

### *Summary*

Conglomerate mergers are traditionally considered to be associations of such economic entities that are not participants in the same market, but operate in related or otherwise interconnected markets.

The most typical related markets are upstream and downstream relative to each other markets. In this regard, the analysis of conglomerate effects is often similar to the analysis of vertical effects.

In practice conglomerate mergers are quite rare. At the same time, as a rule, possible negative effects arising from the implementation of such transactions are associated with the presence of a market power of the acquired company in the relevant commodity market.

Since conglomerate effects cause significantly less competition concerns than horizontal effects and are often associated with increased efficiency in the relevant markets, in practice they are generally not obstacle to approving deals, but are accompanied by behavioral remedies to minimize possible negative effects.

### *Conglomerate effects of mergers*

Conglomerate mergers are traditionally considered to be associations of such economic entities that are not participants in the same market, but operate in related or otherwise interconnected markets.

The most typical related markets are upstream and downstream relative to each other markets. In this regard, the analysis of conglomerate effects is often similar to the analysis of vertical effects. For example, there was a transaction in which a company that organizes cargo transportation by rail purchased 100% of the shares of a company that operates in the market for temporary use (lease, etc.) of railway transport infrastructure. When approving this transaction, the analysis of the possible effect on the state of competition in the market of the first company's functioning was carried out, taking into account the market power of the second

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<sup>1</sup> The contribution was prepared by the FAS Russia jointly with the Association of Antimonopoly Experts

company. As a result, the transaction was approved, subject to remedies, according to which the parties to the transaction were required to ensure non-discriminatory terms of interaction with legal persons, both part and not a part of the group of persons of the acquirer, when concluding and executing contracts related to the provision of temporary use of railway infrastructure<sup>2</sup>.

Special attention should be paid to the effects of mergers on competition in related markets between companies, one of which provides the capacity or infrastructure for the operation of related markets. These effects are particularly important in the digital industry, where digital platforms provide a kind of infrastructure for the functioning of a number of markets.

Separately, markets can be identified that are linked because the corresponding products are complementary in production, for example one of the products is a by-product of the production of another product. A merger of companies that each specialize in one of these products may have a great potential in terms of increasing efficiency in the market of each of them, which can outweigh the negative effects of such merger on competition.

Related markets include not only markets with vertical relationships, but also other related markets, in particular markets for complementary products. When analyzing mergers that may have an effect in related markets the important question is whether at least one of the parties to the transaction has market power, which in the case of a merger could potentially allow such a company to restrict competition in related markets through practices such as bundling sales or imposing one product on the purchase of another.

In practice conglomerate mergers are quite rare. At the same time, as a rule, possible negative effects arising from the implementation of such transactions are associated with the presence of a market power of the acquired company in the relevant commodity market. As a result of the transaction, the acquirer gains market power in the complementary product market, which can potentially lead to limited competition in the acquirer's main market. However, in all such cases the negative effects resulting from the transaction were not considered as an absolute obstacle to its approval, but it was subject to remedies.

For example, when approving a number of transactions in which economic entities – manufacturers of railway, aviation and other military equipment acquired rights that allow them to perform the functions of the executive body of economic entities that repair and maintain the relevant equipment and have market power in these commodity markets, it was taken into account that the group of persons of the

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<sup>2</sup> Decision of the FAS Russia No. AG/50487/14 of 09/12/2014 based on the results of consideration of the application of "Transneftkhim" JSC: <https://br.fas.gov.ru/ca/upravlenie-regulirovaniya-transporta/ag-50487-14/> (Russian version only)

acquirer as a result of the transaction will also have market power in the repair and maintenance market, i.e. in the market of complementary goods. Taking into account possible negative effects, transactions in all such cases were approved with remedies aimed at leveling them. In particular, the parties to the transaction were required to fulfill all previously concluded contracts, provide repair and maintenance services on non-discriminatory terms to business entities, that are both a part and not a part of the same group of persons as the acquirer, as well as get approval with the Competition Authority the re-profiling of the activities and production capacities of the acquired company and changes in prices for repair and maintenance services<sup>3</sup>.

Conglomerate mergers are also considered to be combinations of assets of companies that are not related either by consumption of the corresponding goods or by production. Such mergers combine the assets of companies that are not related to each other by production or production process, as well as related to unrelated business areas (industries). This conglomerate type of mergers, which does not provide for any combination of competitors or the existence of a vertical connection between the seller and the buyer, both corporate and contractual, but actually mediates a certain form of diversification of economic entities in completely unrelated areas of market activity, is more difficult to control by antimonopoly bodies, since at first glance this form of control is not able to have a significant impact on the structure of the relevant market, nor on the actual state of competition in it.

An example of such a transaction considered by the FAS Russia is the acquisition by a manufacturer of weapons and ammunition of shares in a company that collects and purifies water and at the same time has market power in the relevant market<sup>4</sup>.

In this case, the decisive factor in the formation of actual market concentration under conglomerate control is the increasing financial component that is acquired by the parties to the conglomerate merger that have concluded such an agreement. A significant increase in the financial strength of the combined enterprise allows it to expand its range of activities and acquire additional leverage over its competitors in various relevant markets. Using cross-subsidization of one market at

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<sup>3</sup> Decision of the FAS Russia No. AC/54190/13 based on the results of consideration of the petition of Corporation "Uralvagonzavod" JSC: <https://br.fas.gov.ru/ca/upravlenie-kontrolya-promyshlennosti/2ebc7a87-54f7-40d1-8d95-12e8a4289d06>, Decision of the FAS Russia No. AC/54196/13 based on the results of consideration of the petition of Corporation "Uralvagonzavod" JSC: <https://br.fas.gov.ru/ca/upravlenie-kontrolya-promyshlennosti/eabc7fcf-343b-4899-a502-81910dae0eee/>, Decision of the FAS Russia No. AD/33644 / 13 based on the results of consideration of the application of "United Aircraft Corporation" JSC: <https://br.fas.gov.ru/ca/upravlenie-kontrolya-promyshlennosti/f09d0527-4854-48c3-8ba9-090b59706270/>, etc.;

<sup>4</sup> Decision of the FAS Russia No. AC/54191/13 based on the results of consideration of the petition of "Tula cartridge plant" JSC: <https://br.fas.gov.ru/to/tulskoe-ufas-rossii/6852--8/>

the expense of another, on the one hand, the company can allow to implement practices aimed at squeezing out competitors or creating barriers to entry to the market, but, on the other hand, it can allow to implement investment projects aimed at developing the market. The advantages of a combined conglomerate enterprise over its actual and potential competitors are particularly noticeable if one or both of the merged enterprises had market power in the relevant markets prior to their merger.

In addition, it is impossible to ignore the specifics of trademarks produced or distributed by the merging enterprises, the specifics of the product range and production portfolios of enterprises, which can have a significant impact on limiting competition, which is also most relevant in relations between suppliers and distributors.

We should also note mergers that occur between companies that are not competitors, not because they do not intersect within the product boundaries of the market, but because they participate in different geographical markets. Mergers, acquisitions, or other forms of transactions involving transnational corporations should be closely monitored in all countries where these corporations do business, since such transactions, whether carried out exclusively at home or abroad, may have direct or indirect consequences for the functioning of other divisions of economic units, including the elimination of potential competitors outside the geographical boundaries of the market identified in the merger analysis. In the Russian Federation, after amendments to the Federal Law of 26 July 2006 No. 135-FZ "On Protection of Competition" (the "Third Antimonopoly Package") in accordance with the literal interpretation of Part 2 of Article 3 of the Law on Protection of Competition, almost all transactions with a foreign element (both transactions on economic concentration and other agreements or coordinated actions) fall under the provisions of Chapter 7 of the above-noted Law, if they reach turnover or assets thresholds stipulated by law.

Since conglomerate effects cause significantly less competition concerns than horizontal effects and are often associated with increased efficiency in the relevant markets, in practice they are generally not obstacle to approving deals, but are accompanied by behavioral remedies to minimize possible negative effects.