

Summary

The purpose of the work is to investigate the difficult relationship between markets regulation and control, at both administrative and judicial levels, with the aim of proposing solutions in order to achieve the EU's objectives in competition filed.

In particular, at the administrative level the analysis focuses on the attribution of areas of competence among the different sectorial Authorities and the transverse competences of National Competition Authority (NCA), describing the evolution of criteria identified by law and case law in order to determinate the competences of the Authorities; moreover, at judicial level the research wants to verify the relationship between the court's review of antitrust decision, especially on sanctions, and the discretionary areas of Authorities, in particular of NCA.

Concerning the first point, the analysis concludes that, despite the several court's decision, Memoranda of Understanding among Authorities are needed to clearly define respective competencies, also creating working groups for a shared interpretation of legal criteria.

At a later time, the study deals with the analysis of critical profiles concerning the relationship between the first Authorities level of control and the second level, the jurisdictional one, also taking into account the Convention for the Protection of Human Rights' (ECHR) requirements.

For how concerns this aspect, the research investigates the interaction between sanctioning powers and the control over judicial review, with special regard to sanctions.

In this regard, the main question is the jurisdiction on the merit of the sanctions and the limit to substitute power, on how the judge concretely carries out this power and what he is supposed to do,

according to the Regulation (EC) N. 1/2003 and its main goal of harmonization.

The issue of balance between independent discretionary power of the Authorities and the need for a full jurisdiction was particularly felt in antitrust filed; here the judicial scrutiny moved from an external control to an intrinsic one, through an unlimited access to the facts and the contextualization of the norms that must be applied, even in presence of “indeterminate juridical concepts”.

With regard to this aspect, it is carefully developed the concept of “jurisdiction on the merits” of the sanctions, and it is concluded that in this filed “merit” means that the administrative court has a power enforced by the possibility to substitute the fine, while the “administrative merit” relates to the control of discretionary areas reserved to administration.

The work ends with the crucial issue of the compatibility between the ECHR and the scrutiny exercised on the antitrust decision by the Italian administrative judge.

It is known that the Menarini judgment by the CEDU has held that the scrutiny exercised by the administrative judge is compatible with article 6 (1) of ECHR, nevertheless the dissenting opinion of the judge Pinto de Albuquerque seems to show some hidden weaknesses of the system.

Furthermore, this part of the research analyses the limits of the administrative court's technical competencies at the time of evaluating indeterminate juridical concepts; at the same time, adopted or desirable solutions are reviewed taking in to account the experience all over Europe.