

**TESI DI DOTTORATO DI KOSTANDIN PECCI, DISCUSSA PRESSO
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NON RIPRODUCIBILE, IN TUTTO O IN PARTE, SE NON CON IL CONSENSO SCRITTO
DELL'AUTORE**



**DOTTORATO DI RICERCA IN DIRITTO ED IMPRESA
XXVIII CICLO**

**CONTRIBUTO ALLO STUDIO DEI LIMITI DEL DIRITTO
ANTITRUST: ESERCIZIO DI DIRITTI PROCEDIMENTALI E
ABUSO DI POSIZIONE DOMINANTE**

**COORDINATORE:
Chiar.mo Prof. Giuseppe Melis**

**TUTOR:
Chiar.mo Prof. Marcello Clarich**

**CO-TUTOR
Chiar.ma Prof.ssa Luisa Torchia**

**DOTTORANDO:
Kostandin Peci**

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ABSTRACT

The research focalizes on the relationship between the exercise of administrative power and the application of antitrust rules. In particular, the application of article 102 TFEU in relation to the participation of dominant undertaking within administrative proceedings is investigated. The aim of the research is to examine the boundaries between the prohibition set forth at Article 102 TFEU and the exercise of the dominant undertaking's administrative participative rights.

From another perspective, the analysis concerns the identification of possible criteria capable of resolving (or avoiding) the conflict between the application of antitrust rules and the exercise of constitutional rights, such as that of democratic participation to the public life and the right to petition the Government. In this regard, an important role could be played by the abuse of rights theory.

The antitrust rules should apply only in relation to behaviours of the dominant firm, which do not represent a genuine exercise of its participative rights.

The research is structured as follows.

The first Chapter, after a brief introduction to the applicative principles of article 102 TFEU, focuses on the application of antitrust rules against State measures. The conclusion reached is that antitrust should apply only in cases where the public authority have delegated their power to private interested parties, without sufficient supervision on how such power is exercised by the private operators.

The second chapter is entirely dedicated the application of Article 102 TFEU *vis-à-vis* the participation of a dominant undertaking within administrative/regulatory proceedings. The research concludes that elements such as, (i) the discretionary power of the public administration; (ii) the nature and effects of the administrative decision; as well as (iii) the principle of uniformity of the legal order, act as limits to the application of Article 102 TFEU.

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On the contrary, Article 102 TFEU shall apply in all cases when the dominant undertaking abuses its participative rights for an anticompetitive purpose. Hence, the third chapter of the thesis investigates the relationship between abuse of dominant position and abuse of rights theory/legal principle.

The thesis is then concluded by a fourth chapter, which shows that some of the arguments treated in the precedent chapters reveal general trends of the legal order. This is, for instance, the case with the pluri-qualification phenomenon (i.e. the qualification of the conduct by different branches of the legal system), as well as with the abuse of rights principle.