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*Tacit coordination of market behaviour  
in EU competition law*

*Summary*

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When modern antitrust systems were first taking shape, their architects envisioned "smoke-filled rooms" where competitors negotiated common market strategies. This perception influenced the conceptual framework upon which institutions designed to protect competition from coordinated conduct were built. Economic practice has demonstrated, however, that coordination among undertakings does not always result from explicit agreements to cooperate.

This form of coordination is termed tacit. Initially, economists believed its occurrence was limited to markets with high concentration levels that essentially compelled market players to account for competitors' actions in their strategies. However, transformations in our economic reality mean that competition problems associated with tacit coordination are intensifying. Contributing factors include ongoing concentration processes leading to stable oligopolies, and technological progress that has transformed how firms communicate and provided new tools for analysing economic data and optimizing market strategies.

This dissertation examines whether EU antitrust institutions employ concepts adequate to the ways in which undertakings coordinate their market strategies. The research focuses on the scope of application of EU competition law institutions to anticompetitive effects resulting from tacitly coordinated conduct.

The presentation of research findings begins with two introductory chapters. Chapter I describes the economic rationale for tacit coordination and characterizes the circumstances accompanying its occurrence, establishing what distinguishes coordinated from uncoordinated market conduct and indicating conditions under which firms can tacitly coordinate their strategies. Chapter II examines how technological development affects this phenomenon, characterizing technological solutions whose use is associated with risks of tacitly coordinated market outcomes and identifying challenges this presents for EU competition law.

Chapters III and IV present research aimed at determining the relationship between tacit coordination and the scope of application of particular EU antitrust institutions. The methodology involved identifying normative categories significant from this perspective, establishing their meaning, and indicating the extent to which they encompass this phenomenon. Chapter III analyses Article 101 TFEU prohibiting anticompetitive agreements, while Chapter IV addresses Article 102 TFEU prohibiting abuse of dominance and EU merger control rules. Chapter IV deliberately combines analysis of issues involving collective dominance, a concept that evolved in parallel across both abuse of dominance and merger control jurisprudence and whose content is essentially identical under both institutions. After discussing issues common to these two institutions, the chapter proceeds to matters relevant

from the abuse of dominance perspective, concerning the concept of abuse under conditions of collective dominance.

Chapter V presents solutions from outside EU competition law that enable application of basic EU antitrust institutions to competitive restrictions resulting from tacit coordination or facilitate enforcement authorities' application of these institutions in such cases. It also discusses special instruments functioning in selected national legislations that may be applied to tacitly coordinated conduct.

Chapter VI contains critique of the relationship between EU competition law institutions and tacit coordination, along with proposals for changes in EU competition law. These proposals concern both interpretation of existing EU antitrust tools and possible directions for supplementing the EU competition system with new legal solutions.

The research has established the extent to which EU antitrust institutions apply to anticompetitive effects resulting from tacit coordination. This is determined primarily by interpretation of normative categories significant in this context—concerted practices and collective dominance. Reinterpretation of their analytical frameworks would naturally influence how EU competition law institutions relate to this phenomenon. However, freedom in this regard is constrained by the specific nature of control exercised within each institution. Only merger control rules address tacit coordination directly, but their application is limited to competition assessment of merger effects. Article 101 TFEU focuses on actions leading to coordination, while Article 102 TFEU focuses on manifestations of abusive conduct by dominant undertakings. Therefore, even adopting the most adequate interpretation cannot provide the EU competition authority with sufficient tools to address tacit coordination in all circumstances.

The research has demonstrated that legal instruments functioning outside the EU legal order can supplement gaps in application of basic competition law institutions. Solutions at the intersection of antitrust law and market regulation appear particularly significant for changing how EU competition rules relate to this phenomenon. Given the growing importance of these issues in competition protection, their introduction at the EU level appears to be the right direction.