

Abstract

This diploma project examines competition regulation in the European Union (EU) in regard to rebates. Research is based on comparison of the EU legal system and the United States (US) legal system, insofar as dominance, abuse of dominance, and rebate regulation are determined. The main aim of the diploma project is to establish when pro-competitive rebates inevitably become anti-competitive. The general approach is comparison of theory with practice in European Commission (“the Commission”, “Commission”) decisions, in particular, the *Intel* case.¹ The *Intel* case forms an empirical base for this diploma project. The main focus is the actual problem of how to determine when rebate strategies become illegal. Much criticism has been levelled at the argumentation of Commission decisions. The research analyses two main criteria: the legal reasoning in Commission decisions, and business reasoning. Research methodology is based on EU and US case law studies and related legal instruments. First, analysis of a dominant position or monopoly is followed by analysis of abuse of dominance by granting conditional rebates in both legal systems. Second, the approaches of both legal systems are compared.

Results of analysis show that the US legal system has more developed rebate regulation than the EU and that Commission authorities have ground for development. The main finding is that legal theory differs from practice: even the Commission is not using its own issued legal instruments. However, the real reason for competition law is doubtful taking into account the recent decision in the *Intel* case. The diploma project emphasizes the problem that the current Commission approach should be revised and that the legal reasoning in Commission decisions is based on case law and ignores the fundamental aim of competition law.

¹ Summary of Commission Decision of 13 May 2009 relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the EEA Agreement (Case COMP/C-3/37.990 — Intel), [2009] OJ C227/07.