

## **Abstract**

The dissertation thesis deals with the market abuse through the market manipulation. Its focuses, in particular, to the merits of the regulation itself and specific regimentation. Manipulation is one of two pillars which creates the subject of the area of law dealing with market abuse.

The thesis is divided into five basic parts, which are further divided into seventeen chapters. We proceed from the general definition of basic concepts, categories, and economic context to clarify a particular concept of manipulation and its operation in practice to particular subject matters of manipulation. The conclusion is then added to the list of negative description and liability arising from manipulation.

The first five chapters, which are contained in Part A deals with general introductory remarks (Chapter 1), including notes dealing with the concept and methodology of the thesis, its objectives and determination of verified hypotheses (Chapters 3, 4 and 5). Chapter 2 of this part is partially devoted to the issue of terminology used in the thesis. We note here the fact the existing regulation limiting ratio of the concepts and conclude that this thesis will use principally general terms, i.e the market (instead of the concept of capital or regulated market) and instrument (instead of the term financial instrument or investment instrument). These questions are the subject of analysis in other parts of the work, particularly part B.

Part B deals with economic fundamentals and market regulation. Chapters 6 and 7 describe the financial market and its individual segments. In this analysis we point out that as the subject of protection against manipulation is not sufficient to view only certain instruments traded or admitted to trading on specific markets. We are aware however, that the capital market, there will be a crucial, and therefore the Chapter 8 deals closer with the importance and integrity of the capital market.

Chapter 9 of the same part then offers economic views and theories that are put in the thesis in supporting or refuting the various arguments, especially in relation to subjective and objective approach to manipulation offense. Bring economic theory (not only) in financial law attribute the different approaches and different markets function, respectively, differ in their perceptions of functioning and assumptions that must be considered from the perspective of regulation for guidance. Analysis of laws requires an understanding of economic theories and assumptions.

Manipulation is the designation of Part C, which is in its scope and content the fundamental part. This part is divided into 3 chapters, while Chapter 10 is devoted to

manipulation in embedding jurisdictions, at the EU level and the Czech Republic. There is also remitted to the partial differences in the manipulation in the Capital Market Act and the Penal Code. Partially are also discussed basic principles.

In terms of content is crucial chapter 11 which deals with the concept of manipulation. In connection with the criticism of the objective approach are discussed in particular the question of so-called "artificial price", respectively analogically "right price", compelling market participants to trade (by sending false signals) and the effect on the free (market) formation of supply and demand. The main concern here is however the artificial price, where the objective approach is not triggering the manipulation with fault, but the artificial price. In this part, we subjected this to closer analysis and conclude that this approach is not correct. Setting the right price is not objectively possible. If we were to assess this price, we would always have to "look into the mind" of a particular participant. Transaction carried out at a price that corresponds to the view of such participant cannot be considered manipulative. In other words, the artificiality of price cannot be subjected to an objective test, but is always based on the view of a particular participant, and thus assumes a subjective test. We therefore believe that the fault is an implicit feature of artificial price and thus the definition of manipulation. As a result, objective approach to manipulation cannot be based on the principle of artificial prices.

This chapter also points to criticism of the subjective approach by analysis of arguments for the objective approach which are the burden of difficulties in qualifying manipulative conduct, the need for punish conduct which, although not made with the aim to manipulate, have a deleterious effect of disruption of "usual " dealing on the markets, and prevention from manipulative conduct. This chapter was supposed to also include our preferred approach to the concept of manipulation. During the preparation of this thesis, however, we came to the conclusion that finding a compromise between these approaches is more complex and difficult task than it may seem. There cannot generally conclude that the responsibility for manipulation offense to be objective or subjective one. It would be very simplistic. To assess this in complex, it is necessary to take into account the individual forms of manipulation offences as they are generally known, and define the responsibility in relation to these. The point is also to distinct the conduct which should be considered as a "free" business conduct and not manipulative one. The concept is therefore further discussed in more depth in Chapters 13 and 14.

As to the content, the largest is Chapter 12 which deals with particular characters of the general definition of manipulation. This chapter is structured so that the characters are

discussed in terms of market abuse directive, the Capital Market Act and the draft proposal of the market abuse regulation. In this chapter, therefore, we refer in particular to partial deficiencies under existing regulations in the market abuse directive, issues regarding implementation in the Czech Republic and a comparative perspective according to the draft market abuse regulation as well. The analysis is therefore complex, both from the perspective of each character and laws. Given this fact, all the sub-questions cannot be summarized at this point, but attention can be drawn to issues such as the “average participant test” or prosecutions of the attempts of manipulation in the draft market abuse regulation. Also significant is the extension of platforms-markets and instruments or the reflection of modern trading techniques such as high frequency and algorithmic trading practices in the draft market abuse regulation. They are also in this chapter on sub-areas discussed issues that relate to the main storyline of this thesis, which is objective and subjective approach to manipulation.

Part D, in its chapters 13 and 14, adds a general treatise on the concept of manipulation by analysis of the individual characteristics of each manipulative practices, as well as our proposals as regards the concept of liability and distinction of particular conduct as manipulative or not. Individual practices are discussed in detail in Chapter 13 not only theoretically, but specific examples known from practice are given. Besides the commonly known ones are also listed those, which are associated with automated trading, such as ping orders, quote stuffing or momentum ignition. Partial conclusion as to whether we consider such behaviour manipulative and, if so, proposal of responsibility as subjective or objective, are made at particular practices. In Chapter 14, we provide a table summarizing the various practices and our proposed concept. We conclude that manipulation should not be generally understood as an objective or subjective one. Likewise, some currently punishable practices we are not considering as manipulative. By simplifying the findings, we tend to punish conduct based on the information or using artificial means. In contrast, we believe that the conduct consisting of trading should not in principle be described as manipulative. Finally, we design generic conducts, which should be included into a definition of manipulation.

Chapter 15 provides analysis of manipulative practices that are currently being discussed in connection with the state of world economies. This is a manipulation that is related to specific instruments, which are CDOs (Collateralized Debt Obligations) and CDSs (Credit Default Swaps).

The last part of E is devoted to the negative definition of manipulation and responsibilities under the current legislation in the Czech Republic, including proposal for the market abuse directive number 2 in the field of criminal law. A negative definition is also

analyzed in detail and from the views of the market abuse directive, the Capital Market Act and the draft market abuse regulation. An exception for journalists is discussed in great detail, which we believe, however, should not be explicitly reported and journalists should be subject to the general regime.

Finally, the last passage verify the hypotheses, show the benefits of the results presented in the thesis and, last but not least, suggests directions for further research. This dissertation thesis was drawn with respect to regulations valid as of 31 December 2011.