The Development Trends of Competition Law Related to Crisis Situations

(doctoral thesis)

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I. Summary of the Research Tasks to Be Achieved

In times of economic crisis, competition law has an important role to help undertakings in difficulties to overcome the adverse circumstancies. These situations are the subject of this research and the main objective is to present the development trends of competition law related to crisis situations. In this context, the dissertation is based on three main pillars: cartels created by the crisis, mergers of failing firms, and state aid that can be granted in times of crisis. It also covers alternative crisis management techniques beyond competition law.

This dissertation aims to reveal the competition law tools that could be used in times of crisis, the extent to which these solutions are applicable today, and how case law could be improved. Just as different competition policies and theories change over time, or have different approaches to certain issues, so their responses to the crisis cannot be regarded as eternal.

Consequently, it is necessary to unfold in detail how cartels are viewed in times of crisis in order to draw conclusions about that how they are possible or acceptable as a phenomenon in practice, and to know if the parties involved in cartels may be treated differently when the legally infringing conduct takes place in not regular economic circumstances. Thus, the main challenge in this respect is to determine to what extent a crisis cartel can be an alternative against the difficulties faced by the sector.

Another option for dealing with competition law crises is the failing firm doctrine. Although this legal instrument is recognised in most competition legislation, it has so far rarely been applied in practice, for example at EU level. In order to understand the reasons for this, it is necessary to look in more depth at the case law that has developed, which will provide answers to the question of what is preventing the doctrine from being implemented and how companies can make more effective use of it to combat the crisis.

Nevertheless, state aid is nowadays the most popular and widely accepted tool for governments to restore the economy and thus the functioning of undertakings in difficulty. However, what is often forgotten by policy-makers is that the bail-out of businesses with excessive public funds carries the same risk of distorting competition as a badly assessed merger or cartel. In addition, irresponsible subsidies can further undermine the chances of emerging from the crisis, thus prolonging the economic recession. In order to use state aids responsibly as a crisis management tool, it is essential to explain the dangers and the basic characteristics of them.

But competition law alone will not solve the problems arising from the crisis, so other alternatives should be considered. In doing so, this dissertation will present some other

instruments, such as financial and legal instruments, that can help policy makers. In times of crisis, special and exceptional rules may be justified.

Which solution is chosen can depend on a number of factors, many of which are influenced by the approach of the given period. In this context, it is important to consider to improve existing techniques and how they can be used in ways that are more beneficial than harmful. This dissertation seeks to explore these issues.

II. Research Methods

The dissertation aims to explore the legal options and responses of competition law to the economic crisis, and therefore examines in detail the crisis cartels, the failing firm doctrine and state aids during the crisis. It also looks at alternative options outside competition law. By the end of the dissertation, it will be possible to see which methods are the most useful in a crisis and how they could be further developed and made more effective in practice.

The document presents these legal institutions and their historical development. It also investigates the relevant international and - where available - Hungarian competition law and case law, including the relevant legal literature available on the subject, and summarises the research findings.

The dissertation mentions and investigates in more detail those cases which, in the opinion of the author, are relevant to the subject.

The structure of the dissertation is as follows: the introductory section briefly explains why competition law is relevant and, as a consequence, why the present work and its results need to be summarised. The following three chapters contain the main themes of the research, which thus form the skeleton: crisis cartels, the failing firm doctrine, and state aid in times of crisis.

In the chapter on *the assessment of cartels in times of crisis*, Article 101 of the Treaty on the Functioning of the European Union (TFEU), Article 81 of the Treaty establishing the European Community (EC) and the former Article 85 are repeatedly alternated. This is because on 1 May 1999, Article 85 EC was renumbered as Article 81 and on 1 December 2009, Article 81 EC was replaced by Article 101 TFEU. These three articules of legislation are essentially equal. The legislation has been practically the same in all periods, so the numbers refer to the same content, but taking into account the legal texts referred to and used in each document and case law, the original source's phrasing is always used.

Similar reasons apply to the reference to Article 92 EC, which appears in the chapter on *State aid and crisis management*, the subsequent Article 87 EC, and the current Article 107 TFEU, which replaces the latter. The same reasoning also applies to the use of the words 'Community' or 'European Union' (EU).

Each chapter is closed by conclusions on the legal instrument in question.

The final chapter, *Further options to help economic actors in crisis*, provides a guide for legislators rather than enforcers to help alleviate the crises. However, the successful application of the techniques mentioned can determine greatly the need for further competition law instruments to deal with crises. This latter section, since it is not primarily a matter of

competition law (although there may be overlaps) but rather, as its title suggests, of other, mainly economic, financial or political considerations, has not been analysed in detail.

The concluding remarks at the end of the dissertation summarise the results of the research and include any further comments.

III. Summary of Jurisprudential Results of the Doctoral Dissertation

Legal history shows that competition law and competition policy have responded to the economic crisis in different ways, and have thus evolved continuously. The question as to which techniques or legal instruments are the most appropriate may be judged differently depending on the prevailing approach. Globalisation and increasing transnational cooperation, as well as commercial practices emerging through new technologies, are all pushing towards new solutions and new rules. In view of this, it cannot be argued that the currently established legal instruments are also eternal.

The academic results of the dissertation can be divided into four parts, of which three competition law crisis management modes are the main focus of the research: crisis cartels, the failing firm doctrine, and state aids used during a crisis. The fourth is the alternative options outside of competition law.

Crisis cartels are set up in times of crisis, especially to deal with problems of overproduction in a given economic sector. They are designed to overcome inefficiencies caused by overcapacity. However, the most efficient firms in the market must survive, therefore the rearrangement is basically solved by the competition itself. If, on the other hand, the market is not efficient enough in a crisis situation, crisis cartel agreements may be initiated. There may also be a case for this type of cooperation to let more competitors to function and to prevent large companies from dominating the market. Such cooperation can be used to reorganise a sector facing capacity problems, which can then be used to restore the conditions for competition in the industry.

It is subject of assesment, if the agreement could have any positive impact. In this context, it may be worth considering that, in the short term, there may be less price competition in order to increase competition in the future, but in the long term, consumers may get the benefits resulting from the reorganisation, for example through better quality products and more intense price competition. Though, it is a competition policy issue how to deal with crisis cartels.

Nevertheless, there seem to be more arguments against than for them, and they can cause more damage than benefits. The *New Deal* policies introduced in the United States of America also showed that they tended to prolong the recession by reducing consumption, employment, investment and innovation. There are not many examples of crisis cartels being authorised in the EU either, so the *Stichting Baksteen* and *Synthetic Fibers cases* are special in this topic, but the *Irish Beef case* suggests that there is no room for this kind of cooperation.

Another issue that arises in the context of cartels during the crisis is the question of fines, i.e. to what extent the circumstances of a sector in economic difficulties can be considered as a mitigating factor. There seems to be a chance of this, but it is not a guarantee, as the Commission's case law has been mixed in its assessment of these situations, for example in the *Heat Stabilisers case*, where such fact was taken into account positively, but in the *Calcium Carbide case* not. However, later practice has shown that the Commission is sensitive to crisis circumstances, as was in *Bathroom Fittings and Fixtures case*, although this has not yet been reflected in decisions taken at the time of corona virus.

Undertakings will have to choose a less anti-competitive solution in any reorganisation, but it is unlikely that they will be able to prove that the negative effects of the cartel are largely outweighed by the benefits. Instead, agreements covered by block exemption regulations may provide an alternative. In view of this, specialisation, mergers and possible state aids may nowadays be considered to solve such sectoral problems. In the latter case, it also must be taken into account to not distort the market significantly.

Overall, cartels are not recommended under any circumstances, even in times of crisis.

A more realistic alternative to cartels is the doctrine of the failing firm. If an economic actor in a bankruptcy or near-bankruptcy situation is unable to finance its debts and other costs, it can merge or sell off businesses and subsidiaries under the failing firm doctrine, thus ensuring its survival and profitability. Thereby, it will be possible to avoid liquidation process and the additional costs and losses. The practice shows that the competition authorities rarely recognise that the conditions for a defence are fully met, and therefore the application of the doctrine cannot be considered general. In order to be applicable, it must be the only way for reorganisation to take place in the absence of any other solution. The problem with this condition is that it is very difficult to predict which method would be the best choice in terms of reorganisation and competition.

In the context of a defence based on a failing firm, the notifying parties are not in an easy position to prove the conditions. The *Bertelsmann/Kirch/Premiere case* shows that it is not sufficient to argue in favour of the doctrine in general, and this is even more so in the case of a failing business. As the *Newscorp/Telepiú case* shows, it must be invoked at the begenning of the proceedings, which demonstrates the seriousness of the defence and the intention to rely on the doctrine.

For banks, the requirement to meet the conditions may be more lenient, as was seen *in United States v. Philadelphia National Bank case*, but in practice this has not resulted in more

successful mergers based on the doctrine. In the EU, the application of the doctrine is also hampered by the fact that, instead of applying the conditions of the failing firm defence, the merger is approved by the public interest under *the Regulation (EU) No 806/2014 on the Single Resolution Mechanism*.

New Zealand's legal practice suggests that approvals based on the public good or public interest may favour the wider application of the doctrine, but in consideration of the different traditions of countries and legal systems, probably this may not be accomplishable everywhere without problem.

In relation to the fulfilment of the conditions, the EU's strict practice has identified certain characteristics which, if met, make it possible to argue effectively, or at least more likely, that the conditions of the doctrine are real.

A) The allegedly failing firm would in the near future be forced out of the market because of financial difficulties if not taken over by another undertaking:

It is essential that the business is no longer able to finance its costs, and in the case of a failing business, the parent company cannot be expected to do so. The latter's ability to remain in the market need not necessarily be at risk, but there must be no justifiable expectation of further capital losses. The operation must be loss making, which in the *NYNAS/Shell/Harburg Refinery case* covered the last 5 years, but on the basis of the *Aegean/Olympic II case* it was sufficient to have been so for the last 3 years. A cost-benefit analysis is important to show that it is not worthwhile to keep the company alive, and should include that the costs of closure are lower than keeping the market actor alive. Furthermore, in the case of a failing business (subsidiary), it is better that its liabilities are no longer borne by the parent company.

According to the *Aegean/Olympic II case*, even a reduction of assets by a third could justify the existence of the condition, but a reduction by half would further support this. Other factors that may be relevant are redundancies and a 30% reduction in the company's turnover over the last three years. Further evidence may be provided by an independent auditor's assessment of the company's financial situation, which should show that it will continue to make losses in the future. Prior attempts at reorganisation, such as downsizing, are important, but further measures would no longer be effective. Evidence of unsuccessful loans or very unfavourable loan terms may also strengthen the condition.

Notifying parties must also show that they have tried to find alternative purchasers. For example, based on the *Newscorp/Telepiú case*, it is in any event recommended to invite competitors to bid and to publish a public invitation (advertisement) as well as to demonstrate that it was unsuccessful.

B) There is no less anti-competitive alternative purchase than the notified merger:

As stated in the *Rewe/Meinl case*, it is necessary to prove with whom the parties negotiated and why the deal failed. As regards the absence of any substantial interested parties and the fact that the necessary bidding steps were taken, the same applies as in paragraph A, according to which the notifying parties can show that the competitors were unsuccessfully contacted and that no response to the public invitation was received. However, even here a single attempt is not sufficient. In the *Aegean/Olympic II case*, this has to be repeated several times and the unsuccessful sales attempt must cover a period of at least 2 years. Sending out questionnaires to potential buyers on how they would still be willing to make an offer could also be considered. It is important that all this is realistic, in other words the bidder needs to show a real intention. The best way to demonstrate the purpose is to have a written letter of intent, but correspondence on the subject is also an option.

C) In the absence of a merger, the assets of the failing firm would inevitably exit the market:

If the bids and questionnaires show that no one is seriously interested in the assets, and this is proven as mentioned in paragraph B), then this condition is almost automatically fulfilled. However, in the case of a potential fleet of vehicles, it may be questionable to what extent anyone would want to rent or buy them, given that they may be available cheaper on the market. It is also important where they would want to use these assets, in the relevant market or elsewhere, as was the question in *Aegean/Olympic II ca*se.

Although the market share acquisition requirement in the *Kali+Salz/Mdk/Treuband case* was removed by the *BASF/Eurodiol/Pantochim case*, it appears from the *Aegean/Olympic II case* that it still plays an important role in the application of the doctrine, (or at least may make it easier to prove the condition) that, in the absence of any other interested party, only the other party to the merger would also acquire the market share of the failing firm, and this would not cause a greater degree of market distortion than if the merger had not taken place. It is also worthwhile to carry out a preliminary assessment and market research to establish that it is unlikely that a new entrant will enter the market in the near future. In such a case it is particularly important to examine barriers to entry and the intention to enter.

Other special circumstances may also help to meet the conditions. The economic crisis in a particular country or sector-specific problems in a particular sector can all be taken into account and may strengthen the fulfilment of the above 3 conditions, but this does not guarantee proof of a successful defence, as only the situation of the undertaking has to be examined. As stated in the *Aegean/Olympic II case*, a sectoral problem due to an external factor cannot be temporary but must be permanent. In the case in question, there has been a continuous fall in demand over

the last 3 years, which reached a fall of 25-30% at the end. In such a case, a 3-year period of decline may be sufficient to justify the conditions.

In the case of a business that fails in a crisis, there is also the question of whether the parent company has better performing businesses that are worth maintaining. In the *Rewe/Meinl case*, the parent company deliberately split its profitable and loss-making business, therefore the doctrine could not be established.

The relevance of a brand and reputation can also be an advantage, as happened in the case of *Aegean/Olympic II* and *JCI/FIAMM*. In the latter case, it was noted that the benefits, not just from the brand but from the reputation too, would dissappear from the market.

In addition to the above, referring specific capacity issues can make a major contribution to successful protection. In the *NYNAS/Shell/Harburg Refinery case*, the disappearance of the company or business concerned would have led to a significant reduction in supply capacity, with price increases, which could not be effectively replaced by foreign (third country) supply. In the case, there was also a letter of intent that, in the absence of the merger, the acquiring company would further increase capacity in order to increase its volume of activity. Also in the *BASF/Eurodiol/Pantochim case*, there would have been a serious shortage of production without the merger, as capacity was already scarce on the market and the acquirer had indicated that it wanted to expand its plants rapidly and would start construction if it did not succeed in acquiring the assets of the other two companies. In addition, the time-consuming nature of the construction would have prevented the new capacity from coming on stream in a short period of time. Furthermore, it was also found that not only it could not be expected that they would sell larger quantities in the future, but also that third countries would fill the shortage, as prices within the Community were already lower than outside the Community. By contrast, in the *Saint-Gobain/Wacker-Chemie/NOM case*, the Commission found that competition would have been less harmed in the absence of the merger and that even if capacity had been closed, the market structure would probably have been less harmful to competition than the merger. As a consequence, although a higher price increase could have been expected, higher prices could make the Community market attractive for imports, which could have replaced the firm that would have been lost.

This shows that in an economic crisis there may be more opportunities to apply the doctrine, but this does not mean automatic approval.

The features discussed above may help to implement the doctrine, but relevant foreign and Hungarian practice does not include many cases, and even fewer successful procedures. The competition authorities are extremely strict in their assessment of the existence of the

requirements, which almost hampers the existence and application of the legal instrument. The prevailing view is that a softer interpretation of the conditions is not justified, even in times of crisis, because it would harm the economy and consumers by reducing competition and slowing down the recovery. An exception to this may be New Zealand, where conditions appear to be more lenient. In extreme cases, the cumbersome procedure could lead to undertakings trying to overcome difficulties on their own, either by forming price cartels or by allocating customers among themselves.

The doctrine-based defence is also hampered by the fact that, where a concentration cannot be approved in its original form, competition problems can often be remedied by conditions or commitments. These may be structural or behavioural. The former may include divestiture or reduction of shareholdings, while the latter may include compliance with or refraining from certain behaviours, such as terminating contracts or granting access to infrastructure. A combination of the two may also be possible, so-called *hybrid solutions*. In the *Rewe/Meinl, JCI/FIAMM case* and the *Newscorp/Telepiú case*, the Commission finally cleared the transaction through commitments. Nowadays, there seem to be few cases (at least at Community level) where a notified merger is not cleared. The Commission has cleared more than 3,000 mergers in the last decade, and in 90% of cases unconditionally, while in the same period it has prohibited only a few mergers. In EU practice, the Commission's preference is mainly for divestiture. However, national competition authorities are also much more open to behavioural remedies. A possible explanation may be that it may become more difficult to find suitable buyers at national level, which reduces the effectiveness of the remedy of divestiture. Nevertheless, in the case of divestment, it is questionable how successful this can be in an economic crisis, as it is unlikely that other businesses in difficulty would want to incur unnecessary costs, not to mention the uncertain market environment. This can make it difficult to identify potential acquirers. In addition, adverse market conditions may make the relevant competition authorities uncertain as to whether the parties will be able to find a suitable buyer.

In addition to the remedies, the fact that the fulfilment of the conditions requires a thorough investigation, which may lead to a prolongation of the procedure, which in turn may result in the termination of the failing undertaking before the merger is cleared, e.g. if a creditor firm initiates liquidation proceedings during the assessment, does not favour the practical implementation of the doctrine. Referrals between competition authorities can also be lengthy, so the possibility of a simplified procedure and the possibility of being allowed to exercise control rights prior to the clearance decision may be more important. However, the problem arises that all of these can be done if the circumstances justify it, but it is questionable to what

extent competition authorities will consider it justified to allow them without a deeper examination of the doctrine's conditions, which would require a longer process and analysis. In view of these difficulties, it is more likely that the parties will seek to remedy the problem in some way, including by initiating prior consultation in order to ensure a quicker and more successful procedure.

In addition to the above, the *Deloitte & Touche/Andersen UK case*, the *Ernst & Young/Andersen Germany case* and the *Ernst & Young/Andersen France case*, as well as the *KLM/Martinair case*, may serve as a basis for considering how a merger of a company in difficulty can be compatible with competition law. The first three cases are based on the fact that the loss of *Andersen's* reputation led to the failure of the company, which provided the basis for approving the merger. Furthermore, in markets that bear oligopolistic features but whose practical significance is irrelevant - because customer acquisition is decided in a competitive bidding process between them - the chances of a successful merger (involving a failing company) are also higher.

In the *KLM/Martinair case*, the transaction was approved for a financially troubled company that was not otherwise in a state of near bankruptcy, nor was the strict conditions of the doctrine applied.

Finally, the benefits regarding efficiencies may also replace the need for the failing firm doctrine, in particular the reference to capacity problems, as arised in the *Outokumpu/INOXUM case*.

These decisions may be good examples of how, in certain situations, competition authorities can take into account the difficult financial situation of a company in a merger without strictly applying the conditions of the failing firm doctrine.

State aid can also provide an alternative to help struggling undertakings get back on their feet. However, rescue and restructuring aid is always fraught with doubt, especially the latter. This type of support should only be granted with great caution and only if the distortion of competition is sure to be outweighed by the benefits of staying in business. Restructuring for reasons of rationality and efficiency often entails a reduction in activities and therefore may decrease or disappear capacity. This in turn causes a cutback in the workforce. In view of this, attention must be paid, inter alia, to the problems associated with the cessation of a given activity, the consequences for suppliers and consumption, and the need to avoid the emergence of a monopoly or oligopolistic situation. On this basis, one of the main conditions is to avoid or reduce social distress, one of the means of which may be, for example, to provide the

redundant workers with social benefits, which the Commission does not consider to be state aid within the meaning of Article 107 (1) TFEU.

If the financial support by public money is qualified as state aid under EU law, it must in principle be notified to the Commission before it is implemented. It is important that companies should only have access to public money once they have exhausted all market opportunities and it is indispensable for the achievement of the objective of common interest. Aid can therefore be granted with obligations that do not allow large companies to obtain public funds without sacrifice and without justification, therefore burden-sharing is also essential. In such cases, the company concerned must also contribute some of its own resources to restore viability. The financial resources of the owners of the company and, in the case of a subsidiary, of the parent company must also be taken into account. The extent to which a company can benefit from this type of aid and the degree of the contribution to make to restore its viability may depend on the size of the undertaking mainly. The aim is to ensure its future viability, but with the smallest state intervention as possible in order to avoid distortions of competition. Consequently, the 'first and the las time' principle must be fully respected. The use of measures to limit distortions of competition may even prove useful in order to reduce further potential adverse effects of the aid.

Insolvency procedures should also allow viable undertakings to stay in the market, jobs to be preserved and suppliers to keep their partners. Of course, owners must also be careful to invest their funds in viable businesses. EU competition law provides the conditions for appropriate state aid decisions, but they need to be considered carefully.

The EU has considerable experience in dealing with economic recession since the 2008 financial crisis, and has been able to act quickly and effectively to address the challenges posed by the spread of the coronavirus, wherein competition law has played a key role, including by prioritising state aid. The Commission has previously focused on rescuing operators of financial services to prevent the adverse effects of the sector's problems from spreading to other parts of the economy. It has therefore introduced a faster and more flexible procedure.

The focus of the EU's response to the pandemic crisis has been to restore the functioning of its entire single market by reason of certain border closures and other restrictive measures. An important difference between the two crisis responses is that the EU also helped businesses and the economy to recover from the situation caused by the coronavirus by borrowing at EU level, and as a result additional public money can be used or approved in the form of state aid. In contrast, during the financial crisis, this could only be done at Member State level and it was up to each country to decide whether or not to seek specific financial assistance. It can be said

that the EU has seen state aid as the main solution to the problems of both economic recessions. This can also be observed in the measures taken to mitigate the economic consequences of the Russian-Ukrainian conflict. Nowadays, public aid granted under Article 107 (3) (b) and (c) TFEU is the main instrument used to revive the economy and keep businesses alive.

The prevailing view is that the rules cannot be lenient and must be strictly applied even in times of crisis. On the contrary, there seems to be a change in the EU's attitude and flexibility in its approach, for example, for the first time, Member States can be temporarily exempted from the provisions of the *Stability and Growth Pact* and there were more flexible rules during the financial crisis. In the context of the temporary crisis framework issued during the Russia-Ukraine conflict, Executive Vice-President VESTAGER said that they intend to be 'flexible' in the regulation of state aid in times of crisis.

However, when granting state aid, great care must be taken to avoid irresponsible distribution of public funds and to ensure that their negative effects do not further distort market conditions. For example, during the financial crisis, no state aid was authorised for *Malév*, while during the COVID-19 pandemic, the €199.45 million bailout for the Italian airline *Alitalia* was approved, on the grounds that the subsidy would compensate for losses suffered as a result of the pandemic. According to the Commission, the Hungarian company could not demonstrate its ability to survive on the market and, as a result of the investigations carried out against *Alitalia* for previous aid, it found that the loan granted to the airline constituted incompatible aid. On this basis, the Italian company should have been ceased to exist even earlier, and the amount authorised for the coronavirus was only used to keep a non-viable company afloat with public money.

In the light of the above, it would be worth considering a more 'flexible' assessment of the failing firm doctrine as a crisis management tool, which could facilitate the merger of more financially distressed firms. In this case, the market itself could remedy the economic problems that arise without the need for direct state intervention. This may also be worth considering, as misjudged public support could deepen the economic crisis and contribute to the survival of businesses that are unviable in the long term. Furthermore, such supports will increase the budget deficit of the state concerned, which will foreshadow austerity measures in the future, such as the introduction or increase of taxes, which could trigger another recession, thus prolonging the recovery from the crisis.

An economic crisis cannot be solved by competition law alone. States may not be equally affected by the challenges of recession. While one country may have a greater role as a creditor,

another may face additional difficulties on the debtor side. This increases inequality. In the EU, another problem can be that the euro area is unable to effectively reap the benefits of export growth from the devaluation of its national currency. As a consequence, it cannot stimulate consumption and investment in this way. There is also the obligation to maintain a budget deficit of 3 %, which cannot be increased. This could lead to a policy of austerity, for example by reducing spending, raising taxes and cutting wages, which would also entail redundancies. Austerity does not help to recover from the crisis, because it may impede consumption, production and investment. This could create a negative spiral.

Therefore, it is necesarry to have appropriate, swift and effective action. It is important, for example, to control excessive risk-taking banks and to avoid too high corporate and household indebtedness. In this respect, regulations could include, among other things, the establishment of crisis management strategies by companies and the provision of dedicated resources for such goals.

It is crucial that neither the state nor individual economic actors - in particular financial institutions - should just 'take' in the form of taxes and interest, but also put it back into the economy, for example through lending and investment.

Coming out of recession can put individual states and market players in a better position. As a result, it is not irrelevant the degree of competitiveness that is possible to achieve in the global space after the crisis. This includes also how capital and labour can flow in ways that promote efficiency.

On this basis, it is important to continuously study the market, including external factors such as changes in raw material and other commodity prices, inflation and transport costs, as these can affect the functioning of the economy.

The role of central banks is particularly relevant, as their base rate and public statements can reassure markets and avoid worsening the crisis. It is highly important to have credible communication and transparency in operations. Without that it may trigger the panic and the planned actions to stop that will not achieve the desired effect. It can be said that the first priority is to restore confidence in the financial process. Unconventional measures and programmes by central banks are all stimulating economic growth.

In addition to central banks, the states can make a major contribution to alleviating the crisis through their active intervention and by changing the rules in certain areas of law. It is worth reiterating that, in such a situation, rapid response solutions such as payment moratoria and reorganisation options are particularly important. Furthermore, the recovery of the economy requires the preservation of jobs and the restoration of employment, which can be encouraged

by various tax incentives. Some infrastructure improvements can also help to come out from crisis. Priorities include protecting families, preserving jobs, targeted tax cuts and boosting investment programmes.

The state can still act as an incentive to restart the economy through active support programmes and support funds. Some favourable lending schemes and investment grants are all working in this direction. In such cases, there is scope for a shift towards innovation, such as the preference for certain environmentally friendly solutions in the name of the fight against climate change. These state subsidies may be concern by the point of view of competition law, but there are sectors, such as banking, whose collapse could create even more serious problems for the economy.

The status and society of a country can have a big contribution to find what instruments are used, but this does not substitute for assessing and analysing the economic situation on a case-by-case basis. Careful consideration by policy makers is needed in deciding what solutions to adopt to combat the crisis, because, in addition to individual political interests, the extent to which a given state or sector will be competitive once the economy has been restarted is not irrelevant.

Overall, the situation of countries and crisis management tools are constantly changing and adapting to the (contemporary) circumstances. The same applies to the evolution of competition law in relation to crisis situations. What is acceptable today will certainly change in the future in the light of emerging practices and challenges. In addition, the identification and application of new and better techniques can only be achieved through constant monitoring of the market, which is a major responsibility for both legislators and practitioners.

IV. List of Publications

BARNÓCZKI Dávid: The Most Frequented Unfair Practices in the Beer Market in the EU and Hungary, *Iustum Aequum Salutare*, 2023/2.

BARNÓCZKI Dávid: The unfair practices of the big tech companies and the alternatives to repel their power, *Külügyi Műhely – Gyorselemzés sorozat*, 2023/2.

BARNÓCZKI Dávid: Sberbank Europe AG, or Enough Big to Fail, *www.versenyjog.com*, 2023.

BARNÓCZKI Dávid: State Aids and Crisis Management, *Bibó Jogi- és Politikaitudományi Szemle*, 2021/1.

BARNÓCZKI Dávid: Dominant Positions Created by Concentrations, *www.versenyjog.com*, 2021.

BARNÓCZKI Dávid: Saving of Companies in Difficulty in the European Union, *Pázmány Law Working Papers*, 2021.

BARNÓCZKI Dávid: Goals of the Competition Law, *Pázmány Law Working Papers*, 2020.

BARNÓCZKI Dávid: Assessment of the Cartels at Times of Crisis, *Pázmány Law Working Papers*, 2019.

BARNÓCZKI Dávid: The Rescue of the Fusions, *Pázmány Law Working Papers*, 2019.