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Merger control and economic growth of the LDCs: Some observations and recommendations

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Abstract

The aim of this paper is to evaluate merger control as a segment of the competition policy in the less developed countries (LDCs) and to propose desirables regimes. The only standard for this evaluation is economic growth as the growth should be the only aim of competition policy in LDCs. Taking into account specific engines of growth of the LDCs, it is evident that mergers should play a substantial role in speeding-up the growth. Considering specific economic features of the LDCs (domestic saving, financial intermediation, missing markets, size of the firms, absorption capacity for technology transfer and barriers to entry), merger control is counterproductive to economic growth of the LDCs in majority of the cases. The supply of merger control in the LDCs is constrained by unfavourable political and public environment, lack of available resources, especially human capital, and weak rule of law. Three regimes of merger control are suggested, depending on the level of institutional and economic development. For the LDCs with low level of both no merger control is found appropriate. For the LDCs in the intermediate level of both, very restricted merger control is recommended, evaluating into somewhat restricted merger control for the remaining LDCs. Restrictions are: high notification thresholds (only pre-merger compulsory notification is considered), exemption of cross-border and vertical mergers and formal rules in the merger control process. Substitute activities of the NCAs recommended. Relations between merger control and combating cartels is considered.

Key words: economic growth, competition policy, merger control, institutional development, advocacy

JEL Classification: L40, L41, 043

1. Introduction: aims of the paper and competition policy

The aim of this paper is to evaluate merger control as a segment of the competition policy in the less developed countries (LDCs). The only standard for this evaluation is economic growth. This approach assumes that economic growth is the priority of the LDCs, and that the only aim of the competition policy in the LDCs should be speeding-up economic growth. Accordingly, competition policy is evaluated by considering the main engines of the economic growth, i.e. both production factors accumulation and improvement of efficiency of their utilisation. This is a deviation from the standard Chicago School consideration of the efficiency as the only aim of competition policy. Nonetheless, no other standards for evaluation, no other aim but economic growth is considered, although it has been suggested that competition policy in the LDCs should be a multiple aim policy (Bakhoum, 2011, Gal and Fox 2014).

As economic growth is the priority of the LDCs, competition policy is, in principle, well equipped to deal with it, especially as to the growth of efficiency, i.e. increases in total factor productivity (TFP) as the component of the economic growth (Voigt, 2009). Though accumulation of production factors is indispensable engine of growth of the LDCs, appropriate competition policy in these countries should encourage restructuring of the current operations, reallocation of resources from low to high productivity activities and should enable both innovations and imitations, considering that the LDCs are far away from the technological frontier. Those are operational targets that are within the realm of competition policy. Nonetheless, competition policy is not well equipped to deal with other aims, basically non-economic aims like supporting public interest (whatever its specification is), reducing inequality by redistribution or otherwise, safeguarding democracy,[1] promoting fairness and social inclusion or development of the SMEs. If these aims are considered the aims of "economic development" (Bakhoum, 2011), then this paper deals only with the economic growth, not with economic development. At the end of the day, there is economic growth without development, but there is no economic development without growth.

For this paper competition policy is considered as a combination of competition law (with three main areas of enforcement: restrictive agreements, abuse of dominant position and merger control) and advocacy aimed at increasing competition irrespectively of the competition law enforcement. It is assumed that the same resources can be reallocated among competition law enforcement and advocacy, as well as among three pillars of the competition law enforcement. Elasticity of substitution of the resources among these activities within a NCA is assumed to be unitary.

Though in this paper it is accepted that the competition policy of the LDCs should converge to the competition policy of developed nations in sense that "economics-based model"

[1] Though Ma (2011) demonstrated on the panel of data (109 countries for 15 years) that there is a statistically significant relationship between competition policy and democracy and that the main mechanism of that relation is protection of consumers and small producers, the strength of the relationship is rather weak, he finds that the appropriate way of safeguarding democracy is using taxation and transfers providing income redistribution favourable to democracy. In short, competition policy should not be used for promoting democracy.

(Greber, 2013) is accepted, an "absolutist view" (Priest, 2013) that competition policy in every jurisdiction should be basically identical is not accepted, enabling the LDCs' authorities to formulate, within the "economics-based model", appropriate specific model of the competition policy.

The structure of the paper is consistent with its specified aim and described framework of assumption. Homogeneity of the LDCs will firstly be explored, with the implications to the economic growth of the specific groups of the LDCs and pro-growth competition policy in them. Then specific economic features of the LDCs relevant for the pro-growth competition policy in them will be analysed focusing on the merger, their impact to economic growth and the impact of their control. Competition policy institutional environment in the LDCs will then be analysed, establishing constraints for the efficient implementation of competition policy, focusing to the institutional demands of merger control. Merger control of the LCDs will then be evaluated, both its pros and cons. Based on that, desirable options for the merger control in the LDCs will be specified and their implications will be analysed. Conclusion and recommendations follow.

2. Definition of the LDCs as non-OECD countries

LCDs are far from being homogenous group. The LDCs, defined as non-OECD countries are heterogenous regarding: (a) level of development that each country has achieved; (a) its economic structure; (c) the role of natural resources; (d) size of its economy.

2.1. Level of development

Some of the LDCs are vibrant and growing economies that already reached rather high levels of GDP *per capita* and are firmly on the way of convergence with the developed economies. On the other hand, some of the LDCs are stagnant and poor economies with rather low level of GDP *per capita* and widespread poverty – "bottom billion" countries (Collier, 2007).

The distinction of the level of development is relevant because there is a change of dominant engine of growth with the change of the level of economic development. As suggested by Aghion and Howitt (2009), the dominant engine of growth on the lower level of development is accumulation of production factors as the level of that accumulation is still very low and there are no decreasing returns. Innovations are not so important for these economies, it is rather investments, predominantly in physical capital that counts – this is investment based growth. With the model of growth based on this engine, it is of the paramount importance that expected returns to the investments are substantial, providing incentives to the entrepreneurs for investment, i.e. for accumulation of capital.

Following this line of thinking, it is possible to infer (Singh, 2002) that competition is unfavourable to economic growth, because it undermines expected returns, i.e. economic rents that are expected from the investments. Accordingly, competition policy on this stage of economic development is disadvantageous for economic growth. This notion should be considered within the framework of a few additional insights. First, the LDCs with low level of

GDP *per capita* usually feature weak rule of law and expected returns are low in these countries due to the substantial probability of expropriation of both the returns and the investments, by private and more often government or at least government connected predators. As the expropriation risk is high, expected rates of returns are rather low. If that is the case, it is not the lack of competition that solves the problem, but the private property rights protection against both private and public sector predators.

Second, growth of TFP due to reducing inefficiency is also contribution to the economic growth of the LDCs even for the countries with very low level of GDP *per capita* as there are various and widespread inefficiencies in these economies. It is only competition, i.e. competitive pressure, that provides incentives for improvement of both allocative and productive efficiency, that can reduce if not eliminate inefficiencies and provide economic growth on that ground.[2] Accordingly, there is a possible trade-off between accumulation of production factors and TFP growth, especially TFP growth based on innovation and technological progress even for the LDCs at the lowest level of GDP *per capita*.

Third, more developed LDCs are countries with middle level GDP *per capita* and the countries that have entered middle-income convergence trap, i.e. situation on which growth based on investments inevitably, due to the decreasing returns, slows-down. For these LDCs a change of growth paradigm is essential. Growth based on investments must be substituted with growth based on increase of TFP, due to the innovations and technological progress. Crucial prerequisite for this type of growth is strong competition pressure, especially low barriers to entry, i.e. strong potential competition. Accordingly, effective competition policy, especially advocacy that will bring down legal barriers, is a prerequisite for economic growth based on innovations and technological progress.

Irrespectively of the level of development, i.e. level of the GDP *per capita*, it could be expected that all the LCDs' economies feature substantial inefficiencies. Competitive pressure is a decisive incentive for business decision-makers to get rid of these inefficiencies. Mergers (including acquisitions and takeovers) as a part of operational restructuring are one of the ways to deal with the inefficiency. Accordingly, there should be as little as possible obstacles to mergers as they are indispensable mechanism for increasing efficiency and economic growth on that ground (increase of TFP).

Considering all these insights, it is evident the economic growth in the LDCs is simultaneously based on the accumulation of the production factors and increase of total factor productivity (TFP). Competition policy decision-makers should always take into account this finding.

2.2. Economic structure

There are substantial differences in economic structures of the LDCs. Some of the LDCs, mostly those with higher GDP *per capita*, have economies with rather balanced industrial

[2] According to the insights of the modern growth theory, the economic growth based on the improvement of efficiency is a transitory, not the steady state economic growth. In other words, it is one-off increase in the GDP level. Though not sustainable, due to the widespread inefficiencies in the LCDs, such an increase in the GDP and consequently GDP *per capita* level can be substantial.

structure, with substantial manufacturing, and with high productivity services. On the other hand, some of the LDCs, mostly these with low GDP *per capita*, have unbalanced economic structures with dominant traditional (agriculture) sector and without substantial manufacturing sector as the source of income. Obviously, differences in the GDP *per capita* can be explained by differences in labour productivity and substantial part of the variance of labour productivity can be explained by the variance of structure of the economies of the LDCs, predominantly by the variance of the share of the traditional sector.

Hall and Jones (1999) empirically demonstrated that there is a substantial difference among the countries in labour productivity and that the LDCs considerably legs the developed economies. This insight should be considered together with the two observations: (1) there are widespread inefficiencies in the LDC, that can be eliminated by reallocation of resources and increase of production efficiency; and (2) the LDCs are very far away from the technological frontier enabling them to increase the productivity by adopting more advance technology than the incumbent one. That can be done by reallocation of resources from low to high productivity activities. Although there is no need for R&D to produce the new technology and technological innovations, there is a possibility for the LDCs to, by adopting new technology, improve the technology, and decrease the gap to the technological frontier.

Competition policy is crucial to enable competitive pressure to be maximised as it is the only effective incentive for restructuring of business operations and reallocation of resources from low to high productivity activities. Nonetheless, mergers are essential for the restructuring process, i.e. process of increasing efficiency, hence merger control, if any, should be lax to facilitate mergers.

2.3. Role of natural wealth

There are LDCs that are natural wealth rich economies in which the substantial share of income is generated by exploitation of natural resources and export of commodities. Contrary to that, there are LDCs without natural wealth and without substantial export earnings. Usually in the case of natural wealth as income generator, substantial economic rents are appropriated and rent seeking process can produce political instabilities. Irrespectively to this, it is of a paramount importance that export sector is competitive and competition policy toward export sector, if any to be applied, should be focus to that aim. Mergers in the export sector can contribute to its efficiency as this is the most important way of materialisation of the economy of scale and the World market competitiveness: Hence they should be facilitated rather than checked and controlled. These considerations are not necessarily relevant for all domestic market sectors, especially those producing non-tradables.

2.4. Size of the economy

The LDCs differ from each other in terms of the size of their economies. Some of these economies are big, both in terms of the GDP and population, with substantial and integrated domestic markets. The other economies are small, with small domestic demand, with small and often not fully integrated domestic markets. Sustainable economic growth of small

economies is inevitably export led and the issue of export competitiveness a crucial growth issue for those countries, similarly as the competitiveness of commodity export in the previous case. Accordingly, competition policy towards export sectors should be focused to facilitate their efficiency and competitiveness among other things by enabling mergers that will bring economy of scale to those business operations. Furthermore, competition on the domestic markets should be established primarily by import liberalisation and eliminating of all tariff and non-tariff barriers.[3] Hence, competition policy should be focused to the non-tradable market in these countries.

Irrespectively of the observed differences, it is evident that economic growth of the LDCs depends both on the production factor accumulation and increased TFP and the latter depends both on decreasing/elimination of inefficiencies and adopting new, superior technologies. All three engines of growth (production factors accumulation, decreasing inefficiencies, and adoption of new technologies) are endogenous, depending on the incentives facing economic agents (producers and production factors owners). In that sense, the general aim of the competition policy in the LDCs should be to, for all given constraints, maximise economic growth rate irrespectively of its engine, by creation incentives to economic agents. Though it should be considered that competition policy can have countervailing effects to economic growth, with more competition slowing down economic growth by reducing returns and in that way decreasing production factors accumulation, and with more competition providing incentives for increasing TFP, both by decrease of inefficiencies or by innovations.

There is some empirical evidence that competition policy can achieve such an aim. In their econometric model Dutz and Hayri (2000) used cross-section of 53 countries' effective competition policy, based on the answers from the survey of business people, as an explanatory variable for economic growth. It was demonstrated that there is a statistically significant relation between competition policy and economic growth with more effective competition policy increasing the growth rate. The use of instrumental variables and all robustness tests confirmed those results. The finding is that competition policy is generally good for growth, though no separation of the its bad effects (decreasing returns undermining production factors accumulation) and good effects (increasing TFP due to the competitive pressure) has been achieved.

Voigt (2009) empirically demonstrated (cross-section approach, 107 countries) statistical significant relationship between competition policy on the TFP, with more competition policy increasing the TFP. This relationship has been demonstrated not only for the whole sample, but also for the non-OECD countries, i.e. for LDCs. This finding provides support to the notion

[3] Tariffs reduction should be considered as the first step in foreign trade liberalisation is frequently compensated with non-tariff, very often hidden trade barriers. It is that non- competitive outcomes are not linked to the uncompetitive domestic market structures, but the protection from foreign trade. Though it can be linked indirectly – the issue of free rider, the more concentrated industry structure in the industry the bigger incentives for the incumbent firms to lobby for the various non-tariff barriers. Rodriguez and Williams (1994) provides a long list of non-tariff barriers: product standards, technical requirements, environmental standards, etc. All of them produces the prices higher that marginal costs and rents for the domestic producers.

that competition policy affects economic growth by reducing inefficiencies and improving productivity.[4] Dutz and Vagliasindi (2000) empirically demonstrated that effective competition policy is good for growth of transition economies, as more competition policy implementation produces the expansion of more efficient private firms – a clear testament that the growth is based on increasing TFP. Accordingly, in the case of transition economies, competition policy implementation proved to be good for economic restructuring and increase its efficiency as well as the economic growth based on the increase of TFP.

As it was demonstrated, though with not so many empirical research, that competition policy is good for economic growth of the LCDs, it is time to consider the role of the merger control as a segment of competition policy, and an appropriate way to do it is within the framework of the most important economic features of the LDCs.

3. Economic features of the LDCs and the role of merger control

3.1. Domestic savings

In principle, with a few exceptions, the LDCs feature low level of domestic saving, measured as gross domestic saving to the GDP. Though several factors influence the level of saving rate of households, the most important one is a level of income with rising marginal propensity to save, a regularity that has been empirically verified – richer households save a bigger part of their household. In the LDCs many households are poor and their both marginal and average propensity to save is low, producing low gross domestic saving rate. This mechanism of low saving is sustainable – as long as the LDCs are poor, as long as GDP *per capita* and median household income are low, saving rate is also low. This is specific saving trap – low saving rate is due to level of income *per capita* can be overcome only by economic growth based on the investments and that growth cannot be achieved because of low saving rate. The only way out of this trap for the LDCs is import of savings form developed, rich countries in which saving rate is higher that the investment rate (Table 1).

[4] Only one segment of one indicator of competition policy (out of four that have been used) deals with the merger control as component of the competition policy. It answers the question whether a jurisdiction relies both on remedies and efficiencies in case-by-case deliberation on the mergers and their effects, basically a question on the level of development of the merger control.

Table 1.
Gross capital formation, gross domestic savings and investment gap in 2015 for groups of countries

Group of countries	Gross capital formation (% of GDP)	Gross domestic savings (% of GDP)	Investment gap (% of GDP)
Low income	26.3	7.9	-18.4
Low middle income	27.1	23.2	-3.9
Middle income	38.4	38.9	0.5
Upper middle income	31.3	33.3	2.0
High income	21.1	22.1	1.0
European Union	19.8	23.1	3.3

Source: World Bank database

The import of savings can be achieved via international financial intermediation either by borrowing or by portfolio investments, but a prerequisite for such intermediation is developed domestic financial system, which is not the case of many of the LDCs. Furthermore, borrowing on the international capital market creates foreign debt (sovereign or private) and the outflow of funds for interest payments is not linked to the actual rate of returns of the investments funded by the borrowed capital and the economic growth that follows and that can produce debt sustainability issue. Especially taking into account that due to the high country risk level of many LDCs, interest rates that are charged by creditors are substantial.

The alternative to borrowing capital for savings' import from the developed countries are FDIs, including mergers and acquisition of the domestic firms. This channel of savings' import does not require well developed domestic financial system and it does not create foreign debt. Furthermore, it is not only import of capital/savings that FDIs provide for, but also import of technology and know-how, enabling technology transfer and providing for imitation that reduces the gap of the LDCs to the technological frontier. Accordingly, FDIs in the LDCs provide both for the accumulation of production factors and for the increase in TFP.

These insights provide arguments not against competition policy as such, but only against merger control, especially against control of cross-border mergers which are in many cases vehicles for FDIs. It is intuitive that stringent merger control decreases number of cross-border merger and in that way FDIs. The first channel for this mechanism to work is that some numbers of the cross-border mergers will inevitably be blocked in the control process. The second channel is that there is a substantial deterrent effect of the merger control as there are substantial costs, both in monetary terms and in terms of time for the notification of the merger even if it is estimated that the merger would not be blocked. There is only one empirical study of the issue and it has confirmed this conjecture. Evenett (2002) provided econometric evidence (cross-section econometric model for 1999 that includes 109 countries, including jurisdictions with pre-merger, post-merger, and voluntary notification of merger) that the merger control, especially mandatory per-merger notification regime, has statistically significant impact to the US mergers and acquisition overseas by reducing their level by roughly 50%. Not only that the relation is statically significant, but it is also substantial, as the reduction of the mergers is half of the number.

Nonetheless, this finding is about the merger control and not about the competition legislation as such. Evenett (2003) suggests, though without empirical evidence, that introducing of the competition legislation can make countries more attractive for the FDI and cross-border mergers, because, as he points out, the multinationals are used to competition law and they know how to do with it. Nonetheless, it is intuitive that any company prefer less government intervention constraints, and institutional environment that creates more economic freedom and more latitude for business manoeuvring, including the creation of market power.[5]

Government effectiveness can also be used as a proxy for merger control (Deng and Yang, 2015). Though this is a poor proxy for merger control, there are some econometric findings (panel of data for 71 countries and 13 years) that in developed markets there is statistically significant negative relationship between government effectiveness, i.e. merger control, and cross-border mergers: increase in government effectives decreases cross-border mergers in developed markets. Such a statistical significance though has not been recorded in the case of developing countries, not even when the sample is divided to the two sub-samples, those with high and low government efficiency.[6]

Rossi and Volpin (2004) provided empirical evidence that better accounting standards and strong shareholders protection in the recipient country increases cross-border mergers. Though this finding is intuitive, it could lead to a confusion. The point is that higher accounting standards and better protection of private property rights are correlated with effective and even stringent merger control – all these features are correlated to the level of institutional development of jurisdictions. This could lead to a spurious positive correlation between merger control and cross-border mergers.[7]

3.2. Financial intermediation

Financial markets in the LDCs are in most of the cases not well developed, so even the arguments of missing markets (Laffonte, 1998) can be used. Hence the financial intermediation is very limited and the investments must be funded by retained earnings (Singh, 2002), as there is no other mechanism for their funding, or the cost of capital is

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[5] This Evenett's argument can be considered in another way. If there is no competition legislation whatsoever, there is uncertainty whether and why the country will introduce it and what would be its character, whether it would be restrictive or not. In other words, the devil that I know is better that the devil I do not know. The same argument can also be used for the merger control.

[6] Lebedev *et al.* (2015) surveys literature considering performance rather than incidence of cross-border mergers and acquisitions, proposing, though without empirical verification, that that the institutional development, that could be correlated to the government effectives, increases the efficiency of the cross-border mergers.

[7] Erel, Lian and Weisbach (2011) provided a through empirical analysis od cross border mergers and their factors, but merger control was not within these factors. The results support the insight that better accounting standards increases the number and level of cross-border mergers. Again, a spurious positive correlation between stringent merger control and cross-border mergers can be established.

prohibitively high. These earnings must be high to provide enough funding for investment, i.e. for corporate saving to substitute for the lack of financial intermediation.

The argument, nonetheless, is not only for undeveloped financial system. Even if financial market works smoothly, higher returns means that more investments will be attracted to the industry/country, as opportunity costs of alternative investments are high. This argument, however convincing it is, is an argument against competition policy as such, an argument for market power, not necessarily against a specific pillar of competition law. Nonetheless, mergers can contribute to the increased returns by creating market power – undertakings with dominant position, that are exercising market power to appropriate economic profit, i.e. high returns, and also by increasing efficiency of the merged undertaking, for example due to the economy of scale.

The strength of the high expected returns argument should be, as already pointed out, checked in the framework of the protection of private property rights, taking into account that the probability of expropriation of the returns and even investment in many LDCs is rather high. If private property rights are not universally enforced, that even market power (an argument against competition policy in the LDCs) will not be sufficient incentive for investment and will not be a prerequisite from investment based economic growth. Nonetheless, if private property rights are protected, than mergers that create market power and efficiency can contribute to the investment based growth.

3.3. Missing markets

The missing market argument for consideration of the competition policy and merger control can be considered in two ways. The direct one is that markets for many business services do not exist, i.e. supply of these services is either zero or very low (Laffonte, 1998). This includes financial services (financial intermediation including insurance), non-financial business services (legal services, consultancy, accounting, auditing etc.), communications, transportation, infrastructure (utilities), etc. The lack of provision of these services, i.e. missing “business infrastructure”, creates substantial barrier to entry above and beyond legal barriers to entry, decreasing the level of potential competition and reducing competitive pressure. Accordingly, competition law itself cannot provide remedies for this deficiency, but other public policies should be used for boosting these activities.

It can be argued (Kovacic, 1998 and Dutz, Ordover and Willig, 2000) that government should invest in these activities and in that way close the gap in their supply. Alternative or perhaps complementary public policy is to reduce all legal barriers to entry in these industries and perhaps provide some additional incentives for private investments in the provision of these services. This seems to be more reasonable in the case of financial services and non-financial business services, though public investment in infrastructure are perhaps inevitable in some cases. One way or the other, merger control should not be an obstacle to these endeavours.

The indirect argument of the missing market in the LDCs deals with inappropriate institutional arrangements that, not only by reducing competition, created incentives for low level of

productivity. The ubiquitous inefficiencies in the LDCs, especially those with the low level of GDP *per capita*, provide ample room for economic growth based on the improvements of efficiency due to the restructuring and reallocation, as there could be substantial one-off increase of income, though not a steady state growth, as it is not sustainable, but a substantial increase in the GDP levels – it can move many people from poverty to moderate prosperity. Mergers, both domestic and cross-borders, are crucial for restructuring economy of the LDCs and reallocation of resources – both allocative and production efficiency is increased in that way. Accordingly, merger control could be undesirable for this engine of growth of the LDCs. Additionally, advocacy could be an answer to the inappropriate institutional environment and a mechanism for achieving institutional reform and improvements og the bisoness environment.

3.4. Size of the firms and economy of scale

For most of the LDCs size of the firms which their economies are made of is very important issue, considered within the framework of the economy of scale. The economy of scale argument is especially relevant for the small LDCs, i.e. those who selected export led growth as their economic growth strategy, since there is a technologically specified minimum efficient size of the firms in each specific sector. The probability of organic growth of firms in the LDCs as the way to reach their optimal size, i.e. to materialise economy of scale, is very low due to the limited prospects of external financers, due to the undeveloped financial system and poor financial intermediation, with retained earnings as virtually the only source for funding investments. Accordingly, mergers are the only efficient way for the firms in the LDCs to increase their size, to exploit economy of scale and to improve efficiency. This is relevant not only for export competitiveness of the country, but also general level of efficiency, irrespectively of the export competitiveness – the argument stays in the case of the sectors suppling the non-tradables.

Countervailing effects of mergers exist as they can create both decrease of efficiency due to the allocative and production inefficiency due to the market power created by the merger and decrease and increase of efficiency due to the economy of scale, economy of scope, restructuring, in-house provisions of the business services that are not available on the local market, and pressure regarding corporate control. The inefficiencies due to the market power creates economic rent, i.e. excessive returns to investments, providing incentives to invest and being beneficial to the investment based growth of the LDCs. Accordingly, both arguments speak against merger control in the LDCs.

The point is that merger control decreases the intensity (number) of mergers. The more stringent merger control, the less number of mergers. This is an intuitive insight, and it is based on two expectations. One is that some number of mergers will be blocked in the merger control procedure and that number increases with the more stringent merger control. The other is that merger control, with its costly procedure and uncertain outcome, provides deterrent to mergers, i.e. to their notification and materialisation, irrespectively whether they predominantly create market power or enhance efficiency. In short, costs of the merger

(transaction costs of notification and merger control process, transaction costs of preparing the merger, reputation costs if the merger is blocked) are bigger than discounted expected gains (future expected increased profits due to the merger, irrespectively whether economic profit is due to the market power of efficiencies). Deterrent increases with bigger uncertainty of the merger control outcome, i.e. lower probability that the merger will be cleared, with increased risk aversion of the merger parties and with increase of the discount factor by which the economic agents transform future returns to their present value. The probability that the merger will be cleared decreases with increase of the asymmetry of information, which is substantial in the LDCs due the to the lower level of the NCA ability to process mergers. That is a reason for conjecture that deterrence is especially strong in the LDCs with merger control.[8]

It is difficult to empirically separate these two effects, blocking and deterrence, because a counterfactual analysis must be done: a control number of merger that would have taken place should no merger control had existed must be established and then deterrence would have been a residual number after the number of blocked mergers id subtracted. One way or the other, merger control is inevitably a barrier to mergers, taking into account that motives for mergers are increased returns to capital, and creation of economic rent for the capital owners. Both managers and capital owner are in principal indifferent whether this economic rent is the consequence of the market power or (competitive) efficiency. The increase of the expectations of the returns leads to the increase of the demand for the stocks of the merging companies, though there is no way to separate expectations due to the market power and due to the increased efficiency (Eckbo and Wire, 1985).

Achievement of economy of scale by the mergers that are not blocked nor deterred should be distinguished from public policies focused to building national champions. Such a policy includes very active policy measures including subsidizing and barrier to entry in the industry of the national champion, policies that are far away from the principles of sound competition policy. Policy of national champions is policy of exceptions, policy of abandoning or at least relaxing merger control is universal one.

3.5. Absorption capacity for technology transfer

Not only that the growth in LCDs is based on investments (production factor accumulation), and increase of the TFP due to reduction/elimination of inefficiencies, but it is also based on the technology transfers, i.e. imitations that increase TFP – effectively that is local technological progress, local innovation for the LDCs.[9] There are substantial costs of adoption of new technology and these costs are fixed, creating indivisibility in production with new,

[8] There is an argument that the merger that is deterred is not valuable because it does not create enough added value by increased returns, hence these mergers should be blocked anyhow as they do not increase social welfare. Nonetheless, the validity of this argument depends on the transaction costs and asymmetry of information. With both being large, the argument loses its validity.

[9] In the terminology of competition law, that could be referred to as dynamic efficiency, and specified as the increase of total welfare (the sumo of the consumer's and producer's surplus) over time, over a specific time horizon.

adopted technology. Accordingly, the recipient firm must be sufficiently large to overcome that very indivisibility and merger control could provide obstacle for such growth of the firm.[10] Furthermore, the most efficient technology transfer to the LDCs is done by FDIs, in many cases cross-border mergers. Technology transfers, aimed at increasing production efficiency, is the response to competitive pressure – no competitive pressure, no need for technology transfer. Accordingly, competition policy that increases competitive pressure, but with no or lax merger control, also increases capacities for adoption of the new technologies in the LDCs.

Adoption of the new technologies by imitation in the LDCs is crucial for dynamic efficiency and their steady state, sustainable economic growth. Modern growth theory, theory of endogenous growth considers innovations endogenous, depending on the incentives to the economic agents to innovate. Imitations are also endogenous and they depend on the incentives to the economic agents. The crucial incentives are those produced by competitive pressure, hence competition policy should at least does not decrease that pressure. Mergers provide absorption capacity of the domestic forms, i.e. ability to imitate due to the competitive pressure. Both ingredients are necessary for successful imitation and technological progress of the LDCs based on imitation and for their sustainable economic growth.

3.6. Barriers to entry

Substantial barriers to entry should be expected in the case of the LDCs. Some of them do not have a long history of market economies, market economic institutions are not well developed and there is a substantial involvement of the government in production and exchange. Furthermore, in many of the LDCs private, vested interests substantially influence public policies, i.e. government protects the interest of business elite, enabling them, by creating of barrier of entry, to earn substantial rents. All legal barriers to entry are endogenous, meaning that, at least in principle, can be removed.[11] Nonetheless, there are exogenous barrier to entry, depending on technologies that are used and barriers based on the lack of supply of many business services due to the low level of economic development (Kovacic, 1998).

Standard Chicago School argument against merger control is that, in absence of barriers to entry, economic profit possibly created by the merger dur to the market power brought on by the merger will attract new entries and that will dissipate economic profit and undermine the established market power – competitive structure of the market will be recreated and allocative production inefficiencies will be eliminated. Accordingly, the magnitude and

[10] The argument of the high (expected) returns necessary for the investment in adoption new technology to materialise can be relaxed because of the high (expected) returns due to the efficiency and/or competitive advantage created by the new technology, even a temporary monopoly that can be established by introducing that technology.

[11] Not all endogenous barrier to entry are legal. Some of them can be due to the actions of incumbent firms. It is reasonable though to assume that most of the endogenous barrier to entry are legal, i.e. are the competency of public policies pursued by the government, not ruling out that private interest of incumbent business elite can influence these policies.

sustainability of the barriers to entry in the LDCs should be considered as a segment of valuation of the desirability of merger control and its impact to the economic growth of these countries.

In considering endogeneity and sustainability of the legal barrier to entry, the crucial question is whether regulation of entry, i.e. legal barriers to entry, depends on the level of development. If there is a strong causal relationship from level of development (measured by income *per capita*) to the regulation entry, i.e. legal barriers to entry, then these barriers will stay for long period in the case of the LDCs, and merger control will be justified. Nonetheless, econometric analysis of Djankov *et al.* (2002) demonstrated that statistically significant relation between income *per capita* and regulation of entry is not robust, that it depends on the regression model specification and that the causality direction is not well established. Furthermore, there is no consistent theoretical explanation of the mechanism by which lower level of development, lower income *per capita* creates higher legal barriers to entry.

Another way of explaining legal barrier to entry would be by introducing political institutions. There is a theoretical insight (Acemoglu, 2008) that autocratic/oligarchic societies feature higher legal barriers to entry, as the government is accountable only to the small business elite and their interest is best served by high economic rents due to the high legal barriers to entry.[12] Contrary to that, in democracy the government is accountable to the whole constituency, it has to serve the broad based interest, hence there is no incentive for government to preserve legal barriers to entry as they decrease social welfare.[13] Taking that into account, the question is to what extent the character of political system is influenced by the level of economic development: does increase of income *per capita* introduce democracy, or the two variables are not related at all? Although Lipset's hypothesis is that increase in the income *per capita* encourages advent of democracy, the empirical verification of that hypothesis provided no unambiguous results (Barro, 1996, Acemoglu *et al*., 2008, and Fayad *et al.,* 2012).[14]

Taking all these insights into account, it seems that barriers to entry, at least legal barriers to entry are not a destiny of the LDCs. They are to the substantial extent endogenous, even in the short run. Though serous elements of their sustainability are identified, based on the political economy consideration, governments of the LDCs can do a lot about decreasing legal barriers to entry and the NCAs in these jurisdictions can have a substantial impact to the barriers to entry in the process of advocacy.

Accordingly, although high and sustainable barriers to entry can be used as the argument of merger control, it is evident that a viable alternative for the LDCs is advocacy that will

[12] Nonetheless, the empirical analysis made by Djankov *et al*. (2002) provided no evidence that autocracy has a statistically significant relation to the regulation of entry, i.e. legal barriers to entry.

[13] Davis and Williamson (2016) introduced deeply embedded institutions as culture in the analysis of barrier of entry. They have demonstrated that there is an interplay of culture and political/legal institutions. Individualism in interplay with democratic political system or/and common law tradition can explain low barriers to entry. This results speaks for sustainability of barriers to entry in the LDCs.

[14] The relation between income *per capita* and democracy, for example, proved not to be significant in the case of countries with substantial natural wealth, but it proved to be significant in the cases of the other LDCs (Fayad *et al.,* 2012). This demonstrated that the econometric results are not robust to the change of the sample.

decrease substantial barriers to entry that currently exists in many LDCs. Especially taking into account that it is quite convincing that higher barriers to entry, due to supressing competition creates lower growth rates. This is exactly the result that has been achieved by another centromeric analysis (Djankov *et al.*, 2006), irrespectively of the competition policy that is enforced, as the regression model did not encompass competition policy as an explanatory variable. Accordingly, low barriers to entry are good to economic growth, irrespectively in their role in the merger control.

4. Competition policy environment in the LDCs and merger control

There are several contributions (Kovacic, 1998, Mateus, 2013, Gal and Fox, 2014, Jenny, 2016) that provided a detailed evaluation of the competition policy environment in the LDCs and these results are incorporated in this section of the paper with some additional insights, particularly those relevant for the merger control.

4.1. Political and public environment

There is a fragile political foundation of the competition policy in the LDCs, as there is no tradition of independent agencies, no tradition of division of power and institutional innovations, like competition law, frequently contradict traditional, informal, and deeply embedded institutions. In many cases, new institutional arrangement is imported, i.e. transplanted as a package of the reforms that must be completed due to the international agreement and membership in some organisation or as a condition for development aid packages of the IFIs. Accordingly, there is no widespread indigenous political support, nor wide and sustainable public support to the competition law and the activities of NCAs. The lack of widespread public support makes NCAs very vulnerable to the interfering of the executive government, undermining the NCAs' independence. In addition, there is poor understanding of the mission of the NCAs by the general public, as there is no widespread culture of competition, in many cases considered as an "imported" value that contradicts traditional domestic values. That is especially difficult in the case of merger control, as it is not a straightforward competition law enforcement, like busting cartel, that is much easily understood by the general public.

Furthermore, there is substantial government intervention in the markets, starting with the substantial role of government owned enterprises in many sectors, for ideological and historical reasons, and rather widespread price control, sometimes supported by selective subsidising. That government intervention undermines competition policy, distorts the level playing field and it is very effective in that sense as it is usually considered by the general public as the public policy of social justice or fairness.

4.2. Lack of available resources

There is a general lack of resources available in the LDCs and fierce contests of needs for public finances. Budgets of the LCDs are inevitably modest for two main reasons. The one is the low tax base as the income level *per capita* of the LDCs is low. The other one is that tax administrations in the LDCs are not very developed and they are far from being efficient, disabling them to effectively enforce tax legislation and create substantial budget revenues. Taking that into account, there are many competing needs for public finances, i.e. for provision of public goods and government services. Accordingly, resources allocated to the NCAs, i.e. to the competition policy, have high opportunity costs, hence there are strong political pressures to reduce these resources. In short, they are rather modest in political equilibrium in collective decision making process in the LDCs. Therefore, NCAs should be entrusted relatively simple tasks, hence only limited resources are available, and they should mainly operate on the rule based procedures.

The additional problem is that that provision of many public goods and government services that are funded from the budget have indivisibilities, i.e. substantial fixed costs. Competition policy and NCAs to enforce it are not the exception. There are substantial economy of scale and scope in the operations of the NCAs, meaning that the creation of both the policy and institution is a barrier for itself.[15] This is especially important for the small LDCs in which the absolute size of the budget is small comparing with the absolute size of the fixed costs of establishing competition policy and NCAs to implement it. Not only that fixed costs are substantial, but there are also recurring, variable costs of NCAs operations. At the end of the day, these costs relations can explain why in the LDCs, as pointed out by Kovacic (1998), the wages of public servants in the NCAs are usually low, premises are inadequate, equipment is missing or is obsolete and, perhaps the most important, small are funds for investing in human capital of the NCAs' staff. The lower level of development of an LDC and the smaller that country is, the bigger constrains regarding the available resources for the NCAs. This is particularly important in the case of merger control, as it is especially resource demanding – it deserves sophisticated economic analyses and simulations of the merger effects. It was demonstrated (Botteman, 2006) that even in the EC and EU institutional environment, the resource demand of that kind is substantial. Let along in the case of the LDCs where the available resources are modest. Furthermore, all the resources that are used in the merger control have their own opportunity costs, as that have been drained from the other activities of the NCAs, like combating cartels and competition advocacy. More merger control inevitably leads to less of other activities of the NCAs.

4.3. Lack of human capital

There is generally rather low level of human capital in the LDCs and in the case of competition policy that transforms in to the lack of specific knowledge and experience that is needed for

[15] It is not only that in the case of competition policy and the NCAs operations that economy of scale is recorded. Alesina and Spalore (2003), considering the size of nations from the economic point of view, specify that in virtually in all cases of provision of the public goods economy of scale exists.

its implementation. There is no indigenous competition policy expertise, especially economic expertise in microeconomics, industrial organisation, and econometrics. Not only that the lack of the expertise means that it must be imported, by international cooperation, but that is hardly a panacea, not only because the evaluation of the imported expertise and its achievements is difficult without indigenous competition policy expertise. International cooperation in training could be a way out, but the results are uncertain and it takes time to be accomplished, perhaps generations for the benefits to be recorded. Lack of economic expertise is especially relevant constrain to the effective enforcement of merger control with minimum errors in decisions, as this control is very demanding regarding specific human capital based on knowledge of economics, much more than the other activities of the NCAs.

In addition to the lack of human capital, there is no or very little data available for the purpose and competition law enforcement, especially for the merger control and economic analyses that are essential to it. Hence, even available limited human capital cannot be fully utilised because of the lack of data that are crucial for analysis of the effects of proposed mergers and appropriate decision in the process of merger control. Statistical services/offices in the LDCs are especially unreliable. Furthermore, young NCAs without much of the track record in merger control and modest economic expertise do not have appropriate databases that are needed for economic/econometric analyses as the ground good decisions in merger cases.

4.4. Rule of law

There is no universal rule of rule and no universal protection of private property rights in the LCDs as there is a lack of solid and effective legal system. Courts and judiciary altogether are not well developed, especially in economic analysis. There are very few judges that have a grasp of market and how it works, meaning that judicial errors can be frequent. Let alone a grasp of competition law, its rationale, and mechanisms. Furthermore, there is a lack of resources for the judiciary and usually its poor organisation. That has produced a huge delay in delivery of justice and substantial numbers of backlogs. Long periods for judicial review could have a substantial deterrent effect for the mergers. Mergers' cases are complicated and difficult for the courts to handle even in the developed, let alone developing countries. Botteman (2006) demonstrated difficulties that the EU courts to handle economic and econometric evidence and one can only speculate the difficulties of that kind of the courts in the LDCs are facing.

Furthermore, with widespread vested interests in the LDCs, it can be expected that judiciary is not impartial and that decisions made by courts could be influenced by interested firms and their owners. Though private influence over institutions is not restricted to the judiciary, in this case it has substantial effect to the competition law enforcement, since judiciary is the final instance in these cases.

Although these features of competition policy environment are something that all the LDCs have in common, all these countries can be distinguished to each other by the level of institutional development and quality of institutional framework.

Mateus (2013) suggested, following contribution of Glaeser and Shleifer (2003), that there are effectively four different institutional environments, i.e. regulatory regimes that can be identified and that different types of competition policies are appropriate for each of these regimes. It seems productive to use this classification and to apply first three specified regimes though with some modifications to the institutional environment of the LDCs relevant for the competition policy.

Regime I is the institutional environment of weak law and order, with many informal rather than formal and universal institutional arrangements. Vested private interest is very widespread, as there are no checks for it, and there are basically no solid institutional foundations of market economy, like universal protection of property rights. Mateus (2013) considers that most of the competition policy in this stage should be focused to advocacy.

Regime II is lower-intermediate level of institutional development with some rule of law and with some, though limited, government's administrative and judicial capacity. Vested interest is still substantial but not so widespread as there are some check for it. Mateus (2013) considers that the country in this regime should have at least a minimum level of democracy and that most of the competition policy in this stage should be rule based enforcement of competition.

Regime III is higher-intermediate level of institutional development, the highest level of institutional development that a LDC can reach. Rule of law is not universal, but rather widespread and administrative and judicial capacity is improved, though some limitations remain. It can be expected that only a small number of the LDCs belong to this institutional regime. Some of the enforcement of the competition law can be objective based, not necessary rule based.

Regime IV is high level of institutional development and can be found only in developed countries, hence it is irrelevant for further consideration.

It is reasonable to assume that there is a correlation between the level of institutional development and level of economic development measured by the GDP *per capita*. There is empirical evidence of such a correlation. For this paper the causality issue, an important issue in the empirical research of the relations, is irrelevant – it is enough to have information that a country from the first group in terms of institutional development (Regime I) level is also a country from the first group (i.e. lowest level) of economic development.

5. Perils of the merger control in the LDCs resources demand

In the previous sections of this paper mechanism by which merger control can adversely affect economic growth of the LDCs have been identified and considered. Nonetheless, for the time being there is no comprehensive empirical study whether and how merger control affects the economic growth of the LDCs. Instead, there are contributions that provide some insights of that relationship.

Rodriguez and Coate (1999) provided a list of, as they pointed out, merger control pitfalls in practice of the LDCs, based on the practice of the enforcement of the US merger guidelines. There are few of them that are very important for the LDCs, they are "deeper" and more dangerous in these countries compared to the OECD countries. The most pertinent of these pitfalls is dismissing efficiencies as speculative. Efficiencies should be judges by the same standard that are applied to the (anti) competitive effects – this is the way for balancing efficiency and anticompetitive effects. The LDCs' levels of inefficiency are so high, that it is much more likely to improve efficiency. Furthermore, by requiring evidence of actual entry, NCAs are focusing to actual rather than to the future/potential barriers to entry that can be substantially different in the case of the LDCs usually in the process of institutional change, not necessarily for the better.

Although Kovacic (1998), points out that poorly conceived merger control policies will discourage reorganization and investments needed to increase economic growth,[16] the crucial question is whether the LDCs, considering huge constraints considered in the previous section of the paper, can have anything else but the poorly conceived merger control policies, especially those LDCs on the lower level of institutional development.

Furthermore, there is a possibility of merger control abuse. Though mergers are efficiency enhancing they produce a substantial job losses, exactly because they are improving TFP and labour productivity. Nonetheless, governments take care of jobs number as a party of their popularity and political support struggle, they may wish to prevent mergers and to influence both the competition legislation and its enforcement by the NCAs (Voigt, 2009). Furthermore, governments especially like to enforce industrial policies and to actively manipulate industrial structure of some sector (Voigt, 2009) – accordingly merger control could be abused for these purposes and it would not be unbiased any more.

Carletti, Hartmann and Ongena (2015) provided some empirical evidence on the effects of strengthening merger control legislation in industrial countries. They have found that such a strengthening decreases stock prices of non-financial firms. Such a finding is intuitive, though it does not, just like the other contribution of that kind, distinguish between increase of expected profit due to increased market power or due to increased efficiencies, although both can be beneficial to growth of the LDCs, especially those on the lower level of economic development. Furthermore, this finding provides evidence to the deterrent effect of the merger control, because it was not experience or track record of the merger controls, that brings down stock process of non-financial firms, but just a legislation provision – a signal that mergers can be more rigorously controlled.

Cosnita-Langlais and Tropesno (2012) points out that efficiency gains provided by mergers are endogenous and that merger parties can increase them with appropriate incentives. These incentives can be provided with the remedies and efficiency defences in the merger control process. Hence, merger parties have incentive to design merger in such a way to maximise its efficiency gains. The relevance of this insight for the LDCs should be evaluated taking into

[16] The Coca-Cola/Cisneros case from Venezuela is usually the case that are referred to as the counterproductive outcome of the merger control regrading economic growth of the county.

account that this approach to merger control is rather complicated and that it demands necessary expertise of the NCAs to properly evaluate projected efficiency gains of the proposed mergers. It is the lack of administrative capacity of the NCAs in the LDCs that produces substantial asymmetry of information that weakness the incentive for increasing efficiency gains of the mergers.

Merger control demands substantial resources for its implementation. Accordingly, it drains limited resources from other activities of the NCAs, like combating cartel or advocacy. This resource constraints means that the legislators and NCAs face trade-offs and that stringent merger control inevitably undermines other activities of the NCAs. This is exactly the experience of transition countries, all of whom included EU-style merger control in the portfolio. The number of cases of merger control vs cases of violations of the competition law (restrictive agreements and abuses of dominant position) provided by the share of the number of merger control cases in the total number of competition law enforcement cases of the NCAs demonstrates substantial reallocation of the NCAs resources to the merger control (Table 2).[17]

Table 2.

Share of closed merger control cases in total cases closed by the NCAs in the CEE

Jurisdiction	**2012**	**2013**	**2014**	**2015**
Albania	64.3%	86.7%	42.1%	52.4%
Bosnia &Herzegovina	48.0%	55.2%	45.2%	76.7%
Bulgaria	56.0%	57.4%	66.2%	60.0%
Croatia	45.5%	82.6%	76.2%	72.0%
The Czech Republic	93.1%	94.6%	82.8%	81.6%
Estonia	N/A	N/A	N/A	N/A
FYR Macedonia	73.3%	81.8%	78.9%	87.5%
Hungary	78.3%	64.9%	63.6%	74.2%
Latvia	52.4%	66.7%	60.9%	78.6%
Lithuania	72.5%	N/A	N/A	N/A
Montenegro	61.5%	75.0%	78.1%	87.5%
Poland	62.5%	65.8%	73.6%	84.8%
Romania	77.8%	88.6%	77.8%	58.7%
Serbia	80.2%	85.8%	81.3%	76.4%
Slovakia	72.2%	70.8%	71.0%	65.6%
Slovenia	78.3%	83.3%	89.3%	92.0%

Source: Official websites of the NCAs and direct inquiry

Accordingly, elimination or substantial limitation of merger control will provide additional resources for the NCAs to deal with violation of competition law and competition advocacy.

[17] In some transition counties like Serbia merger control effectively hijacked competition law and most of the activities of the NCA are merger control cases. This is the consequence of low notification thresholds and high fees that are charged for the notification, as substantial revenues of the NCAs due to the merger control provide no incentive to change anything. High fees that law offices charge for the merger notification, together with simple and repetitive jobs that are done contributes to the stability of this bad equilibrium.

The economy of scope argument is not relevant for this insight. This argument deals only with the enforcement of merger control by a separate authority, not by the NCA, jointly with other competition policy activities. Elimination of merger control has nothing to do with the violation of the economy of scope as less resources will be utilised, i.e. resources will be available for reallocation to the other competition policy activities.[18]

Taking into account that merger control decreases the level of FDIs and increases legal uncertainty, Gal and Fox (2014) recommends that in the case of merger control "…developing jurisdictions require advance notification. To identify such instances, a list of relevant markets and firms that fall within the above category (regarding the size of specific market) should be created and published." (p.52). This is huge administrative burden for the NCAs and knowledge based operation of the market analysis of all the industries in the economy, *ex ante* just to signal out which markets are those that are eligible of merger control.

6. Recommendations for merger control in the LDCs

6.1. *Regime I* – the least developed LDCs

There should be no merger control whatsoever. The main activities of the NCAs should be competition advocacy focused to the foreign trade liberalisation (removing both tariff and non-tariff barriers), to enable the country to reap benefits of globalisation, removing barriers to entry, i.e. creating proper market economy and removing government from the business. NCAs should be established and basic competition legislation should be in place, making the legal ground for NCAs' advocacy. As to the competition legislation enforcement, it should be focused only to the hard-core cartels with clear rules of the NCAs engagement, as abuses of dominant position are too complicated for the law enforcement in this group of the LDCs.

Barriers of entry in the LDCs are to the great extent endogenous, hence advocacy can reduce them to the great extent. The most important source of competition should be foreign trade liberalisation (including both tariff and non-tariff barriers) and liberalisation of domestic markets of non-tradables.

As to the demand for merger control in this group of countries, mergers are crucial for restructuring, increasing efficiency and for bringing FDIs to compensate for the lack of domestic savings and for the technology transfer. As pointed out by Waked (2016) the merger control should not scare away limited foreign investments that can be attracted to the LDCs on the lowest level of economic and institutional development.

There are substantial obstacles for the supply of merger control due to institutional constraints, i.e. limited administrative capacity of this group of the LDCs. The probability of errors in decisions is very high, with error type I being very dangerous for the economic growth. The government should focus itself to the reform of the institutional environment

[18] The impression of the violation of the economy of scope argument can come from wrong and out of context reading of Ghosal (2013) who specifies that „…the Agency is better off producing the full range of outputs as opposed to a restricted set" (p. 96). This is valid only under assumption that the full range of outputs is produced. Recommendation to eliminate merger control means that this assumption is violated.

and to remove all legal barrier to the competition as suggested by Cooter (1996) and Waked (2016). As pointed out by Kovacic (1998), the most effective national policies for dealing with potentially adverse competitive effects of mergers reducing legal, government imposed barriers to entry, as market power in the LDCs is frequently based on the government intervention and legal barrier to entry and there is a widespread rent-seeking network of the business elite (Rodriguez and Williams, 1994).

6.2. *Regime II* – the mid-level developed LDCs

There should be some merger control – only with very high thresholds, and rule based prohibition of small number of mergers (only those creating monopoly) should be introduced. Only horizontal mergers should be controlled and all vertical should be exempted, as well as there should be exemption of cross border-mergers from control. There should be pre-merger notification as everything else will substantially decrease legal certainty.

Demand for merger control in the case of this group of the LDCs is still very limited as mergers are crucial for restructuring and for bringing FDIs to compensate for the lack of domestic saving and for transfer of technology. That is why cross-border mergers should be completely exempted from the merger control.

As to the supply of merger control in the case of this group of the LDCs it should be based on clear, simple and binding rules. The mergers should be blocked only in case of creation of monopoly, minimising the administrative burden of the NCAs and the probability of errors in decision. There should be no analysis of the effects, no efficiency or failing firm defence, as this will complicate merger control and increase legal uncertainty.[19] The administrative burden of the NCAs should be reasonable. The most important task would be dealing with the relevant market issue, meaning that there will be incentives for database creation and introduction of economic analysis in the case management. Very high notification thresholds will reduce the number of the merger control cases, hence the NCAs could deal with the breaches of competition like cartels and abuses of dominant position and also competition advocacy which does not lose any significance on this level of economic and institutional development.

[19] The efficiency defence would bring lack of transparency and legal uncertainty, unless there are clear guidelines, like EU 2004 merger regulation, that would decrease the legal uncertainty. But this institutional solution is not appropriate for the LDCs because it is resource demanding and it has a antimerger bias. Chua (2016) recommends that in the LDCs, due to the lack of resources of the NCAs available for case-by-case consideration of efficiency the burden of proof should be allocated to the firms, i.e. merging parties. Nonetheless, there is a need to verify the claims by the firms, and due to the asymmetric information, that verification demands substantial resources of the NCAs. Although Chua (2016) considers efficiency defence very important for the LDCs, especially for the small LDCs, the arguments provided in the paper speak for no merger control at all.

6.3. *Regime III* – the most developed LDC, middle income countries

In the case of these, the most developed LDCs, there should be more widespread merger control still exclusively with pre-merger notification, but still with high thresholds. Cross-border merger should not be exempted any more from the merger control. Rule of reason, i.e. effects based merger control policy should be introduced in the merger control consideration: efficiency defence, remedies, falling form defence. Efficiencies are difficult to verify and quantify, especially by the NCAs with limited expertise. Accordingly, given the asymmetry of information in which the merging firms have more relevant information, the NCAs should analyse only the efficiency claims put forward by the merging parties. The latter should be required to substantiate such claims. Vertical mergers are still exampled from merger control.

Demand for the merger control is bigger in these countries since they have industrialised and they the market structure are more developed. Foreign trade has already been liberalised to the great extent, hence there is no substantial room for improvement in this area, i.e. for introducing more competition in that way. Market institutions have been built to some extent and legal barrier of entry have been somewhat removed, leaving little room for additional progress on that front.

As to the supply of the merger control, NCAs in this group of the LDCs have already built their expertise and experience, especially economic expertise that is needed for successful merger control. Furthermore, some databases have already been established, enabling the use of econometrics for decision in the merger control cases.

In all three cases, for the LDCs on all levels of institutional and economic development, reducing barriers to entry is good for growth not only in terms that offsetting adverse negative effects of the mergers that materialise to the lack of merger control or its leniency, but more barriers to entry is better for the growth as they provider incentives for efficiency and innovations and competition advocacy is a key mean for accomplishing it. Theoretically speaking, advocacy may be as a second-best solution, but resources otherwise allocated to the merger control will be saved and reallocated into advocacy.

Though, advocacy should not be treated as panacea, as there is a substantial number of dilemmas regarding the strategy and enforcement of the advocacy in the LDCs, especially into account Evenett (2006) suggested five crucial points by which the contention advocacy in a country should be evaluated. Nonetheless, there is an advantage of the NCA to be the central pillar of advocacy efforts, as there is substantial economy of scope between the competition law enforcement and competition advocacy. In addition, as pointed out by Evenett (2009), NCAs should stand for these interest groups, like consumers, who are in favour of competition and who that are dispersed and, due to the free rider problem cannot be well organised and effective to counter well organised interest groups who are against competition.

Rodriguez and Williams (1994) pointed out only advocacy is a way out for the LDCs – only advocacy due to undeveloped institutional framework can be effective. It should be done by the NCAs. It is only the NCAs have substantial knowledge of competition, its mechanisms, and obstacles to it. There is an economy of scope between competition legislation enforcement and competition advocacy (joint production of law enforcement and advocacy). Enforcement should be focused to the breaches of competition and advocacy to the merger effects, i.e. barriers to entry. There is much less vested interest of the NCAs contrary to the economic regulators that are sector regulators and the resistance of the political economy capture by the specific industries (either directly or via legislative and/or) executive is much smaller, hence the advocacy will effective be for competition, not for the protection of incumbent operators – an outcome that can be expected in the case of captured sector regulator. This is not to say that each and every sector regulation, being economic or off come other kind is counterproductive. Though it undermines the competition, usually by erecting barrier to entry, there could be a trade-off, like competition and stability in banking industry (Vives, 2016).

It could be assumed that mergers and cartels are substitutes from both firms and NCAs point of view. From the firms' prospective, tougher merger control provides firms incentives for firms to decrease competitive pressure from other firms by entering restrictive agreements with them (including cooperative joint ventures), as the competitive pressure cannot be avoided by the anticompetitive merger (Finkelstein, 1997). Considered in the other direction, more mergers will reduce need for restrictive agreement, because market power will be created by those unchallenged mergers. It is a choice of behaviour for the firms. From the NCAs' prospective, given resources, according to its budget constraints, can be allocated on combatting cartel or controlling mergers, Nonetheless, as demonstrated by Cosnita-Langlais and Tropeano (2013) firm's strategy could be to merger because it would create the ground for efficiency cartel (pro-collusive. i.e. coordinated merger effects) with other firms, i.e. there is a complementary of merger and cartels from the firm's viewpoint, they in terms of NCAs resource allocation, merger control and combating cartels are substitute. Using a formal model, Cosnita-Langlais and Tropeano (2013) demonstrated that if coordinated merger effect are large enough, i.e. if the post-merger cartels are easy enough to sustain, then combating cartels is more efficient policy option.

7. Conclusion

It is evident that one size does not fit all in the case of competition policy. Specific economic and institutional features of the LDCs demand appropriate solutions in competition policy, not only straightforward legal transplants form the developed countries. These solutions should be within the framework of "economic-based model" and they should take care of the main engines of growth of the LDCs. It should be taken into account that due to widespread inefficiencies in the LDCs, increase of TFP due to their removal is important engine of growth of the LDCs, at least equal to growth based on the production factors accumulation, implying that effective competition policy is desirable even for the least developed LDCs.

Due to the specific economic features of the LDCs (domestic saving, financial intermediation, missing markets, size of the firms, absorption capacity for technology transfer and barriers to entry), merger control is counterproductive to economic growth of the LDCs in the most of the cases, especially taking into account that increase of the TFP in the LDCs is based on restructuring of current business operations and mergers are beneficial for such a restructuring. Furthermore, mergers can be vehicles for the FDIs and even in the case of creating market power they can be beneficial to the investment based growth, as they increase expected returns. Accordingly, demand for merger control in the LCDs is rather low.

Supply of the merger control in the LDCs is inevitably constrained by the lack of proper institutional framework and administrative capacity, including unfavourable political and public environment, lack of available resources, especially human capital, and weak rule of law. With both demand and supply of the merger control rather low in the LDCs, hence public policy equilibrium should be restricted merger control or no merger control at al. Three of these normative equilibria, i.e. three regimes of merger control are suggested, depending on the level of institutional and economic development. For the LDCs with low level of both institutional and economic development no merger control is found appropriate, an advocacy should be the main activity of the NCAs with some activities in combatting cartels. For the LDCs in the intermediate level of both institutional and economic development, very restricted merger control is recommended, with high thresholds and rule based prohibition of small number of mergers (only those creating monopoly) with exemption of cross-border and vertical mergers from control. For the LDCs in the higher level of both institutional and economic development, somewhat restricted merger control is recommended, with exemption of vertical mergers and introduction of efficiency and failing firm defence – a departure from strictly rule based decisions in the merger control process. More research is needed on the full consequences of the application of such a scheme, especially to the other competition policy activities. Furthermore, some preliminary list of the LDCs belonging to the each of the proposed groups can be made, a step towards case-by-case consideration of each LDC.

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