

LOYALTY REBATES AS AN EXCLUSIONARY PRACTISE IN THE EUROPEAN COMPETITION LAW

ABSTRACT

This master thesis treats loyalty rebates in the light of European competition law when applied by dominant undertakings and analyses its consequences. It describes when such practise might be considered by European Union authorities as an abuse of a dominant position as it has negative impact on the competitors by inducing customer's loyalty to the dominant undertaking. It depicts its position in the European competition law system and compares it to other practises that influence the market in a similar way. Also, it classifies different types of loyalty and other types of rebates and explains how such rebates can force a customer to acquire increasing portions of his demand from the dominant undertaking and how they can damage its competitors.

The thesis also offers a critical view on a very strict treatment of this practise by European institutions in the past and its arguments by several positive effects that loyalty and other types of rebates may have. Simultaneously it takes into consideration the newest decision of the Court of Justice of the European Union in the *Intel* case from September 2017 which will hopefully affect EU institutions' approach to this practise as it broke well-established *per se* interdiction of exclusive or quasi-exclusive loyalty rebates for the first time since 1976 decision *Hoffman-La Roche*.

It also analyses the as efficient competitor test that has been introduced by European Commission in order to determine negative effects of pricing practices on the competition and that, unlike for other pricing practices, is not hundred per cent reliable in case of loyalty rebates

The aim of this thesis is to provide a guide to easily distinguish rebates that will not cause any difficulties from the questionable ones, thanks to detailed economic and legal analysis as well as complex summary of the most relevant case law of the European courts and the European Commission over the past 40 years.