Impact of the Leniency Program and the Institution of Settlement upon the Civil Enforcement of Competition Law

Keywords: competition law, leniency program, private enforcement of competition law

The purpose of this thesis is to assess the mutual interference between the private and public enforcement of competition law. In the public enforcement there is growing trend of using modern tools such as leniency programme or settlement decisions. These are based on the cooperation between competition authorities and undertakings. On the other hand such cooperation and very often disclosure of confidential information by undertakings may threaten their position in terms of potential civil law suits by consumers or business partners. It is often claimed that private and public enforcement are complementary but when it comes to these modern tools a clear conflict arises. The thesis consists of two following two chapters.

First chapter describes the evolution of private enforcement of competition law within EU. From its underdeveloped beginnings ten years ago it started to attract attention. European Commission has recently published a proposal of a directive which should foster the private enforcement within EU. Second half of the first chapter describes the development of new modern tools within the public enforcement (leniency programme, settlement, commitments, competition advocacy) by showing the changes on the examples of European Commission and Czech ÚOHS (Czech competition authority).

Second chapter describes the relationship between each of the particular tool of public enforcement mentioned and the private enforcement. The analysis focuses on the possibilities of so called follow on actions, the access to file and other information and how these aspects may change the motivation for potential plaintiffs. It analyses the impact of the Pfeiderer case and the recent Donau Chemie judgement of the CJEU on the private and public enforcement and it analyses whether the current practice of the Czech competition authority is compatible with the opinion of the CJEU. On the other hand it also analyses the impact of the growing interest in private enforcement on the attractiveness of leniency program and other modern tools for the undertakings and it proposes how the mutual conflict of two ways of competition law enforcement could be mitigated.