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The Concept of Essential Facility in Competition & Regulatory Law – Final Report

General summary: the purpose of this research project is to critically examine the concept of the essential facility doctrine and refusal to supply under EU competition law and American antitrust. The first part of the research focuses on the legal framework of the two competition regimes, procedural issues to be taken into account and schools of economics. The second part sets out the relevant legal framework and how the concept of the essential facility doctrine (refusal to supply) has evolved in the jurisprudence of both regimes. The third part analyses specific problems which frequently arise in such cases, covering vertical integration issues, foreclosure of competition and legal standards applied (“abuse test”). The final part of the work concludes by proposing a principled approach when assessing access to an essential facility and refusal to supply.

The comparative analysis: as stated above, the research employs a comparative approach. The essential facility concept, as is widely known, originates in American antitrust and a comprehensive doctoral study on the subject necessitates the careful study and research of American antitrust. The research grant provided by the Swedish Competition Authority covered additional expenses incurred during the research visit in the USA, in 2010-2011. Though, the doctoral candidate was employed (and remunerated) by Uppsala University during the relevant period. Having secured an international research fellowship at Harvard Law School, the doctoral candidate studied American antitrust and regulation, conducted advanced research in the subject, participated in research seminars and attended a major conference covering relevant issues.

Research output: the research visit at Harvard University has substantially enriched and sharpened the comparative analysis in the doctoral thesis. In particular, the first two parts of the work, which extensively covers American antitrust, has benefitted from the research and studies at Harvard University. The doctoral research project is currently in its final phase.

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