

# **Abstract**

## **Protection of business competition – Abuse of dominant position**

The main objective of this thesis is a comprehensive analysis of the term “abuse.”

In a wider complex, thesis deals with a question of the present aim and prevailing method of application of provision 102 TFEU in order to find out whether and if yes, to what extent is current approach compatible with the modernization process of the application of article 102 TFEU declared by the Commission. Thesis deals with a question whether decisional practise is capable to react on a challenge made by so called new economy sector. Thesis consists of five substantial chapters.

The first chapter sums up historical development of the 102 prohibition in Europe and USA law with a particular focus on the objective behind the text of the relevant provisions and decisions and its changes in time. The second chapter zooms to modernization process in relation to Art. 102.

The central chapter analyses in detail the features of the general definition of an abuse arising from the decision of Hoffmann-La Roche, namely: i) a special responsibility of the undertaking; ii) the objective nature of the abuse and the effect of conduct on competition; iii) competition on the merits. An analysis of the concept of anticompetitive foreclosure follows. The concept of anticompetitive foreclosure has been adopted by the Commission’s Guidelines on application of art.102 on exclusionary abuses in connection with the modernization efforts of the Commission. Possibilities of objective justification and a burden of proof are discussed in the conclusion of the European legislation part of the third chapter. At the conclusion of the third chapter is an excursion into the legislation of the Czech Republic and the United States of America relating to the concept of abuse.

The purpose of the fourth chapter is to apply the general definition features of an abuse to selected exclusionary abuses, i.e. on the exclusive agreements, tying and bundling and refusal to supply. First, each of the selected practices is briefly presented and subsequently discussed in more detail by legal regulations, focusing on the characteristics of typical practices and of the way of their assessment by the competition authorities of the EU, the Czech Republic and the USA with the focus on the most controversial elements of discussed decisions.

The final, fifth chapter is devoted to the application of knowledge emerged from the body of thesis to the currently ongoing proceedings against Google. The aim of this chapter is to use a case that at the same time was addressed by both the Commission and the FTC to summarize the views of European competition law and US antitrust law on the issue of abuse of a dominant position, with emphasis on their differences and offer a brief reflection on the likely outcome of the proceedings.

To conclude, following findings were made: First, the main objective of the European competition law to protect the process of competition remains, and it seems that it would not be possible to expect drastic changes. Furthermore, although there can be seen some efforts, in particular on the part of the Commission to adopt decisions based on more economically-oriented approach, it is still not fully enforced regime. Second, European competition law is characterized by a greater degree of restriction of conduct by dominant undertakings and it is generally less interested in the importance of innovation.