Can be EU Competition-law Concept of Undertaking Lesson for Bankruptcy Law?

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Summary: The article deals with the relevant feature of the concept of undertaking in European competition law, particularly its definition as economic unit and possible transplantation of this concept into bankruptcy law. The main features of this concept that are related to parent liability and economic continuity. Furthermore the concept of parental liability is compared to concept of beneficial owner in European anti-money-laundering legislation and the concept of related party in Slovak insolvency law.

Keywords: competition law, bankruptcy law, joint and several liability, single economic unit, beneficial owner, related party

1. Introduction

Indeed, bankruptcy law shall be tool for "healing" entrepreneurial environment that provides as high recovery of creditors' claims as possible. Bankruptcy law, and civil and commercial law in Slovakia as a whole as well, is based on identification of bankrupting debtor and its assets that fall into estate subject to bankruptcy procedure. Similarly, judicial enforcement of civil and commercial claims is restricted to debtor's assets, only. This approach could deprive creditors from full or higher recovery of their claims in cases when debtor is a part of greater corporate structure and this structure holds enough assets to both, compensate debtor's liabilities and continue in economic activity. Normally, all legal persons that are part of corporate structure operating with single corporate identity are perceived as single entrepreneurial unit. It is not rare if difference between legal person's department or branches and its subsidiaries is merely legal without any economic, managerial or factual consequences. However, satisfaction of claims arising from economic activity of branch and subsidiary in the case of its insolvency is dramatically different. Therefore there is a question if it could be possible to introduce some kind of joint liability of the whole corporate structure in commercial, judicial enforcement and bankruptcy law. Furthermore, such

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enlargement of group of persons liable of debts and assets that may be subject to judicial enforcement can also can lead to incentives not to commit crimes connected with bankruptcy because the main motives for such crimes (escape from liability from debts, damage to creditors) can became ineffective.

One of the easiest was for evolving new legal instrument in the legal environment is its "transplantation". This "transplantation" can be directed form other legal environment, from other country, or from other sphere of law (or combination of them).

If we are trying to find workable concept of liability of corporate structure for its non-compliance with law, concept of undertaking developed in European competition law can serve as an example. This concept can rely on decades of years of application and substantial amount of case-law. Therefore this article will particularly focus on possibility of "transplantation" of competition-law--like liability of undertaking into commercial, judicial enforcement and bankruptcy law.

2. Concept of undertaking in European competition law

The concept of undertaking for the purposes of competition law (agreement restricting competition and abuse of dominant position) is not explained in the TFEU itself (Art. 101[1] and 102[2]). However non-existence of legal explanation of this notion in the primary law is not absolute. Articles 54 and 55 of the Agreement of European Economic Area (EEA Agreement) contain corresponding provisions to Articles 101 and 102 TFEU. For the purposes of their application Protocol 22 Concerning the Definition of 'Undertaking' and 'Turnover' (Article 56) was attached to the EEA Agreement. Article 1 of Protocol 22 provides legal definition of the notion "undertaking" for the purposes of EEA competition law: "an 'undertaking' shall be any entity carrying out activities of a commercial or economic nature". Although this definition explains notion "undertaking" for procedural and competence purposes only, it is not prevented to use it for subject-matter purposes, too. It must be noted that such definition is in line with

[1] The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market (…).

[2] Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States. (...)

well-established case-law of the CJ EU in this issue (and which is applicable in the EEA as well).

The starting point for definition of undertaking in European competition law under the settled case-law is the concept of an undertaking that covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.[3] The concept of an undertaking, in the same context, must be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal.[4] The concept of undertaking may be de-personalized since undertaking corresponds to the unitary organisation of personal, tangible and intangible elements.[5]

The description of "undertaking" constituted by several natural or legal persons is necessary for finding persons who are liable (jointly and severally) for debts arising from fines imposed for competition infringement. Liability of persons responsible for actions of the undertaking does not stem for their personal involvement in illicit behaviour but from they responsibility of the actions of undertaking as a whole. In *Elf Aquitaine* the General Court explained that "it is not a relationship between the parent company and its subsidiary in which the parent company instigates the infringement or, a fortiori, the parent company's involvement in the infringement, but the fact that they constitute a single undertaking for the purposes of Article 81 EC that enables the Commission to address the decision imposing fines to the parent company of a group of companies".[6] Therefore parent company was "personally condemned for an infringement which it is deemed to have committed itself because of its economic and legal links with [its subsidiary], which enabled it to determine the latter's conduct on the market."[7] Such concept thus does not not breach the principle that penalties should be applied only to the offender, because companies responsible for acts of the undertaking are offenders themselves without being directly active in wrongdoing.[8]

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3 Eg. Judgment of 28 June 2005 02 P Dansk Rørindustri and Others/Commission, C189/02 P, C202/02 P, C205/02 P to C208/02 P and C213/02 P, EU:C:2005:408, (hereinafter "Dansk Rørindustri") par. 112.

4 E.g. Judgment of 10 September 2009 Akzo Nobel and Others/Commission, C97/08 P, EU:C:2009:536 , par. 54 and 55, Judgment of 14 December 2006 Confederación Española de Empresarios de Estaciones de Servicio, C217/05, EU:C:2006:784, par. 40, and Judgment of 15 September 2005, DaimlerChrysler v Commission, T325/01, EU:T:2005:322 , par.85.

5 E.g Judgment of 3 March 2011, Areva and Others/ Commission, T-117/07, ECLI:EU:T:2011:69 (hereinafter "Areva"), par. 71

6 Judgment of 17 May 2011 Elf Aquitaine/European Commission, T-299/08, EU:T:2011:217, (hereinafter "Elf Aquitaine"), par. 180.

7 Elf Aquitaine, par. 180.

8 Elf Aquitaine, par. 181.

The general principle for building up set of natural and legal persons liable for infringement committed by particular undertaking is that parent companies are responsible for actions of their subsidiaries. The conduct of the subsidiary may be attributed to the parent company in particular where that subsidiary, despite having a separate legal personality, does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company[9] , due to the economic, organisational and legal links between those two legal entities[10]. In order to attribute liability to parent company for behaviour of the subsidiary the Commission cannot merely find that the parent company is in a position to exercise decisive influence over the conduct of its subsidiary, but must also check whether that influence was actually exercised[11]. It must be noted, that such influence does not need to be proven regarding to certain act of the subsidiary but in general.[12] If a parent company has a 100% shareholding in a subsidiary which has infringed the competition rules, the parent company is able to exercise decisive influence over the conduct of the subsidiary[13] and there is a rebuttable presumption that the parent company does in fact exercise decisive influence over the conduct of its subsidiary[14]. In those circumstances, it is sufficient for the Commission to prove that the subsidiary is wholly owned by the parent company in order to avail itself of the presumption that the parent exercises decisive influence over the commercial policy of the subsidiary.[15] Hence in such cases the Commission is empowered the parent company as jointly and severally liable for payment of the fine imposed on its subsidiary, unless the parent company produces sufficient evidence to show that its subsidiary acted independently on the market[16]. This presumption is not subject to further confirmation by other indicia, such as the fact that it was not disputed that the parent company exercised influence

9 Eg. Judgment of 14 July 1972, Imperial Chemical Industries/Commission, 48-69, EU:C:1972:70, (hereinafter "ICI") par. 132 and 133.

10 Cf Dansk Rørindustri par.117., Judgment of 11 December 2007, ETI and Others, C-280/06, ECLI:EU:C:2007:775, (hereinafter "ETI and Others") par. 49.

11 ICI, par. 137.

12 Cf. Judgment of 27 October 2010, Alliance One International and Others/European Commission, T-24/05, :EU:T:2010:453 (hereinafter "Alliance One International"), par .: "It is also necessary to reject the applicants' argument that the decisive influence that a parent company must exercise in order to have liability attributed to it for the infringement committed by its subsidiary must relate to activities which form part of the subsidiary's commercial policy stricto sensu and which, furthermore, are directly linked to that infringement, in this instance the purchase of raw tobacco (…)."

13 ICI, par. 136 and 137.

14 Cf. Judgment of 25 October 1983 AEG-Telefunken/Commission, 107/82, EU:C:1983:293, par. 50.

15 Alliance One International, par. 130.

16 Cf. Judgment of 16 November 2000, Stora Kopparbergs Bergslags/Commission, C-286/98 P, EU:C:2000:630, (hereinafter "Stora Kopparbergs Bergslags"), par. 29.

over the commercial policy of its subsidiary or that both companies were jointly represented during the administrative procedure[17] and therefore such indicia themselves do not rebut the presumption. The presumption arising from 100% ownership of the capital can apply not only in cases where there is a direct relationship between the parent company and its subsidiary, but also in cases such as the present one, where that relationship is indirect, through an intermediary subsidiary.[18]

On the other hand, the fact that the subsidiary is not wholly owned by a parent company does not exclude the possible existence of an economic unit, in the competition law sense[19]. The existence of an economic unit may thus be inferred from a body of consistent evidence, even if some of that evidence, taken in isolation, is insufficient to establish the existence of such a unit.[20] In order to decide whether a company determines its conduct on the market independently, account must be taken of all the relevant factors relating to the economic, organisational and legal links which exist between it and the company in the same group which is considered to be responsible for the actions of that group, and which may vary from case to case and the CJ EU noted that it is not possible set out in an exhaustive list[21].

In the majority of cases there is one parent company found to be liable for behaviour of their subsidiaries. In this context, assessment of the structure of Knauf Group in *Knauf* case became interesting because companies forming Knauf Group do not have single parent comp/any or have single shareholder but have 22 shareholders, the same members of Knauf family in every of companies, even though none of them held majority. However event in such case it was confirmed that Knauf Group companies form single economic unit – undertaking. The CJ EU argued that "the legal structure particular to a group of companies, which is characterised by the absence of a single legal person at the apex of that group, is not decisive where that structure does not reflect the effective functioning and actual organisation of the group"[22] and company can be found liable for behaviour of other company even without any subordinating legal links between them if it is established that, in reality, the latter does not determine its conduct on particular market independently.[23]

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17 Cf. Alliance One International, par. 131.

18 Alliance One International, par. 132.

19 Judgment of 1 July 2010, Knauf Gips/Commission, C-407/08 P, EU:C:2010:389 (hereinafter "Knauf Gips"), par. 82.

20 Knauf Gips, par. 65.

21 Knauf Gips, 100.

22 Knauf Gips, par. 108.

23 Knauf Gips, par. 109.

If there is not such situation when the company is owned by family-linked group of persons but by several other companies, it is not possible to employ presumption of decisive influence. Where such undertaking is under the joint control of two or more other undertakings or persons, those undertakings or persons are by definition able to exercise decisive influence over it. However, only one part of criteria are there fulfilled since that is not enough to enable them to be held liable for the infringement of the competition rules committed by the undertaking which they control jointly, because such liability also requires fulfilment of the condition concerning the actual exercise of decisive influence.[24] On the other hand, if those conditions are fulfilled, it would be possible to hold the various undertakings or persons which exercise joint control liable for the unlawful conduct of their subsidiary.[25] Hence two companies, each with a 50% shareholding in a subsidiary and having joint management power in the commercial management of the subsidiary, can be found liability for the unlawful conduct of that subsidiary. However if it transpires that, in reality, only one of the undertakings or persons holding joint control in fact exercises decisive influence over the conduct of their subsidiary, or if other specific circumstances were to justify it, only that undertaking or person jointly and severally liable, with its subsidiary, for the infringement committed by the subsidiary.[26]

Description of undertaking by the group of natural and legal persons constitute static description of undertaking. However economic reality is much more complex and persons responsible for behaviour of undertaking can vary in the time. Hence "dynamic" description of the "undertaking" must be involved and this kind of description is mainly represented by the concept of "economic continuity".

Even in the case of dynamic principle, it is crucial to refer to the principle of personal liability[27], under which a person can be held liable only for his own acts[28], the person managing the undertaking in the time of commitment of the infringement shall answer for that infringement, even if, at the date of the decision finding the infringement, that undertaking is the responsibility or under the management of a different person[29].

So-called "economic continuity" criterion is considered derogation from the principle of personal liability that is accepted by the CJ EU.[30] Under this

[24] Alliance One International, par. 165.
[25] Alliance One International, par. 165.
[26] Alliance One International, par. 165.
[27] ICI par. 131 to 141; Judgment of 8 July 1999, Commission/Anic Partecipazioni , C-49/92 P, EU:C:1999:356 (hereinafter "Anic Partecipazioni"), par. 78; ETI and Others, par.39.
[28] Areva, par. 65.
[29] Cf. Judgment of the Court (Fifth Chamber) of 16 November 2000, SCA Holding v Commission, C297/98 P, EU:C:2000:633, par. 27, and Stora Kopparbergs Bergslags, par. 37.
[30] Areva, par. 66

approach competition infringement may be attributed to the economic successor of the legal person which committed it, even where the latter has not ceased to exist on the date of adoption of the decision finding the infringement. The rationale of the swift of the liability is not to compromise the effectiveness of the completion rules due to the changes to, inter alia, the legal form of the undertakings concerned[31].

Comparing to the *Anic Partecipazioni* case, in *Aalborg Portland*[32] in the context of an intra-group transfer of an undertaking, the transferee company was held liable for the infringement committed by the undertaking, before its transfer, even where the transferor company continued to exist as a legal entity. In *Anic Partecipazioni* was established that there can be "economic continuity" only where the legal person responsible for running the undertaking has ceased to exist in law after the infringement has been committed. The reason for this different approach in *Aalborg Portland* was that the transferor company had transferred all of its economic activities to the transferee company while maintaining a structural link with the latter, in which it had a 50% shareholding.

Further, in *Jungbunzlauer v Commission*[33] the General Court held, that the fact that a company continues to exist as a legal entity does not exclude the possibility that there may be a transfer of part of the activities of that company to another company which becomes responsible for the acts of that undertaking, provided that such transferred part of the activities of the company constitute an undertaking for the purposes of competition law. The liability for the infringement can be attributed to the to the transferee company, even though the transferor company continued to exist as a legal entity, while the transferor company had retained the production activities of the relevant undertaking, it had inter alia transferred the management and governance of that undertaking to the transferee company, which could, to that extent, be regarded as the economic successor of the transferor company.

The justification of penalising "economic successor" was provided by the CJ EU in *ETI and Others* case[34]. The Court confirmed, that applying penalties in this way is permissible and does not breach the principle of personal responsibility, even if the entity that committed the infringement still exists on the date on which the entity to which it transferred its economic activities is penalised, where those two entities have been under the control of the same person and,

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31 Cf. Judgment of 20 March 2002, HFB and Others/Commission, T9/99, EU:T:2002:70, par. 105 and 106.

32 Judgment of7 January 2004, Aalborg Portland and Others/Commission, C-204/00 P, EU:C:2004:6.

33 Judgment of 27 September 2006, Jungbunzlauer /Commission, T-43/02, EU:T:2006:270.

34 ETI and Others, par. 48 to 51.

given the close economic and organisational links between them, have carried out, in all material respects, the same commercial instructions. In the case of entities answering to the same public authority, where conduct amounting to one and the same infringement of the competition rules was adopted by one entity and subsequently continued until its cessation by another entity which succeeded the first, which has not ceased to exist, that second entity may be penalised for that infringement in its entirety if it is established that those two entities were subject to the control of the said authority.

Contrary to intra-group transfers, legal entities which have participated in their own right in an infringement and which have subsequently been acquired by another company continue to bear responsibility themselves for their unlawful conduct prior to their acquisition, where they have not been purely and simply absorbed by the acquiring undertaking, but continued their activities as subsidiaries[35] The acquiring undertaking may be held responsible only for the conduct of its subsidiary with effect from its acquisition if the subsidiary continues the infringement and if the liability of the new parent company can be established[36].

Finally, identification of natural and legal persons liable for actions of the undertaking is necessary for attribution of joint and several liability for that infringement. Thus, the decision by which the Commission imposes on several companies the payment of a fine jointly and severally necessarily produces all the effects which are inherent, by force of law, in the legal rules governing the payment of competition law fines, both in relations between creditors and joint and several debtors and in those between joint and several debtors.[37]

3. Parent company as a beneficial owner?

Concept of parent liability in competition law stems from the idea that on the one hand parent company has duty to manage its subsidiary properly and on the other hand it can benefit from illicit gains of its subsidiary. The "reverse" approach is defined in anti-money-laundering laws. Particularly, "beneficial owner" is defined in "anti-money-laundering" directive[38] (Art. 3 par. 6 thereof) as any natural

[35] Cf. Judgment of 16 November 2000, Cascades /Commission, C279/98 P, EU:C:2000:626 , par. 78 to 80.

[36] Cf. eg. Stora Kopparbergs Bergslags, par. 37 to 39.

[37] Judgment of 3 March 2011, Siemens AG Österreich and Others/Commission, T-122/07 to T-124/07, T:2011:70, par.156.

[38] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist

person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least persons described in said provision.[39] Indeed, purpose of definition of beneficial owner is completely different to the definitions of competition law and focuses more on potential benefits that responsibility for actions (it is obvious that the directive is aimed to illicit actions of beneficent than behaviour of market actors). However, it is evident from the definition of the beneficial owner that the principle – who controls – benefits – is similar to rationale of definition of undertaking in competition law. On the other hand it must be noted that thresholds for definition of beneficial owner are much more lower comparing to attribution of liability for competition infringement. The notion of undertaking in competition

financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L 141, 5.6.2015, p. 73–117.

[39] (a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a natural person shall be an indication of direct ownership. a shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council (29);

(ii) if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point;

(b) in the case of trusts:

(i) the settlor; (ii) the trustee(s); (iii) the protector, if any; (iv) the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates; (v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

(c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to in point (b)

law serves to attribution of liability for infringement that is quasi-criminal due to human-right standards, but identification of beneficial owners serves to risk assessment and suspicions for further investigation, only. Therefore, it seems that stricter concept can serve better for subject assets to judicial enforcement or bankruptcy schemes, however definition of beneficiary owner can be starting point for suspicion on fraudulent transaction aiming to harm creditors.

4. Related parties in Slovak Insolvency Act

Act No. 7/2005 Coll., on Bankruptcy and Restructuring as amended (hereinafter "Insolvency Act") defines in § 9 so-called "related party":

(1) following persons are related party of legal persons:

a) statutory representative or member of statutory body, director, statutory proxy, or member of supervisory body,
b) natural person or other legal person that holds qualified share in the debtor legal person,
c) statutory representative or member of statutory body, director, statutory proxy, or member of supervisory body of the legal person named in b),
d) close person of the natural person named in a) to c),
e) other legal person in which legal person or one of the persons under a) to d) holds qualified share.

(2) the act consider related party of natural person close person of such natural person and legal person in which holds the natural persons or his or her close persons qualified share.

Qualified share (interest) is defined as at least merely direct or indirect 5 % share of the capital, voting rights or influence of managing of the debtor.

The major consequences for the related parties are that their claims are subordinated.[40] Furthermore, claims that belong to related party in the past are also subordinated and such subordinated claim is not only every claim of the person that is related party but also was in the past related party. Since subordinated claims are subject to satisfaction in the last tier, the probability of their compensation is very low. This subordination has two intertwined consequences: it marginalizes claims of the related parties to the theoretical sphere and raises probability of satisfaction of claims of others creditors. However, existence of related parties generally does not influence amount of assets subject to bankruptcy procedure.

[40] Insolvency Act, § 95(3).

5. Assets of bankrupted debtor

Under the Insolvency Act following assets are subject to bankruptcy scheme:
a) assets of the debtor in the time of declaration of bankruptcy,
b) assets acquired by the creditor during bankruptcy procedure,
c) assets securing debtors debts,
d) other assets stipulated by the law.[41]

Such other assets of third parties can occur from void and null agreements or acts.[42] Nevertheless, it is evident that assets subject to bankruptcy scheme is generally restricted to the assets of the debtor notwithstanding economic links within possible corporate rules.

6. Introducing concept of "undertaking" into bankruptcy law

First of all it is necessary to find out in which stage the assets of persons belonging to "single economic unit" will be subject to satisfaction of claims of debtor's creditors.

The first option is to establish statutory guaranties of such persons for paying debts of the debtor vis-a-vis such creditors. The advantage of this approach is that probability of satisfaction of claims via judicial enforcement could be higher. Furthermore such satisfaction of claims, e.g. by the parent company could avoid bankruptcy of the debtor. On the other hand, this system can be hindered by numerous objections by "statutory" guarantors by which they can challenge existence of links with debtor that give basis for their liability.

The similar situation can occur in the second option, if under the bankruptcy law assets of whole "undertaking" will be subject to bankruptcy scheme[43].

Second question is what and why this concept is "transplantable".

First of all, concept of undertaking in EU competition law follows more economic and factual context that formal legal construction. Second, the concept of undertaking is aimed to effectiveness of sanctions and their full recovery. Third, it was confirmed that parent company is liable for actions of its subsidiary even though it was not directly involved in particular transaction due its responsibility for management as well as benefits from illegal behaviour. All these principles

[41] Insolvency Act, § 67(1).
[42] Insolvency Act, § 80.
[43] This approach sets aside bankrupt private persons.

are feasible with the principles of judicial enforcement as well as bankruptcy goals.

Such approach inevitably erodes concept of limited liability and separation of assets of shareholders from assets of legal persons. On the other hand can lead to higher responsibility of shareholders for economic actions of its subsidiaries and proper diligence.

Indeed, concept of undertaking in competition laws is complex and facet. Furthermore it was never codified in its whole complexity and it is dynamically evolved by jurisprudence. Ephemeral character of borders of the concept can be the major obstacle to its "transplantation". The most simple and economically and legally clearly understandable form of the EU competition law concept of the undertaking can be restricted to parental liability with rebuttable presumption of liability for debts of subsidiaries and concept of economic continuity.

7. Conclusions

Insolvency of the debtor is almost always situation damaging its creditors who are rarely substantially satisfied. Bearing in mind such possibility how to escape from debts is certainly incentive also for criminal activities containing action deceasing possibility of creditors to be satisfied. If probability that debtor can escape from debts could be decreased by increasing amount and content of the assets subject to the bankruptcy scheme, incentives for fraudulent behaviour can be limited.

The article focused on the concept of the undertaking due to European competition law and its possible transplantation into bankruptcy law. This concept is based on idea that the whole group of companies forming usually one corporate structure are jointly and severally liable for their behaviour. The concept of undertaking is thus based on economic and factual relations that cannot be fogged by existence or non-existence of formal legal links. It is evident that Slovak insolvency law does not reflect wholly economic and factual relations when construing definition of assets subject to bankruptcy scheme.

Although it might be too difficult to directly incorporate or "transplant" competition-like concept of undertaking into bankruptcy law due to its complexity and non-codified character it can substantially contribute to better enforcement of creditors' claims and deter creation formal structures within corporate structures aimed to decrease amount of debts due to real satisfaction. Moreover, this idea creates another field of discussion on corporate and intra-corporate liability.

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