ABSTRACT

THE DOCTRINE OF THE PROHIBITION ON PARALLEL IMPORTS RESTRICTIONS WITHIN COMPETITION LAW OF THE EUROPEAN UNION

The aim of this thesis is to analyse the current approach of EU competition law to parallel imports restrictions in light of nearly a half-century of EU Courts' case-law's evolution and in comparison with the approach adopted by US antitrust law. The traditional attitude of the EU Courts and of the Commission towards competition restraints of this type is described in literature in clear terms. However, this is not the case when it comes to the recent and current ambiguous developments within EU competition law. Therefore, this thesis aims to verify these two hypotheses.

The first hypothesis says that evolution of the EU institutions approach to parallel imports restrictions has a circular nature: it starts from the traditional, intransigent position adopted in the early decades of European integration and it continues through a more lenient, economic approach in the period of the so called modernization of EU competition law to return to a rather traditional attitude typical of the current times. According to the second hypothesis, the current EU institutions' attitude towards parallel imports restrictions has nevertheless been shifted, during the modernization period, to a more economics-based analysis and the policy evolution is thus not perfectly circular.

The method of the thesis is based first, on a chronological perspective (this thesis aims to explain current developments by putting them into a broader context of the competition policy evolution) and, second, on a comparative perspective (this thesis aims to define the EU law approach by confronting it with the US law approach). As for its sources, the thesis relies on case-law, regulations, Commission's soft-law and other documents issued by the Commission and, of course, on literature. As for its scope, this thesis deals mainly with vertical territorial restrictions and also, to a lesser extent, with abuse of dominant position if it leads to restrictions of parallel imports. The thesis is fundamentally structured into three parts, if we leave aside the introduction (chapter 1), and a brief explanation of the parallel imports phenomenon (chapter 2).

The first part (chapter 3) deals with the traditional approach of the EU institutions' to parallel imports as defined in the classical *Consten & Grunding* judgment from 1966 which establishes a strong connection between EU competition law and construction of the single market.

The second part (chapter 4) examines the economics-based approach applied to vertical restraints in US antitrust law and seeks to ascertain to what extent economic analysis has been applied on parallel imports cases within EU competition law in the modernization period (i.e.

from late 1990s to late 2000s), the most important cases being *Bayer*, *Syfait*, *Sot. Lelos* and *GlaxoSmithKline*.

The third part (chapter 5) examines current developments of EU competition policy and their influence on the parallel imports issue, the most important judgments being those in *Pierre Fabre* and *Premier League*.

The major conclusion of this thesis is that today's approach of the EU institutions to the issue of parallel imports is rather traditional given the special emphasis on the single market which is being evoked by both EU Courts' case-law and Commission's documents. The first hypothesis was thus confirmed. In the field of parallel imports, US antitrust law has not been of much inspiration to EU competition law as in Europe economic analysis is only applied to special cases which tend to be exceptional and as parallel imports restrictions are still considered restrictions by object. The second hypothesis has thus not been confirmed.