

Abstract

Parallel application of national and Union competition law

The adoption of regulation No. 1/2003 opened a discussion on admissibility of parallel application of national and EU competition law regarding the *ne bis in idem* principle. The aim of the thesis is to map the condition of this legal topic after ten years since the process of modernisation of EU competition law on the basis of the analysis of judicial decisions and relevant legal acts including EU Charter of fundamental rights that became a part of EU primary law since Lisbon Treaty.

Three different cases are to be understood under the term parallel application. *The cumulative application* means a case where national competition authority applies both national and EU law to punish anticompetitive behaviour in one single proceedings. The second case is *the parallel application on the EU territory*, where there are several proceedings held by competition authorities parallelly. These proceedings are held either concurrently or consequently. Lastly, *the parallel application going beyond the EU territory* is the case where an anticompetitive behaviour that has already been punished by a competition authority of a non-member state is subject of proceedings held by competition authority in EU.

The thesis is divided into six chapters.

The *first* chapter is divided into four subchapters. It presents relevant aspects of process of modernization of EU competition law and each of the cases of parallel application. Further, it deals with particular sources of the *ne bis in idem* principle and their applicability to proceedings in competition law is inferred.

The *second* chapter deals with *the cumulative application* and it is divided into four subchapters. The first subchapter describes the *Walt Wilhelm* decision, where the EU Court of Justice held that a proceedings by national competition authority on a matter that has been already decided by Commission is not in breach of the *ne bis in idem* principle. The second and the third subchapter deal with judgments in cases of *RWE Transgas* and *Tupperware*, where the Superior Administrative Court annulled judgments of Regional Court in Brno that were based on the opinion that punishment of anticompetitive behaviour cumulatively on the basis of both EU law and national law is in breach of the *ne bis in idem* principle. The last subchapter deals with principles of imposing a sanction in such proceedings.

The *third* chapter, which is the most extensive one, considers *the parallel application on the EU territory* and it is divided into three subchapters. The first subchapter deals with

the situation where national competition authority holds a proceedings on a matter that has already been decided by the Commission. The second subchapter deals with the situation when a proceedings held by the Commission concerns a matter that has been already decided by national competition authority. The last subchapter deals with the situation when there are several proceedings held by national competition authorities on the same matter.

The *fourth* subchapter is divided into three subchapters and it deals with the *parallel application going beyond the EU territory*. The first subchapter analyses the Court of Justice's practice. In the second subchapter we are concerned with the duty of competition authority to take into account the previous sanction when imposing another one. In the last subchapter, the influence of the EU Charter of fundamental rights on existing Court of Justice's practice is excluded.

In the *fifth* chapter we consider the possible influence of expected accession of the EU to the European Charter of Human Rights on existing conclusions. It seems that there are not any since the protocols to the Charter are not subject of the accession.

In the *last* chapter the synthesis of previous conclusions is made. It follows that currently there is no doubt of admissibility of the *cumulative application* neither of the competition authority's competence to sanction the behaviour that has already been sanctioned by an authority of a non-member state. However, there is some uncertainty on the admissibility of the *parallel application on the EU territory*, rising from different approach of European Court of Human Rights and EU Court of Justice towards the *ne bis in idem* principle. It is proposed a solution consisting in integration of both approaches in modified concept of "*idem factum*" that reflects the specificity of European competition law in a way that it takes into consideration temporal and territorial effects of the act as an aspect of the identity of behaviour.