Antitrust holding liability – in search for the objective of piercing the corporate veil

The prevalence of company groups in the modern economic landscape creates multiple new legal challenges. The regulations currently in force were created for autonomous entities, operating independently, in their own interest and on their own account. With the emergence of corporate groups, consisting of several, a dozen or even several hundred formally separate entities acting collectively, the fundamental principles underlying the authors of contemporary codes have been called into question. The search for specific rules for the creation, operation and, in particular, liability within so-called holdings has become one of the leading problems in many areas of law. Apart from company law, where this topic has been of great interest for many years, a particularly interesting area of regulation in this regard is competition law, located on the borderline between public and private law and harmonised at the EU level. Meanwhile, the direct impulse to undertake research on antitrust holding liability is provided by newly designed regulations introducing into the Polish legal system - following EU standards - liability for competition law violations by an entity exercising decisive influence on the direct infringer (RCL project No. UC69).

The project aims to analyse the prerequisites for antitrust liability in a holding company and to answer the question: what is the actual objective of piercing liability (i.e. both administrative and civil liability for the actions of another company within the same holding company) in competition law, in light of the well-established decisional practice of the EU antitrust authority? This question is particularly pertinent in the context of recent case law indicating that a subsidiary can be held liable for damages caused by an infringement of competition law by its parent company. Preliminary research suggests that, contrary to the assumptions of the European Commission and the Court of Justice, this aim is by no means prevention or the need to ensure the effectiveness of the law, but rather increased repression. The project involves a precedent-setting comparison between antitrust liability and the general principles of vicarious liability (for the conduct of another) in other liability regimes. In addition to the traditional in legal sciences dogmatic method, the research will also draw extensively on the law-comparative method and the economic analysis of law. The American and German legal systems will be a particularly important point of reference.

The results of the research will be disseminated in several ways. Most notably, the project will culminate in a monograph published in English by a renowned publisher. Due to the European and even global dimension of the problems discussed, the publication will constitute an important - and first Polish - voice in the discussion on piercing antitrust liability. In addition, a scientific article is planned to be published in a Polish journal in connection with the planned amendment of the Polish Act on Competition and Consumer Protection. A particularly valuable way of disseminating the research results will also be their presentation at scientific conferences, which will provide an opportunity to submit the key theses of the project for discussion at the international level.