

Title:

Special responsibility of undertaking in dominant position

Author:

Iva Čechráková

Department:

Department of Business Law

Supervisor:

JUDr. Daniel Patěk, Ph.D

Abstract:

This thesis deals with the doctrine of special responsibility of the dominant undertaking and related issues. The special responsibility of the dominant undertaking is the obligation not to allow its conduct to impair genuine undistorted competition on the common market. The doctrine of the special responsibility is tied to the prohibition on abuse of such position. One concept could not be assessed without the other, because the concept of special responsibility of the dominant undertaking is a fundamental principle for the application of the prohibition on abuse of such position. Based on that it is necessary to describe in this thesis the prohibition on abuse of dominant position together with selected prohibited practices, in which the special responsibility of the dominant undertaking is reflected. This responsibility presupposes a higher standard of vigilance reflected in the conduct of such an undertaking, because an undertaking in dominant position on the relevant market could not take all actions that the other undertakings lacking such market power could do. The question of the superdominant undertakings and the scope of their special responsibility is related to the issue of the special responsibility.

In the literature we can frequently find opinions of the scholars, that are influenced by different economic approaches and for that reason they have different views on these concepts. Thus, the first chapters deal generally with the competition, economic approaches and targeting of the competition law.

The next chapter focuses on defining the terms which are related to the dominant position and its abuse. The individual terms are derived from the case law issued by European authorities as well as Czech authorities. In this part there are described the terms of undertaking/competitor, relevant market and the concept of dominance itself.

The key part of this thesis is chapter four which deals with the special responsibility of the dominant undertaking analyzed on the basis of the *Michelin I* case and related cases along with the issue of the superdominance and different approaches to evaluation of competitive situations, meaning the form-based approach and effect-based approach, which have different impacts on viewing on the special responsibility doctrine. Part of this chapter includes section about the abuse of dominant position explained in the light of the definition of abuse arising from the judgment in the case of *Hoffman-La Roche*. This chapter further analyzes the features of abuse and selected abusive practices supported by the decision of the European and Czech authorities. The last subchapter deals with similarities and differences between the European and American regulation of competition law that differs a lot, although this is not entirely absolute assertion, since there are tendencies of convergence of the two systems.