

Abuse of dominant position in the European law perspective

This Dissertation deals with one of the branches of the European Competition Law - Abuse of Dominant Position. It is regulated in the Article 82 of the EC Treaty. Since the initiated provision is the only rule of law that regulates abuse of dominant position, the main focus in the thesis is concentrated not on the legislation, but primarily on the case law of the European Courts. The European Court of Justice and The Court of the First Instance as well as Commission's decisions helped to specify the provision and to ensure functional system of dealing with the large number of cases over the years.

The thesis is divided into several parts. I dealt with a dominant position itself to identify whether an undertaking in question is dominant or not. However, to hold a dominant position does not violate Article 82 itself. A dominant undertaking has to abuse its unique position. An abusive behaviour can relate to many different forms of conduct. These forms can be divided into two groups: exclusive and exclusionary abuse in relation to the effect of the conduct on the market structure.

The substantial part of the thesis deals with actual trends in the assessment of a dominant position. The European Commission attention has shifted towards the development of a modern approach to the abuse of dominant position. In 2005 the Commission published a Discussion Paper which introduced economic approach to exclusionary abuses and formulated consumers' welfare as a key objective of EC competition law. The Discussion Paper has triggered a debate on the criteria to be applied to assess dominant firm's practices and may be eventually transformed into guidelines in the future.

The critics of the former form based approach argue it lacks a clear and coherent basis and focuses primarily on the form of an alleged anticompetitive conduct. On the other hand, the critics of the new economic approach argue that it lacks clear rules which are necessary in order to enhance legal certainty and to ensure an expeditious handling of competition cases. The thesis contains a chapter dealing with abuse of dominant position in United States. The key differences between American and European approach are demonstrated in two chapters. First, the findings in Microsoft case in USA and EU are introduced and compared. Second, a chapter concerning the US Supreme Court decision *Trinko* is included. *Trinko* decision

analyses the essential facility doctrine in USA. However, the essential facility doctrine has been introduced also in European law, starting from harbour facilities to compulsory licensing of the intellectual property.

Key words: abuse, dominant position, dominance