

Streszczenie rozprawy doktorskiej Mgr Fabiana Elżanowskiego /j.angielski /pt.
„Vertical restraints on e-commerce”

The subject of the doctoral dissertation titled "Vertical restraints on e-commerce" is to analyze the impact of the new economic phenomena related to the development of online distribution on the EU antitrust policy. The applicable antitrust law regarding distribution, in particular rules resulting from the Court's case-law, were established for the purpose of assessing offline distribution systems. The development of e-commerce significantly influenced distribution relations. In response to the new economic phenomenon, enterprises have changed their existing practices and introduced new restrictions in distribution agreements.

The aim of this dissertation is to verify the following research hypothesis: The applicable EU antitrust law rules allow for an effective anti-monopoly assessment of restrictions on online distribution. The effective antitrust assessment is the one which pursues the objectives of the EU antitrust policy. The EU antitrust law includes: the rules of EU primary law - art. 101 TFEU; secondary law rules - EU regulations, in particular Regulation 330/2010, and the case law of the Court; soft law rules - guidelines and recommendations of the Commission, in particular guidelines on vertical restraints. Rules resulting from the above sources form a framework for the antitrust assessment of distribution agreements.

The analysis carried out in the dissertation proved the hypothesis wrong. In principle, the hypothesis has been confirmed in relation to exclusive distribution systems and selective distribution. In this regard, the applicable EU antitrust law rules allow effective assessment of the new restrictions related to e-commerce. However, the Commission should apply the case-law concerning export restrictions. The prohibition of online sales is a manifestation of export restrictions and as such should be clearly recognized as a restriction of competition by purpose. However, the analysis regarding the status of a commercial agent, franchise agreements and distribution of digital content proved the hypothesis wrong. Existing rules of assessing the status of a commercial agent lead to ineffective assessment of restrictions imposed in agreements by e-commerce platforms. Moreover, Regulation 330/2010 and the Guidelines completely disregard the specificity of the franchise agreements and do not provide an effective framework for antitrust assessment. Last but not least the existing antitrust rules do not prevent territorial segmentation practices in EU digital content distribution.
