Essential Facilities Doctrine in the European Union and the United States of America

Abstract

The essential facilities doctrine is a concept in competition law that allows addressing and, to some extent, preventing the abuse of a dominant position, thereby protecting free economic competition. It applies when a dominant undertaking refuses to grant access to a facility it owns, which is simultaneously essential for the competitiveness of other market participants. The doctrine addresses this issue by setting out specific conditions under which a dominant undertaking is obliged to provide access to the essential facility.

This thesis examines the development of the essential facilities doctrine in American and European competition law from its inception to the present day. The aim is to compare the conditions under which the doctrine is applied on both continents through an analysis of decisions by American courts and EU institutions, identify the main differences, and outline its current status in modern competition law.

For this purpose, the thesis is divided into five chapters. The first chapter traces the origins and establishment of the essential facilities doctrine in the United States as a distinct category separate from the broader refusal to deal framework, up to its limitation in the *Trinko* decision. The second chapter focuses on the adoption of the doctrine by the European Union and its gradual recognition by EU institutions. The third chapter analyzes more recent U.S. case law, which has reinforced the restrictive approach of American competition law toward requiring dominant undertakings to grant access to their facilities. The fourth chapter is dedicated to current case law of the Court of Justice of the European Union, which in recent years has contributed to the loosening of the conditions for imposing an obligation to share access to facilities owned by dominant undertakings on the European continent. The final fifth chapter summarizes the findings of the previous chapters, compares the conditions under American and EU competition law for the application of the essential facilities doctrine, and describes the impact of these differences on market participants.

Key words: essential facilities doctrine, forced access, abuse of a dominant position