Summary

In my doctoral thesis titled "Vertical restraints on e-commerce" I analyzed the impact of the new economic phenomenon – e-commerce and online distribution - on EU antitrust policy regarding distribution agreements. I endeavored to verify the following research hypothesis: The applicable EU antitrust legal framework allows for an effective antitrust assessment of restrictions on online distribution.

The rules applicable to distribution, in particular the Court of Justice of the European Union’s ("the CJEU") case law, were established in the 70’ and 80’. The rules adopted at the time served as an adequate legal framework for an antitrust assessment of distribution agreements in the offline economy. However, the advent of e-commerce significantly influenced distribution relations by changing the economic landscape. The results of the e-commerce sector inquiry, launched by the European Commission ("the Commission") in 2015, confirm that the growth of e-commerce over the last decade had a significant impact on companies’ distribution strategies and customer behavior. First, online trade has increased price transparency. Second, the ability to compare prices of products across several online retailers leads to increased price competition affecting sales, both online and offline. Third, increased price transparency allows for easier monitoring of prices by companies. Fourth, alternative online distribution models such as online marketplaces have made it easier for retailers to access customers. In response to such new economic phenomenon enterprises have introduced new restrictions in distribution agreements. In general, the analysis carried out within my dissertation proved the hypothesis wrong.

First, the official guidelines on the assessment of commercial agent status are not up-to-date with the developments in e-commerce and the rise of online marketplaces. Therefore, distribution agreements entered into by online marketplaces are currently not subject to antitrust assessment on EU level. Those agreements may have adverse impact on competition, in particular as regards most-favored-nation clauses.

Second, Regulation 330/2010 and the guidelines on vertical restraints disregard the specificity of franchise agreements and do not provide an effective legal framework. A franchisee network should have unlimited freedom to shape its online distribution policy. A franchisor should have a right to impose restrictions on having own websites by franchisees and resale price maintenance. The aforementioned arrangements concerning the online distribution policy are necessary for the proper functioning of the objectives envisaged by a franchisee agreement.

Third, the analysis of the EU digital content distribution practice proved the existing EU antitrust rules inefficient in dealing with territorial segmentation practices. Right holders tend to grant exclusive licenses to digital content providers, usually territorial and in particular limited to a single member state. Exclusive territorial licenses result in absolute territorial protection for content providers. Therefore, the UE digital single market remains divided along national borders.

By contrast, the hypothesis has been confirmed in relation to both exclusive distribution agreements and selective distribution agreements. With respect to the former, restrictions on online distribution should not result in absolute territorial protection for exclusive distributors. As regards selective distribution agreements, the CJEU’s judgments in Pierre Fabre case and Coty case have clarified that the legal framework established in the 70’ and 80’ is still adequate and valid.