Quarterly
ISSN 1898–2255
Vol. 13, No. 3/2014
http://www.ekonomia.i.prawo.umk.pl

EKONOMIA I PRAWO
ECONOMICS AND LAW

Article details:
Received: 23.10.2013
Revised: 19.10.2014
Accepted: 03.11.2014

Kąkol M.K., *The evolution of US merger control policy – part 1: 1890-1973*, „Ekonomia i Prawo. Economics and Law.", Polszakiewicz B., Boehlke J. (ed.), Vol. 13, No. 3/2014, pp. 403-415. DOI: http://dx.doi.org/10.12775/EiP.2014.029.

Magdalena Katarzyna Kąkol*

THE EVOLUTION OF US MERGER CONTROL POLICY – PART 1: 1890-1973

SUMMARY

The aim of the study is to present the changes in US merger control policy at different stages of development of competition theories and views on pro- and anti-competitive effects of mergers (especially Harvard, Chicago, and Post-Chicago Schools of Competition). The research methods used in the study include literature review as well as the in-depth analysis of US legislation, antitrust agencies' enforcement policy and federal courts' case-law with focus on changes in the economic analysis of mergers and their impact on market competition.

The first part of the study covers the years 1890-1973. Apart from explaining some procedural issues it highlights the early days of merger control policy in the United States with an emphasis on the creation of antitrust legislation and institutional framework for its enforcement. In 1890-1950 the antitrust authorities' approach to mergers was generally friendly as large enterprises were supposed to play an important role contributing to the development and international expansion of the US economy. However, together with a surging increase in concentration in the US market and with the emergence of new competition theories that focused their research on market structure (Harvard School) this approach changed for the very interventionist (1950-1973). At that time the main purpose of merger control policy was to preserve competitors and small businesses rather than to improve consumer welfare, economic efficiencies or to protect competition process.

Keywords: mergers, merger control policy, US antitrust, theory of competition

JEL Classification: K21, L4, L2, N11, N12, N81, N82

* Magdalena Katarzyna Kąkol, Maria Curie-Skłodowska University, Faculty of Economics, Chair of the World Economy and European Integration, Pl. Skłodowskiej 5, 20-031 Lublin, phone: +48 81 537 51 75, e-mail: mkakol@hektor.umcs.lublin.pl.

INTRODUCTION

Merger control policy is an important part of antitrust policy aimed at monitoring consolidations of businesses that lead to the changed structure of the companies involved as well as of the market they operate in. A consolidation of firms is referred to as "concentration" within the EU, and as "merger" in the US.

In practice there are very few real "mergers", the vast majority of this sort of transactions are indeed "acquisitions" so the universally used acronym M&As is more appropriate for describing main forms of concentration of enterprises.

From a legal point of view, a merger is the amalgamation of previously independent companies into a new entity, whereas an acquisition occurs when one company takes over another and completely establishes itself as the new owner (in which case the target company still exists as a separate legal entity controlled by the acquirer). For antitrust purposes, it does not matter whether the fusion reflects a formal merger of two corporations into a single one or instead the acquisition of another firm's assets or stock. In each case the essential question is whether previously independent businesses have come or will come under common control that gives them a joint profit motive[1].

M&As may allow economies of scale to be obtained, production and distribution costs to be reduced, profitability to be improved and technical progress to be speeded up as well as facilitate international competitiveness of national enterprises. Some of these benefits may be passed on consumers in the form of lower prices or better products or services. Despite all the advantages that go in par with mergers where the concentration in industry exceeds certain limits it can lead to monopoly or oligopoly structures, which restrict competition and jeopardise consumers' interests[2].

While conducting merger review, competition authorities should consider a range of issues[3]: lessening of competition in the market, likely adverse effects on consumers and on domestic firms, employment consequences, preserving old industrial landmarks or national champions, international competitiveness (at least where a domestic company is involved or threatened).

[1] E. Elhauge, D. Geradin, *Global Competition Law and Economics*, Hart Publishing, Oxford and Portland, Oregon 2008, p. 799; R. Whish, *Competition Law*, Fifth Edition, Lexis Nexis, London 2003, p. 779-780;

[2] N. Mousis, *Access to European Union: law, economics, policies*, 15th revised edition, European Study Service, Rixensart 2006, p. 297.

[3] J. Wilson, *Globalization and the Limits of National Merger Control Laws*, Kluwer International, The Hague, London, New York, 2003, p. 44-45.

Countries that have adopted merger laws share similar goals although sometimes assign different priorities to them. Such universal aims include[4]: putting limits on large concentrations of economic power, protecting small businesses, preserving competition, protecting jobs, encouraging economic efficiency, and protecting consumers against price increases.

The US antitrust policy including merger control was the first competition regime in the world. Many countries inspired by its long tradition and valuable experiences have tried to pattern their antimonopoly policies and merger control systems on US antitrust rules and approach to economic analysis of market competition. Therefore exploring rich US experiences in shaping its merger control policy during the period of over 120 years may be of great significance both for other national jurisdictions as well as for an international merger control regime.

The aim of the study is to present the changes in US merger control policy at different stages of development of competition theories and views on pro- and anti-competitive effects of mergers (especially Harvard, Chicago, and Post-Chicago Schools of Competition). The research methods used in the study include literature review as well as the in-depth analysis of US legislation, antitrust agencies' enforcement policy and adjudication practice of courts (especially the Supreme Court case-law) with focus on changes in economic standards in merger control. The first part of the study covers the years 1890-1973. It begins with the presentation of the division of competences in merger control policy and the explanation of some procedural issues which should be helpful in understanding how this policy is enforced. However, the main focus in the entire work is put on the substantive aspects of US merger policy including economic analysis.

1. OVERVIEW OF US LEGISLATION AND JURISDICTION ON MERGERS

The principal US antitrust regulation governing mergers and acquisition is section 7 of the Clayton Act (enacted in 1914 and amended in 1950). It prohibits acquisitions of assets or stock which may result in a substantial lessening of competition or creating a monopoly. Mergers are also covered by section 1 and 2 of the Sherman Act (1890) as unreasonable restraints of trade or as attempts at monopolization. Moreover, the Federal Trade Commission

[4] D. Valentine, *The Evolution of U.S. Merger Law*, Prepared remarks of Assistant Director for International Antitrust, Federal Trade Commission, before INDECOPI Conference, Lima, August 13, 1996.

can challenge a transaction as an "unfair method of competition" under section 5 of the FTC Act[5]. The Antitrust Division of the Department of Justice and the Federal Trade Commission (collectively "antitrust agencies") share responsibility for merger enforcement under the Clayton Act whereas the Antitrust Division has exclusive federal responsibility for enforcing the Sherman Act[6].

Whichever statute is used, merger review process embodies a containment policy against allowing mergers with anticompetitive effects. This prophylactic approach means mergers should be investigated before they are consummated, antitrust enforcement bodies must predict their anticompetitive outcomes before they occur and block such transactions. Therefore parties planning a merger above certain size must notify the Antitrust Division and the FTC under the Hart-Scott-Rodino Antitrust Improvements Act (1976) before consummating their deal (so-called pre-merger notification)[7].

Although both agencies have jurisdiction to enforce antitrust laws, any given merger or acquisition will be examined by only one of the two bodies[8]. Despite the overlap of jurisdictions there is a certain statutory or based on specialization and historical experience division of activities between the two institutions. While the DoJ has exclusive authority over criminal matters, such as market division or price fixing, and matters related to regulated industries such as banking, telecommunications, rail, and air transportation, the FTC is primarily responsible for consumer protection issues. The FTC has often dealt with petroleum, refining, natural gas pipelines, cement, department stores, and grocery retailing, whilst the DoJ has investigated matters concerning steel, brewing, aluminum, and newspaper industries. Where both institutions wish to investigate a case, the conflict is solved under the Clearance Procedure for Investigations (issued jointly by them in 1993), based on an assessment which agency has more expertise[9].

The HSR Act envisages a two-tier merger review process: 1. minimal information: initial notification filing and initial review, usually within 30 days; and 2. close scrutiny: second filing and second-phase review including a detailed economic analysis to decide whether a merger is likely to have anticompetitive effects. Most notified merger transactions do not rise any anticompet-

[5] R.P. Harty, *Unites States*, [in:] J. Davies (ed.), *Merger Control 2014*, Getting the Deal Through in association with: Global Competition Review, London, 6 September 2013, p. 438.

[6] *Ibidem*.

[7] E. Elhauge, D. Geradin, *op. cit.*, p. 800.

[8] R.P. Harty, *op. cit.*, p. 438.

[9] J. Wilson, *op. cit.*, p. 79-80.

itive concerns but in some cases the agencies decide to open a second-phase investigation and request further information from the merging parties[10]. In fiscal year 2012 this concerned 3,9% of all notified deals[11]. If a merger creates anticompetitive effects only in some markets, then companies often agree for negotiated remedies like divestiture of assets in those markets or offer some conduct remedies (e.g. guarantees to refrain from raising prices). Nevertheless, the antitrust agencies strongly prefer structural remedies (like divestitures) to conduct remedies[12].

What is interesting, the US antitrust enforcement agencies (like European Commission) investigate proposed transactions for potential competition issues but (unlike the EC) do not themselves have the power to prohibit a transaction[13]. Both the DoJ and the FTC must go to a federal district court to seek a preliminary injunction blocking a merger, though have different options for obtaining permanent injunctive relief. The Antitrust Division must proceed to a trial at a district court for such a permanent adjudication and the FTC has the option of either seeking it in federal court or initiating an administrative suit before an Administrative Law Judge (ALJ) who decides whether a transaction may substantially lessen competition in violation of antitrust laws. Parties may appeal ALJ decisions to the full FTC, then to a US Court of Appeal, and finally to the Supreme Court[14]. Thus, ultimately the decision whether to approve a merger is up to the courts[15].

However, in practice, merger parties usually drop a proposed transaction if the agency is opposed, courts hear relatively few merger cases and hardly ever a litigation last long enough to get to the US Supreme Court. The reason of this (except high court costs) is very simple – for most of the last few decades, the enforcement agencies have had a narrower view of which mergers are anticompetitive than the available US Supreme Court case-law[16]. The agencies' decisions are based on sophisticated economic analysis and solid fact gathering as in case of raising objections against some mergers the antitrust bodies are required to prove in federal court that a transaction pos-

---

[10] *Ibidem*, p. 128 and 130; E. Elhauge, D. Geradin, *op. cit.*, p. 801.

[11] FTC and DoJ, *Hart-Scott-Rodino Annual Report. Fiscal Year 2012*, Bureau of Competition of FTC and Antitrust Division of DoJ, April 2013, p. 6. The fiscal year covers the period of October 1, 2011 through September 30, 2012.

[12] E. Elhauge, D. Geradin, *op. cit.*, p. 801.

[13] M. Leddy, Ch. Cook, J. Abell, G. Eclair-Heath, *Transatlantic Merger Control: The Courts and the Agencies*, „Cornell International Law Journal", Vol. 43, No. 1/2010, p. 28.

[14] *Ibidem*, p. 30.

[15] E. Elhauge, D. Geradin, *op. cit.*, p. 801.

[16] *Ibidem*, p. 801-802.

es a threat to competition by a preponderance of the relevant evidence[17]. As a consequence firms are wary of litigation and almost all substantive decisions about mergers are made by the enforcement agencies rather than by the courts[18]. Moreover, there are many old Supreme Court cases that have never been overruled yet and do not reflect modern merger practice.

2. ORIGIN OF US ANTITRUST AND MERGER CONTROL POLICY

The industrial revolution that followed the Civil War resulted in high economic growth in the United States. The economy boomed owing to[19]: 1. the emergence of a single national market for manufactured products, facilitated by developments in transportation (especially spread of railroads); 2. advances in technology that enabled large scale production; and 3. the availability of large amounts of capital through the development of capital market. The process of concentration of production and capital occurred in almost all industries together with new forms of production and market organization. The important factors accelerating monopolization of the US economy were technological progress and the need of capital accumulation by enterprises in order to invest[20].

State law that had limited the activities of corporations were loosened and large companies began to flourish[21]. Cartel agreements, and especially trusts, dominated entire industries, such as railroads, oil, steel, rubber, tobacco, whiskey and sugar[22]. They used hostile takeover as the modus operandi to expand. The targets were given the choice of either joining the trust or being driven out of business[23].

The economic and political power of trusts was so formidable that the Congress decided to curb it and passed the Sherman Act - the first federal antitrust statute - in 1890. Section 1 of the Act renders illegal every contract, or conspiracy in restraint of interstate or foreign trade and section 2

---

[17] M. Leddy, Ch. Cook, J. Abell, G. Eclair-Heath, *op. cit.*, p. 29.

[18] E. Elhauge, D. Geradin, *op. cit.*, p. 801-802.

[19] J. Wilson, *op. cit.*, p. 62.

[20] B. Mucha-Leszko, *Rozwój powiązań w gospodarce światowej - etapy globalizacji i regionalizacja procesów gospodarczych*, [in:] B. Mucha-Leszko (ed.), *Współczesna gospodarka światowa. Główne centra gospodarcze*, Wydawnictwo UMCS, Lublin 2005, p. 21-22.

[21] D. Valentine, *op. cit.*, p. 1.

[22] *Ibidem* and K.M. Davidson, *Megamergers, Corporate America's Billion Dollar Takeovers*, Beard Books, Washington, 2003, p. 104.

[23] K.M. Davidson, *op. cit.*, p. 105.

prohibits monopolization of or attempts to monopolize any part of intestate trade or trade with foreign nations[24]. D. Valentine[25] underlines that the Sherman Act codified the long-standing common law prohibition on contracts and conspiracies in restraint of trade but did not expressly deal with mergers. Although the Act was somewhat successful in eliminating trusts and holding companies, the Supreme Court did not extend its reach to mergers unless it could be shown that their very purpose was to restrain trade[26]. Therefore companies adapted their expansion techniques to the new legal framework and the United States saw its first great merger wave in the late 1890s and at the turn of the 20th century. In 1898-1905 the number of completed M&A transactions in the US exceeded 3000[27].

The Sherman Act set general standards for competitive behaviour instead of defining specific acts that were prohibited. It was the federal courts that were supposed to interpret its provisions. In the early years of the enactment of the Act most lower federal courts interpreted it as it was a codification of the common law, and thus prohibited only unreasonable restraint of trade[28]. However, in Tans-Missouri case (1897)[29], the Supreme Court declared both reasonable and unreasonable restraints of trade as illegal. It meant all trust were unlawful, also those that were beneficial to consumers. The decision perturbed all those who believed trusts and national champions were essential for building the global position of US economy (including Theodore Roosevelt). To limit the negative effect of the Court's ruling on business development and to keep control over large corporations at the same time the power of the executive branch was enhanced. In 1903, Congress created the Bureau of Corporation for gathering information on good and bad trusts[30]. As to the Supreme Court it remained divided on the question of how to interpret the Sherman Act until the Standard Oil[31] and American Tobacco[32]

---

[24] 15 U.S.C. §1 and §2.

[25] D. Valentine, *op. cit.*, p. 1.

[26] Likewise, section 2 of the Act was successful only in arresting mergers that resulted in creation of monopolies but could not prevent consolidation of businesses of less than monopolistic dimension. J. Wilson, *op. cit.*, p. 72.

[27] J. Agnew, *The United States in the World Economy*, Cambridge University Press, Cambridge 1987, p. 58.

[28] J. Wilson, *op. cit.*, p. 69-70.

[29] *United States v. Trans-Missouri Freight Ass'n*, 166 US 290 (1897).

[30] D.A. Ballam, *The Evolution of the Government-Business Relationship in the United States: Colonial Times to Present*, „American Business Law Journal", Vol. 31, Issue 4/1994, p. 615-618. In 1914, the Bureau was superseded by the Federal Trade Commission.

[31] Standard Oil Co. of New Jersey v. United States, 221 US 1 (1911).

[32] *United States v. American Tobacco Co.*, 221 US 106 (1911).

decisions in 1911 where it adopted the rule of reason approach, under which it considered the totality of circumstances in order to determine the competitive effects of market conduct and the legality of the challenged act. Those decisions raised the public concern over the big firms' activities and their immunity from the Sherman Act. They indeed contributed to creating the Federal Trade Commission and passing the Clayton Act in 1914[33].

The Clayton Act was designed to curb the creation of holding companies (the second generation of trusts) and prohibit specific business practices thought to be detrimental to market competition, including anticompetitive acquisitions. Section 7 of the Act[34] prohibited the acquisition by one corporation of the stock or share capital of another corporation when such acquisition might result in a substantial lessening of competition between the acquiring and the acquired companies, or tended to create a monopoly in any line of commerce. Congress intended to stop even potentially anticompetitive transactions and to halt and constrain monopoly power in its incipiency[35].

However, the original Clayton Act had a number of loopholes. It prohibited only the acquisition of the stock of a direct competitor and did not mention the acquisition of assets. Furthermore, it did not also cover vertical or conglomerate mergers. Although it was very soon recognized that the effect of an asset acquisition could be the same as that of stock acquisition and the FTC recommended to plug the "asset loophole" with an amendment to the Clayton Act, the country was preoccupied with more important events - World War I, the Great Depression and World War II[36]. Antitrust laws were suspended during wartime and there was voluntary cooperation between the government and business which continued also in interwar period under the blessing of the Supreme Court[37].

The ineffectiveness of the Clayton Act and lenient enforcement of the antitrust law resulted in next merger waves in the 1920s and the 1940s. From 1926 to 1930 more than 4,800 companies were bought out[38] while in 1940-1947 almost 2,500 formerly independent manufacturing and mining companies with a total asset value of 5.2 billion US dollars (representing more than 5% of the total assets of all manufacturing corporations) had been swallowed

[33] J. Wilson, *op. cit.*, p. 73.
[34] 15 U.S.C. §18.
[35] J. Wilson, *op. cit.*, p. 74; D. Valentine, *op. cit.*, p. 1.
[36] D. Valentine, *op. cit.*, p. 2.
[37] D.A. Ballam, *op. cit.*, p. 622; J. Wilson, *op. cit.*, p. 80.
[38] D.C. Bok, *Section 7 of the Clayton Act and the Merging of Law and Economics*, „Harvard Law Review", Vol. 74, Issue 2/1960, p. 230.

by corporate acquisitions[39]. An interesting feature of merger movement in the 1940s was that many mergers involved large companies taking over small enterprises. This contrasted with situation at the turn of the century when mergers occurred mainly between large corporations. There was undoubtedly a rising tide of economic concentration in the US economy - in 1909 the 200 largest non-financial corporations owned about one-third of all corporate assets while by 1940 they held 55%[40]. From 1914 to 1950 the DoJ challenged only 16 mergers under section 7 of the Clayton Act and 8 of these cases were settled by consent decrees. The Supreme Court adjudicated on 5 mergers which had been blocked by the FTC and forbade only one of them[41].

3. STRUCTURAL APPROACH IN MERGER CONTROL POLICY (FROM THE 1950S TO THE MID 1970S)

In 1950, Congress passed the Celler-Kefauver Antimerger Act which amended section 7 of the Clayton Act so as to prohibit the acquisition of assets. It also enabled arresting vertical mergers, though had little effect on conglomerate combinations of unrelated firms the number of which increased in the US market in the mid 1960s[42]. The aim of the new regulation was "to preserve and promote market structures conducive to competition"[43]. The enactment of the CKA Act meant a U-turn in the merger enforcement policy from undue toleration of mergers (that had leaded to the concentrated economy) to the anti-merger stringency. The antitrust agencies and courts started to use "structural presumptions" in merger litigations and to rely solely on market share estimates[44]. This new political philosophy was a result of changes in economic thinking at that time. From the 1950s to the beginning of the

[39] FTC, *Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1948*, United States Government Printing Office, Washington, 1949, p. 16.

[40] D. Valentine, *op. cit.*, p. 2.

[41] J. Wilson, *op. cit.*, p. 83-84.

[42] *Ibidem*, p. 85 and 89.

[43] US DoJ, *Merger Guidelines 1968*, http://www.justice.gov/atr/hmerger/11247.htm, (30.09.2013).

[44] Ph. Areeda, *Antitrust Analysis: Problems, Text, Cases*, Little Brown, Boston, 1967, p. 545; E. Gellhorn, Ch.A. James, R. Pogue, J. Sims, *Has Antitrust Outgrown Dual Enforcement? A Proposal for Rationalization*, [in:] T.P. Kovaleff (ed.), *The Antitrust Impulse: An Economic, Historical, and Legal Analysis*, Vol. 1, ME Sharpe, New York 1994, p. 395.

1970s the Harvard (or Structuralist) School approach[45] prevailed in US antitrust policy[46].

The greatest achievement of Harvard scholars was the development of the structure-conduct-performance paradigm which can be used as a framework for industrial analysis. The thesis is that market structure exerts a major influence on business conduct and firms' behaviour determines the various aspects of market performance. Conversely, each firm's performance can influence in some degree its future market position[47]. Concentration (which is only one aspect of market structure) is regarded by some Harvard School representatives as clear and convincing evidence of the existence of market power and they seem to ignore the influence of other important attributes of structure (such as barriers to entry, product differentiation, and economies of scale) on market performance. In their opinion government intervention is justified (as high levels of concentration are not the result of real economies of scale or innovation efforts) and economic performance could be improved by reducing concentration in most industries in which it exceeds some predetermined standard. Those views are called the "concentration doctrine"[48]. Many research studies confirmed the relationship between high concentration (as well as other structural conditions like barriers to entry) and large profits[49]. Market dominance was seen as an important problem, causing social costs and market share was recognized as the unifying basis for evaluating market power, pricing behaviour and restrictions on competition[50]. W.G. Sheperd underlined that firms with high market shares could usually get extra profits by setting prices above costs and restricting output. Their monopoly power could impose social looses by causing inefficiency, a retarding of innovation, and unfair shifts in income and wealth[51]. The ultimate goal for the Harvard

[45] It was called „the structural approach" because of a great emphasis on market structure as the root of market failure.

[46] The beginning of the Harvard School thought pattern reaches the 1930s but the most known antitrust cases decided by the Supreme Court in line with the structural approach were those from the late 1950s and the 1960s, e.g.: *Northern Pacific Railway v. United States*, 356 U.S. 1 (1958) and *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962).

[47] W.G. Sheperd, *The Twilight of Antitrust*, „Antitrust Law and Economics Review", No. 18/1986, p. 23.

[48] W.L. Baldwin, *Market Power, Competition and Antitrust Policy*, Irwin, Homewood, Illinois 1987, p. 306.

[49] See for instance J.S. Bain, *Relation of Profit – Rate to Industry Concentration: American Manufacturing, 1936-1940*, „Quarterly Journal of Economics", Vol. 65, Issue 3/1951, p. 293.

[50] W.G. Sheperd, *The Economics of Industrial Organization*, Second Edition, Prentice-Hall, New Jersey 1985, p. 53.

[51] *Ibidem*, p. 2.

School adherents was to identify restraints of competition and develop intervention criteria for the antitrust policy. This approach requires state intervention, broad prohibitions or strict scrutiny of all arrangements and practices, including vertical practices and conglomerate mergers[52].

The antitrust agencies enforcement policy and the Supreme Court case-law of the 1960s favored government intervention to prevent increase in concentration. We see mergers of two small players in markets with many competitors condemned almost as readily as mergers of very large firms in very concentrated markets. In two notorious cases – Brown Shoe[53] and Von's Grocery[54] – the Court held the mergers unlawful though the combined share of the merged firms amounted respectively only 5% and 7,5% of the total market sales. The mergers were blocked despite the fact they did not appear likely to create market power (i.e. the ability of a firm to raise prices above competitive levels). In both cases the Court preferred a decentralized market to preserve small businessmen over market efficiencies that could have been realized by the combined firms. The Court sacrificed lower prices in favor of protecting small enterprises at the expense of consumers.

Not surprisingly, the Court enjoined the merger in Philadelphia National Bank[55] case where the combined share of the second and third largest banks in the relevant market would have exceeded 30% and concentration among the leading firms would have increased by 33%. In the Court's opinion mergers that produce a firm with an undue percentage share of the market and result in significant increase in concentration are so likely to create and exploit market power that are presumptively illegal unless there is evidence clearly showing that the merger is not likely to have such anticompetitive effects.

In 1968, the DoJ released the first Merger Guidelines which indicated how to identify mergers that were likely to change market structures in ways likely to encourage non-competitive conduct[56]. Initially a four-firm concentration ratio (CR4) was used to ascertain market concentration. Under this criterion the DoJ was able to challenge mergers including corporations with combined market shares as small as 8%, irrespective of their economic evidence[57].

---

52 D. Hildebrand, *The Role of Economic Analysis in the EC Competition Rules*, Second Edition, Kluwer Law International, The Hague, London, New York 2002, p. 134.

53 *Brown Shoe…*, *op. cit.*

54 *United States v. Von's Grocery Co.*, 384 U.S. 270 (1966).

55 *United States v. Philadelphia National Bank*, 374 U.S. 321 (1963).

56 US DoJ, *op. cit.*

57 E. Gellhorn, Ch.A. James, R. Pogue, J. Sims, *op. cit.*, p. 395.

CONCLUSIONS

The US antitrust policy including merger control regime emerged as a response for processes of concentration of production and capital in the US economy in the late 19th century. During the first 60 years the key legislation and an institutional framework were created to control merger activity in the US market but enforcement policy was in general merger friendly. Together with the development of competition theories, and especially Structural School, as well as with a surging increase in concentration in the US market an approach to mergers changed for the very interventionist. The antitrust agencies and federal courts were eager to condemn almost every merger or acquisition on the basis of solely market share analysis and because of suspicion of rising concentration. The merger control policy was to protect competitors and small businesses rather than to take care of consumer interests, improve economic efficiencies or protect competition process. However, this was going to change in the 1980s.

BIBLIOGRAPHY

Agnew J., *The United States in the World Economy*, Cambridge University Press, Cambridge 1987.

Areeda Ph., *Antitrust Analysis: Problems, Text, Cases*, Little Brown, Boston, 1967.

Bain J.S., *Relation of Profit – Rate to Industry Concentration: American Manufacturing, 1936-1940*, „Quarterly Journal of Economics", Vol. 65, Issue 3/1951, http://dx.doi.org/10.2307/1882581.

Baldwin W.L., *Market Power, Competition and Antitrust Policy*, Irwin, Homewood, Illinois 1987.

Ballam D.A., *The Evolution of the Government-Business Relationship in the United States: Colonial Times to Present*, „American Business Law Journal", Vol. 31, Issue 4/1994, http://dx.doi.org/10.1111/j.1744-1714.1994.tb00844.x.

Bok D.C., *Section 7 of the Clayton Act and the Merging of Law and Economics*, „Harvard Law Review", Vol. 74, Issue 2/1960, http://dx.doi.org/10.2307/1338755.

Brown Shoe Co. v. United States, 370 U.S. 294 (1962).

Davidson K.M., *Megamergers, Corporate America's Billion Dollar Takeovers*, Beard Books, Washington 2003.

Elhauge E., Geradin D., *Global Competition Law and Economics*, Hart Publishing, Oxford and Portland, Oregon 2008.

FTC and DoJ, *Hart-Scott-Rodino Annual Report. Fiscal Year 2012*, Bureau of Competition of FTC and Antitrust Division of DoJ, April 2013.

FTC, *Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1948*, United States Government Printing Office, Washington, 1949.

Gellhorn E., James Ch.A., Pogue R., Sims J., *Has Antitrust Outgrown Dual Enforcement? A Proposal for Rationalization*, [in:] T.P. Kovaleff (ed.), *The Antitrust Impulse: An Economic, Historical, and Legal Analysis*, Vol. 1, ME Sharpe, New York 1994.

Harty R.P., *Unites States*, [in:] J. Davies (ed.), *Merger Control 2014*, Getting the Deal Through in association with: Global Competition Review, London, 6 September 2013.

Hildebrand D., *The Role of Economic Analysis in the EC Competition Rules*, Second Edition, Kluwer Law International, The Hague, London, New York 2002.

Leddy M., Cook Ch., Abell J., Eclair-Heath G., *Transatlantic Merger Control: The Courts and the Agencies*, „Cornell International Law Journal", Vol. 43, No. 1/2010.

Mousis N., *Access to European Union: law, economics, policies*, 15th revised edition, European Study Service, Rixensart 2006.

Mucha-Leszko B., *Rozwój powiązań w gospodarce światowej – etapy globalizacji i regionalizacja procesów gospodarczych*, [in:] B. Mucha-Leszko (ed.), *Współczesna gospodarka światowa. Główne centra gospodarcze*, Wydawnictwo UMCS, Lublin 2005.

Northern Pacific Railway v. United States, 356 U.S. 1 (1958).

Sheperd W.G., *The Economics of Industrial Organization*, Second Edition, Prentice--Hall, New Jersey 1985.

Sheperd W.G., *The Twilight of Antitrust*, „Antitrust Law and Economics Review", No. 18/1986.

Standard Oil Co. of New Jersey v. United States, 221 US 1 (1911).

United States v. American Tobacco Co., 221 US 106 (1911).

United States v. Philadelphia National Bank, 374 U.S. 321 (1963).

United States v. Trans-Missouri Freight Ass'n, 166 US 290 (1897).

United States v. Von's Grocery Co., 384 U.S. 270 (1966).

US DoJ, *Merger Guidelines 1968*, http://www.justice.gov/atr/hmerger/11247.htm (30.09.2013).

Valentine D., *The Evolution of U.S. Merger Law*, Prepared remarks of Assistant Director for International Antitrust, Federal Trade Commission, before INDECOPI Conference, Lima, August 13, 1996.

Whish R., *Competition Law*, Fifth Edition, Lexis Nexis, London 2003.

Wilson J., *Globalization and the Limits of National Merger Control Laws*, Kluwer International, The Hague, London, New York, 2003.