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Motivations of the Common European Competition Policy and Lessons for the Western Balkans

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ABSTRACT
Common competition policy is one of the original common policies of European integration. Founding members of the European Economic Community recognised properly the need for a Single Market regulating regime that became one of the cornerstones of the integration. Market regulation has several palpable characteristics due to its traditional and topical tasks. We discuss original task of the competition policy that ensures a legally unified business environment in the Single Market. This is the fundament of the policy mentioned since without an EU-level set of common rules the goal of a full and undistorted economic integration couldn't be achieved. Therefore, competition policy considerations laid down in the Treaty of Rome have endured stormy decades of EU's history. Well-shaped competition policy rules, on the other hand, constitute an enduring but flexible framework for additional economic purposes. Establishing a growth-friendly business environment, contribution to the exploitation of efficiency gains or supporting research and development could be mentioned as the most important economic actions fostered by the current common policy. In line with this duality we scrutinise if there has been a paradigm shift in the policy. Non-EU countries of the Western Balkans have to consider these incremental features of competition policy in the harmonisation of their legal systems to the EU law. They have to make consistent their competition regulations with the EU legislation in the light of their forthcoming EU accession and Single Market entrée. By our hypothesis competition regimes of the countries observed are far from being consistent with

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the EU accessing prescriptions. Disaggregating the policy, we assume countries' antitrust regimes could be partly labelled consistent with EU expectations while State aid practices ought to be restructured. Nonetheless, integration of their markets into the European Single Market progresses slowly. We address this question by reviewing their competition policy regimes.

KEY WORDS: EU, competition policy motivations, economic integration, Western Balkans.

POVZETEK

Skupna politika konkurence je ena od temeljnih skupnih politik evropske povezave. Ustanovne članice Ekonomskega gospodarskega prostora so dobro prepoznale potrebo po urejanju enotnega trga, kar je postal eden od temeljev integracije. Urejanje trga ima zaradi svojih tradicionalnih in aktualnih nalog številne otipljive lastnosti.

Prispevek se osredotoča na primarno nalogo politike konkurence, in sicer na zagotavljanje pravno enotnega poslovnega okolja na enotnem trgu Evropske unije. Gre za temelj omenjene politike, saj brez pravil na ravni EU, popolna in dejanska ekonomska integracija ne bi bila mogoča. Stališča politike konkurence, ki so zapisana v Rimski pogodbi, so preživela viharna desetletja razvoja Evropske Unije.

Pravila politike konkurence predstavljajo trajen, a vendar prilagodljiv okvir za dodatne ekonomske namene. Sedanja skupna politika konkurence temelji na vzpostavljanju poslovnega okolja naklonjenega rasti, prispeva k izkoriščanju povečanja učinkovitosti ter hkrati podpira raziskave in razvoj. Zaradi tega pristopa na dveh ravneh, bomo preučili ali je prišlo do spremembe miselnosti v politiki konkurence.

Države Zahodnega Balkana, ki niso članice Evropske Unije, so primorane upoštevati te temeljne funkcije politike konkurence pri usklajevanju svojih pravnih sistemov z zakonodajo EU. V luči želenega vstopa v Evropsko unijo in dostopa do skupnega trga, morajo prilagoditi svojo konkurenčno zakonodajo evropski. Naša hipoteza je, da politike konkurence v obravnavanih državah še zdaleč niso skladne s predpisi, ki jih v procesu približevanja zahteva EU. Ob razčlenitvi nacionalnih politik, lahko potrdimo, da so proti monopolna pravila držav delno skladna s pričakovanji EU, medtem ko bi moral biti sistem pomoči države izboljšan. Kljub temu poteka integracija nacionalnih trgov v evropski enotni trg počasi. Tematiko obravnavamo skozi analizo njihovih nacionalnih politik konkurence.

KLJUČNE BESEDE: EU, namere politike konkurence, ekonomska integracija, Zahodni Balkan.

Introduction

Common competition policy (CCP) is one of the original common policies of the European Union. Founders of the European Economic Community (EEC) have properly recognised the need to derogate Member States' (MSs) sovereignty in a number of fields previously exclusively regulated by national rules. The aim of this process, which is far from being come to the end, is to interlink Member States' economies; we could contemplate it as the contrivance building a single European economy. Together with such strategic branches of regulation like agriculture or trade are, competition issues had been rallied as a supranational policy as well. Due to this, fundaments of the common competition policy could be found in the Treaty of Rome. In our paper we reflect main impulses of scientific studies examining the CCP (Fox, 1997; Lowe, 2006; Schupanitz, 2013) and European Commission (EC) legal texts as well.

With the objective of reflecting the importance and usefulness of further competition policy efforts of the Western Balkan countries[2], we follow a dual approach. Firstly we design the central role of the *common* competition policy for the EU economy and national economies aspiring to join the EU. However, only a common policy on competition could ensure a non-fragmented internal market and it is therefore regarded as an *integrating power*; we consider it as the internal dimension of the uniformed European market in line with the external dimension assured by the common trade policy. On the other hand, competition policy has *developing characteristics* as well, and, as such, *has to be adjusted to the contemporary economic requisites*. By these requisites we list, inter alia, the improved competitiveness and productiveness, contribution to a knowledge-based and sustainable economy (see EU endeavours on the field of R&D, high-tech or biotechnology, and strict EU environmental prescriptions and efficiency, respectively), job creation or supporting

[2] As regard the term 'Western Balkans' we mean the four successor countries of Yugoslavia that are still endeavouring to obtain EU membership (Bosnia and Herzegovina, Montenegro, Serbia and the the Formal Yugoslav Republic of Macedonia [hereinafter: the FYROM]). Their history interlinks them creating a micro group of countries with the same long-term objective of EU integration.

the creation of an economic space providing harmonious operational conditions. In this reading, the CCP should be handled as an infinite regulating regime and ensuring its flexibility seems to be inevitable. Therefore, we address firstly a hypothesis whether the Single Market contemplates a paradigm shift in the notions of the CCP. The key issue is whether accessory economic considerations overcome original motions of the policy (i.e. the shift has occurred) or they have measured up to the latter. This kind of interrelatedness has to be manifested horizontally and vertically as well; under the horizontal dimension we mean the 'good neighbourhood' of the CCP with other (common) policies; under the vertical relations we argue the interrelatedness with MSs' legal systems and national competition regimes. We assume this latter is much more relevant in the case of the would-be Member States; in this sense supporting the countries of the Western Balkans in taking over competition policy legislation and best practices might be a prize-winner commitment.

We address the above mentioned CCP considerations to the countries of the Western Balkans with the objective of underlining imperfectnesses of their competition regimes. The main contribution of this paper is tracked just in this: there is a lack of scientific papers drawing a parallel of the Western Balkan countries' current competition policy and institutional advancements. By recognising their *interests* in legal harmonisation they would adjust their legislation to the acquis for the sake of exploiting more effectively the would-be market of 500 millions of consumers by their accession. Nonetheless, in our second hypothesis we assume that competition regimes of the countries examined are still far from being harmonised with the acquis. While nearing the set of rules in antitrust seems to be much more advanced than reconciling State aid practices, we expect further efforts to be needed to achieve full consistency. In the light of this we execute progress report analysis discussing the current state of competition regulation in the Southeast European (candidate) countries examined. The European Commission evaluates advancements both in the antitrust and merger, and State aid regulations. Scrutinising the case of Serbia is crucial in itself since it is the key non-EU country of the region not only in political but economical sense as well. Serbian sequels at the beginning of 2014 attract special attention due to the fact that the country's accession negotiations to the EU have initiated; however, the first sight suggests competition policy wouldn't be a pivotal chapter in these negotiations (EC, 2014). The other three

post-Yugoslavian countries' (Bosnia and Herzegovina, the FYROM and Montenegro) EU integration raise different questions. In the case of Montenegro, which had already surpassed the screening of its national legislation, conclusions inferred from this report help us to design an updated picture of its advancements. However, numbers of times social and historical tensions erect more significant obstacles in the endeavour to become a full EU member than general economic conditions. Bosnia and Herzegovina, the FYROM and in some reading Serbia as well are struggling with social unrest and an accelerated trend in population aging. On the other hand, having a peep at real economics, the most prominent feature of these economies is the socialist heritage; we design these obstacles, underpinning by competition policy harmonisation assessment on a regional level. We recline upon the most recent Southeast European studies on antitrust and State aid practices (Goranson and Volkai, 2003; Pavić, 2011; Lončar and Milošević, 2013; Petrovski, 2014) arm in arm with European Union evaluations (see progress reports of the country in question).

Flashing a positive sign for the Western Balkan countries dipping experience on their sticky road to the EU we play attention on the Central European Free Trade Agreement (CEFTA). They gain dozens of experience from the CEFTA membership and by this they could ameliorate their adaptation capabilities to the more intensive Single Market competition. Candidate countries should consider best practices CEFTA membership, as the antechamber of the full EU membership, had resulted for previously participating countries (Adam, Kosma and McHugh, 2003; Somosi, Zakar and Pelle, 2007; Ristić and Mijušković, 2013).

Motivations of Competition Policy: from Market Integrity to Accessory Goals

Western European politicians of the early 1950s had correctly realised the need for an enhanced economic cooperation in the realigning world order. Their genuine goal was to reconcile various economic interests of the Western European economies. For the sake of a prosperous Europe, their countries recently stepped on the way of integration; however, the constitution of the reborn Europe – the Treaty of Rome – was designed in the way to leave space for additional cooperation on the field of economics and politics. This, in the meantime, could serve as a guideline for other integrations (Cameron,

2005). In accordance with the open-ended upshot, the looming European Single Market has offered the possibility of a multi way economic development and has not restricted strictly the manners of cooperation allowed. At this point the widely accepted notion on the nature of competition policy and efforts on market integration might be highlighted. Rusu (2010, p.73), for example, states that "the market integration is never a goal in itself but a policy means to achieve the Community's goal of welfare enhancement"; Camesasca's (2000) opinion reflects the same. Abreast, Lowe (2006, p.1) discusses that "competition is not an end in itself, but an instrument designed to achieve a certain public interest objective, consumer welfare. At the same time, competition policy can contribute to other objectives: in the EU context, for example, it can work towards the success of the strategy for growth and jobs, and form part of the public debate about the role of state intervention and regulation in industry". A boldly new approach could already be shelled from the text of the Treaty in effect which has affirmed the getting off the doctrine of an undistorted competition, and hereby comprehends that "competition is no longer an objective of the Union, or an end in itself, but a means to serve the internal market" (Barents, 2009 cited in Van Rompuy, 2011, p.2).

At this point two observations has to be made on CCP which could life likely mirror its importance and motivations of amendments. Firstly, there is no doubt that a *common* competition policy is the core institution of the Single Market since it ensures the cohesion between national economies. In fact, similarly to other common policies, competition policy is being formed as well due to consistent compromises between decision makers (i.e. MSs). Since the policy in question shapes operational conditions of the Single Market, channelling the business sphere's interest shouldn't be ignored. This represents a potential conflict of consumers' and business representatives' interests. Competition policy is therefore a constant trade off of interests and economic considerations where the issue in question is the level of freedom of competition itself.

From the competition policy's central role follows the second observation. The trade off that features common policies implies a *supranational* decision making but only on the highest legislatory level (in accordance with the conception of subsidiary). Supranationality in policy enforcement – due to efficiency considerations – has been modulated by the Council Regulation 1/2003 (discussed later) which

has called in national authorities in antitrust enforcement. The aim of these considerations is to constitute a well functioning structure of legislation, enforcement and feedback.

Setting competition policy into the common framework of the integration, however, was not without doubt in the initial year of the European economic integration. McGowan (2010, p.99) stresses that "outside West Germany and France none of the other four ECSC member states represented at Messina had any great interest in competition, and thus the subsequent discussions involved Bonn and Paris". He contrasts the idea of free competition supported by the Germans and the French instinct for interventionism; in a sixty years perspective we might book that prevailing of the first notion was directly affected by the fact that "the inclusion of competition rules within the EEC Treaty was a demand which had originated within the West German delegation" (McGowan, 2010, p.99).

Fundaments of the common European competition policy have therefore leaned on the contemporary German traditions. Its 20th century evolution, however, could be characterised as a sometimes controversial process, significantly shaped by the (nazi) German political atmosphere, its semi-peripheral labelling (Flint, 2001) and potentially affected by the Kulturkritik as well (Stauth, 1994). In spite of the partly suppressed scientific life in the 1930s and 1940s Germany, various market regulation thoughts have taken root amongst the post World War II German economists and decision makers. Pelle (2010) highlights that one of the routes has originated in Robert Liefmann's limited market regulation (the so-called ordoliberal approach), while the post World War II Freiburg approach, emphasising the benefits of the free competition, could be evaluated as its counterpart. This duality has been embodied in the Treaty of Rome inasmuch as "Article 101 (1) is the manifestation of Freiburg school approach, while (3) is that of Liefmann's tradition" (Pelle, 2010, p.24). On the ultimate goal of the competition policy Maier-Rigaud (2011, p.167-168) states that "efficiency considerations, and in particular a focus on consumer welfare, apparently played a more important role in these debates than ordoliberal thought. Traces of neoliberal thought could not be found, putting the credibility of the argument that the legislative intent of both the EU and German competition law was the protection of free competition, in serious doubt".

As Fox (1997, p.340) points out, "economic integration of the various member nations is a dominant objective of competition policy", means that the *European internal market was designed with the desire to establish a borderless economic area*. By granting uniform conditions for any kind of business activity, the set of common competition regulations has been considered as the integrating power of the Community market. A unified business environment, however, has been crucial in attending the goal set by the Treaty of Rome addressing, inter alia, "to promote throughout the Community a harmonious development of economic activities" (EC, 1957, Article 2) and eliminating MSs rivalry embodied in competition distortion for purpose of making attractive their national markets. MSs have been thereby allowed to pursue wide range of economic activities except executing this on the harm of other MSs or enterprises. Article 3 of the Treaty of Rome (EC, 1957) has assigned to this end a tool of instruments "ensuring that competition in the common market is not distorted" – i.e. "the Union shall establish an internal market" (EC, 2009a, Article 3) as it is stated in the Treaty in effect as well.

The role of the European Commission has been crucial not only in establishing the Single Market, but similarly: in its maintenance and development, too (for recent initiatives see for example EC, 2011a; EC, 2012a). In this reading the EC is the guardian of the Treaties, but its leading position on the field of competition policy is ductile (Barros, Clougherty and Seldeslachts, 2013). Suiting its task, the European Union is authorised with exclusive competence in "establishing of the competition rules necessary for the functioning of the internal market" (EC, 2009b, Article 3), albeit its effectiveness depends on its cooperation with the National Competition Authorities (NCAs), too (Council, 2003). We argue that *by the Council Regulation 1/2003*[3] *leading position of the EC in antitrust enforcement was not challenged but affirmed.* The Regulation states that "the present system should therefore be replaced by a directly applicable exception system in which the competition authorities and courts of the Member States have the power to apply not only Article 81(1) and Article 82 of the Treaty, […] but also Article 81(3) of the Treaty" (Council, 2003: ¶ 4). The motivation behind this consideration has been the central role of

[3] Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

the EC in supranational issues accompanied by the strong integrative approach of the judicial system of the European Union[4] (Hartley, 2007; Díaz, 2011). The cooperation of this triad constitutes the institutional frame of the CCP. Council Regulation 1/2003 by its decentralising notion has therefore brought major changes into law enforcement.

Beside the requisite of setting equal working conditions throughout the European Union, there are additional gains expected from a unique competition policy. This is partly due to the changing role of the CCP over time (Schupanitz, 2013); the author states that during the first decades of the integration competition policy's task was to establish an integrated market, while later – side by side of the adoption of the first merger regulation – it has become a tool that contributes to the generates of desired market structures. The original role of the CCP, he argues, has not been eliminated from the arsenal of this common policy, but an "*active* market integration […] on the part of European policymakers is no longer as central as it once was" (Schupanitz, 2013, p.17). This shift in emphasis could be deduced from Motta (2004, p.15) stating that "the main objectives of competition policy [...] are most probably economic efficiency and European market integration". Generally spoken, all the goals of the antitrust regime could be strung on the principle to supple misuse of dominant enterprises' power, while State aid regulations contribute to escape artificial distortion of competition. In other words, a well shaped competition policy should protect weak(er) market actors, including not only enterprises, but consumers as well. However, it is the competition, as an institution, and not the competitor who the competition policy grants protection for. Fulfilment of the desire of weaker enterprises' protection is therefore rather a theoretical mindset that interlinks the CCP with other policies, such as cohesion policy and industrial policy.[5] Regarding State support, taking into account national interests may turn up by various legal tools such as derogations, interim measures or retarded market accession.

[4] The integrative approach could be tracked not only in judging in preliminary queries, but infringement actions as well. By the supportive interpretation of the legal or even contractual actions, the Court has become a flagship of the deepening European integration using tools it was endowed by.

[5] In the latter part of our paper we discuss gains that could be achieved by a determined distortion of free competition. While these are resulted per se from a distorted competition, they should constitute a different group of economic benefits originated from a well functioning competition policy extracted by the distortion of competition.

The 1993 competition policy report of the European Commission could be regarded as a sequel on these, newly emerged competition policy challenges. The report reflects on competition policy goals, and admits that "since the beginning of the Community, competition policy has helped pursue fundamental Community goals [and affirms that] it has helped create, for example, a common market, a harmonious development of economic conditions and an accelerated raising of the standards of living" (EC, 1993, p.14). However, these goals are not newfangled: Jacquemin and de Jong (1981) practically a decade earlier listed the same considerations competition ought to realise. The Maastricht Treaty finally went even farther supplementing these aims by its ominous considerations on the field of industrial policy or environmental issues (EC, 1992; EC, 1993). Lately a raising number of publications (Nath and Sharma, 2005; Lowe, 2006; Maier-Rigaud, 2011; Schupanitz 2013; van Hees, 2014) have been discussing the goals expected to be achieved by the policy beside that of the integrity of the market; the goal of consumers' protection, the welfare enhancement or the redistribution of wealth have become general goals as well expected to be provided by an effective competition policy. The leitmotivs of competition policy's goals[6] according to this are twofold: on one hand, the policy desires to control monopolistic power, and obviate its misuse. These considerations have been underpinned by the competition policy legislation dumping of the millennium (for example Council Regulation 1/2003, Council Regulation 139/2004 and the countless guidelines issued); it's worth to mention that antitrust actions are available only *ex post* (Lowe, 2006), therefore the legislator's desire ought to be doubtless about the considerations he's being motivated by. However, the forthcoming extension of the Single Market posed by the 2004 enlargement could be another deliberation behind these policy shifts since it has led to the creation of the biggest trading block in the world. On the other hand, actions carried into effect always serve efficiency and welfare deliberations. This reflection emphasizes a social dimension of the economy (by lower prices, broader assortment, creation of workplaces, etc.). These ends have come to the surface more powerfully by the dissemination of the more economic approach introduced into the CCP in the last few decades (Hildebrand, 2009; Drexl, Kerber and Podszun, 2011).

[6] At this point we ignore State aid considerations.

Competition policy's above mentioned welfare and social functions are labelled as efficiency features in the terms of microeconomics. By these considerations, Motta (2004) highlights possible adverse consequences of an excessive market power on efficiency, but condemning it generally as sinful would be hasty. A welfare loss caused by a monopolist (allocative inefficiency) refers to the too high price levied. Probably, this lack of competition (no incentive of pushing towards the use of the best technology) on the relevant market would result in inefficiency in the production. At this point Schumpeter's theory on the commitment for innovation should be born in mind. The third feature of efficiency is that of the dynamic, "which refers to the extent to which a firm introduces new products or processes of production" (Motta, 2004, p.55).

Considerations on efficiency have contributed as well to the extension of competition policy's scope of action. The final end of an undistorted competition throughout the Community doesn't have to result in a rigid system of competition rules, but it has to support further goals, especially on the field of the real economy.[7] In other words, *the core concept of the Single Market's integrity has to be supplemented by the pursuit for a business friendly environment*. Recognising this, by means of a business friendly environment a substrate for multifarious economic interests has been prepared for. In line with the Lisbon Strategy (EC, 2005) and the forthcoming Europe 2020 initiative (EC, 2013a), which have set the goal of an innovative and knowledge based society arm-in-arm with boosting competitiveness, the need for finding solution on the strengthening social and demographic pressure, the desire to lessen the lag in high-tech industries between the EU and its main counterparts (Czékus, 2013) and to support better exploration of potential advantages handed on a plate by the institutionalised Single Market (see allocative and productive efficiency), the EU has valorised the latitude provided by the CCP for achieving accessory benefits. Endeavour for picking opportunities of such a policy undoubtedly appreciates an interdisciplinary approach of European Union policies; notwithstanding, Treaties provide the contractual framework for such deliberations. In correspondence with the new economy and discussing pros and cons of state intervention into the market processions, Hahn (2001) offers several ways for com-

[7] A well shaped and enforced competition policy could have favourable effects in fight against inflation, too. See Böheim (2008).

petition policy development. These embrace, inter alia, the revision of views on antitrust policy's temporal limitations, the enhancement of the dynamic approach in competition policy and re-evaluation operational mechanisms of the market.

This star has spurred the European Commission to initiate and modernise the system of block exemption regulations (hereinafter: BERs). The set of regulations, based on Article 101 (3) TFEU, lift the general ban on certain forms of horizontal and vertical cooperation, giving them forth consistent with antitrust rules (EC, 2009b). Eligibility for referring on the Article mentioned, two positive and two negative, but conjunctive (obtained in the same time) conditions have to be met. The final end of this restraint is to distort competition only as much as it is indispensable by the terms of not eliminating competition fully (negative conditions), and contributes attaining economic progress with transferring satisfactory portion of these benefits to consumers compensating them for the losses due to limited competition (positive conditions). This complex system of conditions, complemented by the contractual provisions "to lay down detailed rules for the application of Article 101(3)" (EC, 2009b, Article 103 (2)b), constitute the fundaments of competition policy's developing function. Based on these authorisations, BERs were being introduced exempting co-operations on both horizontal[8] and vertical agreements.[9] On the water tightness of horizontal BERs the Commission guideline explains that "horizontal co-operation agreements can lead to substantial economic benefits, in particular if they combine complementary activities, skills or assets. [It goes on as follows and argues that] on the other hand, horizontal co-operation agreements may lead to competition problems. This is the case, for example, if the parties agree to fix prices or output or to share markets, or if the co-operation enables the parties to maintain, gain or increase market power" (EC, 2011b, Article 2-3). In the light of these, the role of NCAs and courts has been increased, inasmuch as clear interpretation,

[8] BER on R&D agreements see Commission Regulation (EU) No 1217/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements. BER on specialization see Commission Regulation (EU) No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements.

[9] Commission Regulation 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices Commission Regulation 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector.

protection of competition and legal security are inevitable components of a smooth business environment (EC, 2010a; EC, 2010b). Relieving the Commission has had twofold beneficial consequences. On one hand, it has freed EC's capacities to investigate cases with more complexity, while the switch has not indicated "major difficulties with the direct application of Article 81(3) EC which has been widely welcomed by stakeholders" (EC, 2009c: ¶ 2,7). Both of these dowries are highly welcomed: a more competitive market structure could be resulted from the first, while the latter could effectively increase undertakings' competitiveness operating in the Single Market. These beneficial sequels are reflected in the EC calculation stating that "EU27 GDP in 2008 was 2.13% or € 233 billion higher than it would have been if the Single Market had not been launched in 1992" (EC, 2012b, p.13).

Summing up, the original goal of the CCP based on the contemporary German theoretical mainstream was to maintain Single Market integrity, i.e. to provide identical operational conditions throughout the Community. The possibility for pursuing accessory economic considerations was planted already in the Treaty establishing the European Economic Community. Implementing CCP's regulatory notions NCAs and courts grew up aside the Commission by now.

A Snapshot on the Contemporary Competition Policy State of the Western Balkans

The second section renders an overview on the examined Western Balkan countries' competition policy stance and draws up major characteristics of their market regulation imperfections. Although the Yugoslav successor countries are labelled as post-socialist economies, in a lot of aspects they differ from the Central and Eastern European post-socialist, in the meantime EU membership attained countries (CEECs), since their economies had shown several capitalist strains already in the years of the command economy. However, handling the four successor countries entirely separately from the CEECs would bear witness to irresponsibility since in both groups of countries the fundamental economic organising force was the centralised economic governance. Experiences of the CEFTA membership serve overcoming these obstacles. Nevertheless, countries of the Western Balkans themselves show a wide variety in economic characteristics and in the manner of market governance (including State interfer-

ence) as well, therefore conclusions equally truthful are hard to be laid down. Although there is no devastating and unanimous support for EU accession among the population and politicians of the countries examined, competition policy reform would result in long term benefits for these economies. While CCP's integrating power for the Western Balkan countries could be construed only by their accession, its welfare and developing potentials might be exploited even before joining the EU. From the point of view of consumers benefits of an enhanced competition result in lower prices and wider assortment. On the other hand, undertakings operating on these – strictly regulated – markets could attain efficiency gains. Beside their affirmed position on national markets, enhanced competitiveness would open them up the EU market and consequently the way before exploitation advantages of economies of scale. Competition policy legislative efforts of the Western Balkan countries are therefore more than desired and their success depends entirely on the balance of entrepreneurial lobby and consumer interests. Since long term considerations are only partly shaping the current legislative process, we stress shortcomings of their regimes without dolling their root causes.

The 45 years of the Yugoslav socialist economic governance together with a one-party political system had led to a specific economic regime in Yugoslavia (and some of its elements were inherited by the successor countries). Uvalic (2013, p.366) points out that "this is why the Yugoslav economy was also characterized by some features typical of the socialist economic system as described by Kornai (1980): the dominance of non-private property, 'soft' budget constraints, and state paternalism through state intervention in enterprise affairs". However, the regime's most important sequel on the nowadays *market structure* was the *potentially high concentration rate* in certain national and product markets (Lončar and Milošević, 2013) and characteristics of the related business activities (the occasionally pursued 'specific managerial solutions', attitude towards dominant position, conjecture on mergers, etc); these factors' interrelatedness is named as the structure-conduct-performance (S-C-P) model (see et al. Carlton and Perloff, 2006). As an example for a decade and a half of capture by a distorted competition in Serbia, Madžar (2011, p.99) unreservedly states that „market in Serbia is characterised by the absolute dominance of monopoly, cartel and oligopoly". In line with the original leitmotiv of our paper, henceforward we discuss solely contemporary features of the market regulation.

All the examined countries of the Western Balkans have (re)approved their law on competition in recent years; in some cases more than one amendment or re-approval could be noted in their modern history. A national economy, especially if it is small and open as generally the observed economies are, crucially needs to liberalise its market and streamline market regulation in effort. Petrovski (2014) examining effects of competition policy on the Macedonian economy highlights that a well-shaped policy would increase efficiency of enterprises and attract more FDI; these features are, however, pivotally important for the emerging markets. In the countries in question, the breakup of Yugoslavia, civil wars and their consequences resulted in a considerable delay in legislative actions. For example, Serbia (that time Federal Republic of Yugoslavia) adopted its first competition law only in 1996, five years after the breakup of Yugoslavia. Anyway, this trend of *modernising national laws on competition policy suggests a persistent streamlining of market regulation regimes*, i.e. operational conditions on the national markets. National laws on competition, in the meantime, do not show a diverse image on the scope of the competition policy; traditional antitrust regulation and merger control occur hand in hand, while conditions on granting State aid are labelled separately. This duality might be observed in all the countries examined. It is notable that modernising – at least at current stage of the evolution – doesn't mean an automatic and unconditional takeover of the EU legislative notions. For example, Lindstrom (2011) examining harmonisation in energy policy regulation cautions on inconsistencies of the relevant EU legislation. State intervention, furthermore, in the post-socialist economic governance occasionally remains very influential, accompanied by the stance of greenfield investments. Lončar and Milošević (2013) discussing harmonisation to the EU law downright query the unconditional copy of the supranational rules; evolution and characteristics of the relevant market ought to be taken into account as well. Better correspondence to the EU legislation spurred decision-makers for example in the FYROM when the Parliament adopted by-laws regulating procedural issues, regional aid and the framework for State aid rescue measures (CPC, 2014a).

In Serbia, more specifically, provisions on competition are laid down in the law 'Zakon o zaštiti konkurencije'[10],which has been in effect from 1 November 2009; it replaced the less efficient law on com-

[10] Službeni glasnik Republike Srbije, 51/09

petition of 2005 and 1996. State aid is regulated separately, by the 2009 'Law on State aid control.'[11] In the case of prior, the Competition Commission is the regulatory body and it supervises antitrust enforcement; on the other hand, State aid control has been taken out from the scope of this body and being subordinated directly to the Ministry of Finance (MFRS, 2014). Competition policy of Bosnia and Herzegovina is regulated by the law 'Zakon o konkurenciji Bosne i Hercegovine',[12] while it was modified in 2007 and 2009. The law on State aid[13] was adopted in 2012 (Pravosudje, 2012). The Parliament of the FYROM adopted the law on competition by the 'Zakon za zaštita na konkurencijata'[14], in effect from 2010 and replacing that of 2003; State aid legislation[15] followed the above mentioned dates (CPC, 2014b). Amongst the lands listed, Montenegro has adopted most recently its operative law regulating competition; the law called 'Zakon o zaštiti konkurencije'[16] has been in effect since 9 October 2012. The Law on State aid control[17] in the Adriatic country was adopted in 2009 (Turković, 2012).

The countries legal status in the EU enlargement process varies. Serbia has just started negotiations on accession while Bosnia and Herzegovina is a potential candidate for a membership. For a long time Montenegro seemed as the country in the most favoured position becoming a member of the European family but – due to the postponements of major institutional reforms – accession date is still blurred. Montenegro has initiated its accession negotiation in June 2012, two years after being granted the candidate country status. The only successor country that escaped a civil war during the breakup of Yugoslavia, the FYROM, however, couldn't make capital of a peaceful political and economic transition. The FYROM has been a candidate for membership since December 2005 (EC, 2013b). The difference in advancement of the countries – theoretically – crystallises only in the would-be date of accession, but the speed of the necessitated reforms shouldn't be ignored either. In this process, the European Commission regularly issues progress reports on the legislative acts approved

[11] Službeni glasnik Republike Srbije, 51/09
[12] Službeni glasnik Bosne i Hercegovine, 48/05
[13] Službeni glasnik Bosne i Hercegovine, 10/12
[14] Službeni vesnik na Republika Makedonija, 145/10
[15] Službeni vesnik na Republika Makedonija, 145/10
[16] Službeni glasnik Crne Gore, 44/12
[17] Službeni glasnik Crne Gore, 74/09

by the applicant country. These evaluations, that discuss competition policy development as well, serve as a string for the governments addressed debunking the way for further efforts.

Progress Reports of 2013 give the best overview on the latest trends in competition policy progress. According to these reports among the major hindrances before competition policy development are – with slightly exceptions – the *inadequate legal background* of the competition and State aid policy, *the institutional-financial (in)dependence* and the quality of *competition authorities' human resource* (EC, 2013c; EC, 2013d; EC, 2013e; EC, 2013f; Ristić and Mijušković, 2013).

As regarding to the legislative efforts of the countries, notable steps were being made in legal systems nearing them towards the acquis, but they have to be submitted to further policy harmonisation. The development has proceeded from a differing basis, but a reassuring sign is coming, beside others, from Sarajevo by the establishment of the State Aid Council (EC, 2013f), or from Montenegro by the Agency for Protection of Competition (EC, 2013d). In any circumstances, endeavour on the policy field is welcomed in respect of all characteristics of the market. In the FYROM, on the other hand, a pivotal discrepancy ought to be resolved in the antitrust leniency programme since the Law on Protection of Competition and the national criminal code contain conflicting provisions (EC, 2013e). Serbia, however, diverges from its neighbouring counterparts inasmuch as it has not coped with its sometimes conflicting provisions on competition, unresolved question of State aid granted for the privatised undertakings, or the tangle on the field of services of general economic interest [SGEI] (EC, 2013c).

More information on the stance of (competition) policy harmonisation could be drawn from the screening report of the country accessing the Community. Serbia has just started with its accession negotiations but in the Montenegrin report some notable competition policy statements might be highlighted. The European Commission argues that "although Montenegro has taken significant steps to align its legislation with the *acquis*, its legislation is not overall in line with it" (EC, 2012c, p.7). Montenegro by its 2012 Law on Protection of Competition generally meets the Community provisions, but some definitions need to be elaborated more precisely. On the other hand, liberalisation and State aid procedural legislation, partly due

to its infringed independency, is "only partially aligned with the EU State aid rules" (EC, 2012c, p.7).

Obtaining independence and shepherding market processions free from excessive state intervention is one of the biggest challenges for the aspirants examined. Interlocking of state and market economy filaments originates in economic history of these states, and sundering of regulatory, executive and regulated actors proceeds extremely slowly, especially in the case of bigger undertakings. In other words, the lobby and persuading activities shape much more the business environment that they should, and in the meantime they can obstruct it as well (Várhegyi and Voszka, 2010). In the context of competition policy, independence of State aid commissions emerge suspense, both institutionally and financially. For the first, proceedings of Serbia raise concern by the evasion of Commission for State Aid Control in granting aid (EC, 2013c). A fear from shortage of budgetary resources or misuse of aids characterise the FYROM and Bosnia and Herzegovina; in the case of the latter, the European Commission argues that "transparency of all state aid granted in the country has not yet been ensured" (EC, 2013f, p.35).

Peering at the field of human resources, several comments have to be made. The number and qualification of experts dealing with antitrust and State aid issues seem to be insufficient throughout the region and this position should be ameliorated by gaining international practice. The sole exception from these shortcomings is the FYROM, where the preparedness of servants is adequate although the "staff dealing with anti-trust and mergers is not used efficiently" (EC, 2013e, p.26). The development of human resources doesn't mean only education and training on an administrative basis, but efficiency improvements are awaited to be achieved in the process of investigation and evaluation of facts, or advocacy, too. Furthermore – in accordance with the 'more economic approach' doctrine –, rise in the number of economists employed in these bodies is highly recommended. On the other hand, barding competition policy experts with proper proficiency is only half the battle, since "the capacity of the judiciary to deal with complex competition cases needs to be strengthened" (EC, 2013d, p.23) as well – pointed out the remonstrance towards Montenegro. Pavić (2011, p.252), going further, has emphasised the need for a complex observation of competition policy cases since by the lack of this "market actors, their legal advisors and the [Competition]

Commission received no feedback on the proper way in which the law was to be interpreted".

Undoubtedly, State aid practice is the amid-crisis most scrutinised competition policy branch. Treatment of the Western Balkan countries seems to diverge from the EU practice not only in its volume compared to the GDP (Prokopijevic, 2013), but its sectoral distribution as well (KKDP, 2011). Prokopijevic (2013, p.16) argues that "the percentage share of state aid to Serbian economy in GDP was four to six times higher than in the EU just before the crisis in 2008, while it was quite similar to the level of aid in the EU during the years of crisis – 2009 – 2011. An important difference between Serbia and the EU is that the amount of aid in the EU before the onset of the crisis had decreased, which was not the case in Serbia". On the other hand, a strong realignment could be tracked in the Montenegrin practice, where the share of horizontal aid skipped from the 2008 4,93% to 67,14% in 2010. However, the Serbian scheme shows the contrary since the 2009 62,6% plummeted to the 2011 16,3% (KKDP, 2011; Prokopijevic, 2013). This drift could be traced back to the specific real economy background and distinct economic considerations.

Taken all round, Serbia and Bosnia and Herzegovina have to take considerable efforts harmonising their market regulating system to the EU standards. Belgrade and Sarajevo have to modernise their legislative fundaments and administrative capacity, observing independence of bodies concerned. The FYROM and Montenegro, on the other hand, are on a good track, but political and institutional obstacles hinder their endeavour towards the Single Market. The Montenegrin screening report, as a justification of Montenegro's commitment towards the EU, could serve as a mirror for the rest of the Western Balkan countries. European Union membership means not only participating in the European decision-making or being eligible for cohesion policy resources, but a colossal opportunity for building an economy with stable fundaments, too. This is, furthermore, much more true in the case of small and open economies like the countries of the Western Balkans are. In the process of adjustment to the EU standards useful practices could be rummaged up from the integrating process of the CEECs; their CEFTA membership provides further backup on the way towards the full membership. Heading for the EU seems profitable for these countries since Josifidis, Dragutinović Mitrović and Ivančev (2012, p.174), scrutinising emerging European

countries and the Western Balkans, estimated that "significant changes in economic growth of the Emerging European economies compared to the Western Balkan economies occur after becoming an EU member". And what is more, the 2008 recession disclosed that making sacrifices for the integration would reconcile different economic interests in the region since "the crisis negatively affected the region's trade with the EU more than intraregional trade in the Western Balkans" (Bjelić, Jaćimović and Tašić, 2013, p.94). Furthermore, Goranson and Volkai (2003) highlight the desire for an enhanced regional competition policy co-operation. For these purposes economic governance has to assume even major loss of sovereignty on shaping independent operational conditions, including tax allowances; during the Hungarian accession negotiations, for example, this was a fractioning issue as well (Voszka, 2006).

Discussion and Concluding Remarks

In the primer part of the paper we have given an overview on the main inducements of common European competition policy. The fundamental motive of the Single Market was to create an economic area characterised by identical operational conditions. Competition policy has had to ensure free competition; this theoretical statement, nonetheless, ought to be observed under the supposition of CCP's accessory goals. We argue the role of CCP in industrial policy (more generally: in fostering economic growth and development) and conclude that it has grown up aside Single Market integrity deliberations. Fundaments of separation of goals are justified on the duality of achieving these goals: while the prior category is based on the free competition, latter are fruits of a (moderately) distorted and restricted competition. We bear in mind that attaining progress at the expense of competition is strictly regulated by the Article 101 (3) and BERs. Our assumption on the shift of competition policy emphasis is therefore rejected under the supposition that nowadays crisis' long term consequences on the Single Market integrity and growing perspectives are still unknown.

One of the stiffest obligations of accessing countries seems to match competition policy norms. Roots of the problem are dual. Examined economies show unhealthy market structure in numberless sublevels mainly due to the Yugoslav command economy and realignment

afterwards. Business practices frequently show ambiguous pictures. On the other hand, reforming competition rules is proceeding slowly due to the various economic (industrial policy, employment, etc.) and strategic interests (energy supply, tax incomes, etc.). Much more doubt is raised if these forces throw efforts on harmonisation off the rails and they wreck. This latter could be the case in State aid practices. Our hypothesis on the aspirants' competition policy consistency with the EU legislation is therefore fully rejected in State aid issues and conditionally proved in antitrust regulations. This means Western Balkan countries' antitrust approach is *generally* on a good path. As it is highlighted by the Commission (EC, 2013c; EC, 2013d; EC, 2013e), further legislative actions are needed since preparations are labelled only in the FYROM as advanced, in Serbia and in Montenegro moderately advanced, while in Bosnia and Herzegovina "remain at in early stage" (EC, 2013f, p.35). These should be executed in the countries' own interest since the earlier and stricter their harmonisation follows European conceptions on competition policy the more benefits they could potentially exploit from the forthcoming common market. In other words, an early legislative action would probably result in short term unfavourable effects (the current costs of transition), but a conform economic structure with long(er) tradition would compensate these sacrifices in the long run. Decreasing the lags noticed in legislation and improving the immature institutional system, as acts the state could do for a workable competition, would result in an optimal regulatory framework for the future. The sixty-year-long European integration and practices of the other post-socialist CEECs should serve as a template for building institutional framework and EU membership would undoubtedly lead to further market liberalisation by the enhanced competition. In a long term, this could spur sound economic development of the Western Balkans. On the other hand, institutional reforms have to be supplemented with country-specific solutions on economic governance and economic incentives. This dual approach would lead to a *unity in diversity* – even if it takes toll today.

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