Filip Křepelka, *Masarykova univerzita* (krepelka@law.muni.cz)

Course: Introduction to the European Union Law

[10] EC/EU Competition Policy

National competition laws Many rich developed countries protect and restore economic competition relating to their markets. Simple free competition (refusal of recognition of distortive agreements between undertakings) is regarded to be insufficient. Public competition (antitrust) law (there is private competition law too) is enforced by state authorities: agreements between undertakings and abuse of dominant position are prohibited and punished, mergers are to be officially approved.

EC competition law and competition laws of member states EC has developed similar law for protection of competition. EC law is applicable, if practices danger for competition cross borders of member states. EC law is applicable to if source of distortion originates abroad. If distortion has internal effects only, member state competition law is applicable. Although member states are not obliged by directives to introduce harmonised national competition law, they usually follow EC standards and practices.

Antitrust EC law prohibits any agreements between undertakings (competitors) which restrict competition on EC common market. Case-law and teachings of EC competition law defines broadly: written agreements and publicised decisions of associations are rare (could be easily recognised by competition atuthorities), oral and tacit agreements (concerted practices) are more usual. EC law contains non-exhaustive list of restrictive practices: purchase and selling practice, quantitative restriction of production, market sharing (division of markets) and other practices.

Exemptions However, the prohibition of agreements restricting or distorting competition is not absolute. EC law allows so called block exemptions (established by regulations of the Commission). Agreements restricting and preventing competition can be allowed if contribute to improving the production or distribution of goods or services, promoting technical or economic progress if consumers share benefits. Broad notion of prohibited agreements and concerted practices requires this limitation. Antitrust law shall not discourage cooperation of undertakings.

Abuse of dominant position EC law prohibits abuse of dominant position too. Monopolies and monopsons must behave correctly if want to avoid charges of abuse of dominant position. The abuse (unilateral action of undertaking which enjoys dominant position – it is necessary to be proven) can be imposing unfair prices, limiting production, applying dissimilar

conditions on equivalent transactions (discrimination of several suppliers or clients) or imposing unusual suplementary obligations („coupling“).

Enforcement of EC competition law 2004 reform of EC competition law provided for partial decentralisation of its enforcement. The Commission and national competition authorities enforce EC law jointly. EC law provides detailed rules for investigation of suspect practices of undertakings and their managers, including searches and inquiries (accounts, bussiness letters etc). Wide powers are necessary, distortive and restrictive practices of undertakings are hidden and it is difficult to investigate them properly. The Commission and national competition authorities of member states can impose heavy fines to be paid by undertakings. EC competition law does not include sanctions towards individuals (managers of undertakings) or forced split of undertaking (US law). Powers of the Commission and national competition autorities are described by regulation.

Merger control has evolved gradually in EC law. Now there is detailed regulation for its. Merger control is prevention of abuse of dominant position (no dominant position – no abuse possible). EC law describes all mergers to be approved by the Commission. Mergers can be based on various transaction: fusion of companies, acquiring of an important part of shares etc. Merger without approval is illegal and void.

State aid control EC as supranational organisation shall control practices of member states distorting competition. State aids cause unjust advantage for domestic undertaking. State aids are usually intented to reduce unemployment. Therefore, EC law restricts state aid. In general, state aid is prohibited. The only exceptions can be granted by the Commission. Without the approval of the Commission, state aid must be returned (restitution). EC Treaty describes all types of state aid capable to be approved. The administrative practice of the Commission and the case law of the Court of Justice identified many types of state aid (preferential loans, grants, subsidies, raising capital, tax cuts, preferential supply of goods and services, free immovable property etc.). State aid covers aid of self-government (regions, municipalities etc.) and all public institutions and bodies. Procedural rules for control of state aid are embodied in regulations, policy statements and declarations of the Commissions show the acceptability of state aid projects.

Public procurement EC law must take care for natural tendency of member states to support domestic undertakings by public procurement. No discrimination of foreign providers is allowed. EC directives provide for

detailed harmonisation of national laws governing public procurement. Some tenders must be noticed in the Official Journal.

Demonopolisation The EC launched extensive demonopolisation policy in the last 15 years. EC law requires member state to enable regulated and controlled competition in electricity, gas, telecommunication, transports. However, the level of demonopolisation achieved in member states is different.