

Секция «Английский язык и право (на английском языке)»

Minority shareholdings and restriction of markets' competitiveness

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1. There are two different perspectives from which minority participation in companies' equity capital may be analyzed.

The classic perspective is that of improved protection of minority shareholder rights against a dictatorship of the majority. The second perspective is that a transaction which involves the acquisition of shares in fact provide the minority shareholders with a hardly detectable anticompetitive advantage.

2. The basis for applicability of the regulation lies in the concept of shift of control whereby control is conferred when an undertaking exercises decisive influence over another.

3. The European Commission for competition recognizes, that minority shareholders may exercise sole or joint control either de jure or de facto through a qualified minority.

4. Sole control can be established when specific rights exist that enable the minority shareholder[s] to determine the strategic commercial behaviour of the target company. A legal joint control by minority holders is established when there are one or more shareholders who are able to exercise sole control by veto rights over the most important decisions of the company.

5. In exceptional circumstances the European Commission for competition can establish the existence of a de facto sole or joint control, which is based on the existence of strong common interests and strategies for the future of the joint venture.

Источники и литература

- 1) Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.
- 2) Commission notice on the concept of concentration under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings.
- 3) Russo, Francesco, Abuse of Protected Position? Minority Shareholdings and Restriction of Markets' Competitiveness in the European Union. Amsterdam Center for Law & Economics Working Paper No. 2006-12.
- 4) Commission Decision of 22/12/1998, Ericsson/Nokia/Psion/Motorola [1998] IV/JV.12.