države članice. Koncentracije koje ne ispunjavaju ove kriterijume ipak će se smatrati koncentracijama komunitarnih dimenzija ukoliko:

- kombinovani ukupni promet na svetskom tržištu svih preduzeća u pitanju prelazi 2,5 milijardi evra,
- u svakoj od barem tri države članice, kombinovani ukupni promet svih preduzeća u pitanju prelazi 100 miliona evra,
- u svakoj od barem tri države članice kao pod b), ukupni promet svakog od barem dva preduzeća prelazi iznos od 25 miliona evra,
- ukupan promet na tržištu Evropske Unije svakog od barem dva preduzeća prelazi iznos od 100 miliona evra
- pod uslovom da nijedno preduzeće ne ostvaruje više od 2/3 ukupnog prometa na zajedničkom tržištu unutar jedne te iste države članice.