

The second volume of iKAR – continuation and enrichment of the concept of our periodical (from the editor-in-chief)

K About the Project of Amendments of the Competition and Consumer Protection Act

Anna Piszcz, A few remarks on the draft assumptions for an Act amending the Act on competition and consumer protection

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Abstract: The article is concerned with the discussion of some of the issues and suggestions outlined in the draft assumptions for an act amending the Act on competition and consumer protection (ACCP). The draft document was published by the President of the Office of Competition and Consumer Protection (OCCP) for consultation in May 2012. First, the author explains the significance of the Act on freedom of economic activity for drafting amendments to the provisions in ACCP relating to inspections in proceedings before the President of the OCCP. Second, emphasis is laid on some issues related to remedies and so-called no-contest plea. Last, the author concentrates on some problems related to fines and liability of individuals.

Key words: public consultations; inspection; order to bring an infringement to an end (cease and desist order); settlement; fines

Szymon Syp, The proposed changes in the merger control law – a few remarks on the proposal of the Office of Competition and Consumer Protection

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Abstract: The article deals with the issue of proposed changes in the merger control law in Poland. Due to the fact that the competition authority – the Office of Competition and Consumer Protection (OCCP) has officially launched the main objectives of the changes, the author, by describing the

basic proposals of changes, confronts them with the previously formulated changes by officials during the conferences. In addition, the author describes the proposed changes in relation to the previously published by the competition authority the Competition policy in 2011-2013. Finally, taking into account emerging voices of the practice and academia in terms of the proposed changes, the author attempts to assess the strengths and weaknesses of the envisaged solutions. At the conclusion the overall assessment of the proposed changes by the OCCP will be presented.

Keywords: control of concentration, changes in the law of merger control, merger control, competition policy

Małgorzata Sieradzka, Consumer protection instruments in the Competition and Consumer Protection Act 2007 – the need for changes?

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Abstract: This paper aims to present in detail those provisions of the Act on competition and consumer protection which require an urgent change and its justification. This will answer the question to what extent and how specifically a revision of the consumer provisions in the Competition and Consumer Protection Act of 2007 should proceed. Especially, since the main objectives of the proposed amendments do not include substantive and procedural changes in the consumer provisions, but only emphasize that changes in other regulations (which also applies to consumer rules) intend to eliminate inconsistencies in interpretation and drafting.

Key words: consumer protection instruments; collective interests; practices

Articles

Dominik Wolski, Selected issues from the scope of issuing and fulfillment of decisions on conditional consent to concentration of entrepreneurs

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- II. The legal basis and course of issuing and fulfillment of conditional decisions on concentration of entrepreneurs
- III. Conditions imposed by antimonopoly office
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Abstract: The subject matter of this article are selected issues regarding issuing and fulfillment of conditional decisions on concentration of entrepreneurs. This kind of decision, relatively rare in adjudication office practice, however, is particularly interesting. Against this background there were discussed some issues, namely type of conditions (obligations) imposed on entrepreneur by antimonopoly office, including criteria used by the President of UOKiK, who should propose application of condition and its kind as well as to what extend this proposal shall be binding. The last part of the article addresses question of responsibility for fulfillment of condition or obligation imposed by the President of UOKiK within the set period of time, especially a question of principles on which entrepreneur's responsibility should be based.

Key words: concentrations of entrepreneurs, conditional decision, conditions, obligations, criteria, adjudication practice, fulfillment of condition, responsibility, sanctions

Rafał Stankiewicz, About the need to increase the participation of the third subjects in anti-monopoly proceedings

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Abstract: The presented article is pointing out to the need for the participation of the entities different from the party to the proceedings. Pursuant to the article 88 Antimonopoly Act, the party to the proceedings shall be every person against whom the proceedings concerning the application of competition-restricting practices are instituted. In the Polish Antimonopoly Act is the lack of provisions creating the access the third parties to proceedings. Differently to the solutions existing in the European Union law, competitors and others entrepreneurs possibly harmed by the activity of the undertaking that allegedly violated competition law may not participate in the proceedings.

Keywords: antimonopoly proceedings, party to proceedings, interested entity, third party, social organization

Maciej Gac, Competition law compliance programmes – an effective mechanism in creating European compliance culture?"

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Abstract:

The goal of this article is to analyze the impact of compliance programmes on the effectiveness of the European competition law. The article seeks to answer the fundamental question: whether, and if so, under what conditions compliance programmes can contribute to the creation of compliance culture in the European competition law. The article makes a comparative analysis of the European Commission's proposal, contained in the document titled „Compliance Matters. What companies can do better to respect EU competition rules”, and solutions concerning compliance programmes introduced by French and British competition authorities. The article tries to assess the effectiveness of different models of compliance policies and aims to offer practical solutions on the examined issue. In addition, the article tries to determine if the introduction of compliance policy would be possible under the Polish system of competition law

Keywords: compliance culture; compliance programmes; efficiency; mitigation of fines.

Kamil Ciupak, State aid or not? Legal dilemmas connected with the assessment of public financing of sea ports infrastructure – far from a safe harbour

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Abstract:

Transport by sea plays a vital role for the economy of the European Union. Among all the infrastructure elements necessary to conduct transport by sea, the port infrastructure (in the wide meaning of this term) is of the utmost importance. Its development is often financed from public resources, as it is one of the basic duties of a state. However, in practice a borderline between situations, when public financing of port infrastructure constitutes State Aid and those in which not all of the criteria laid down in Art. 107 (1) TFEU are met and thus such financing is a means of exercising public authority by constructing infrastructure open to all potential users, is a "thin red line". This is so because currently there is no act in the EU legal regime (either binding or non-binding) which lays down clear and precise rules and standards of assessment of public financing of port infrastructure in two aspects:

- 1) When does it constitute State Aid according to Art. 107 (1) TFEU?
- 2) What are the criteria of compatibility of State Aid aimed at the development of port infrastructure with the EU internal market?

The present article focuses on the first of the abovementioned questions. However, the question will be analysed from the perspective of the kinds of port infrastructure, public financing of which may or may not constitute State Aid, and thus not all of the criteria stemming from Art. 107 (1) TFEU will be examined. This is so because in practice most difficulties arise in the said area.

Key words: state Aid, non-aid public financing, infrastructure, sea ports.

Legislation and Case Law Reviews

Anna Piszcz, Review of changes to Polish competition law in 2010-2011 (part 2)

Tables of decisions of the President of Competition and Consumer Protection Office

Tables of judgments of the Competition and Consumer Protection Court

Abuse of dominant position – anticompetitive exclusion of competitors on connected markets.

CCPC judgment of 22 February 2012 in case AmA 171/11 (Konrad Kohutek)

Abuse of dominant position – objective justification of anticompetitive practices of dominant firms.

CCPC judgment of 30 March 2012 in case AmA 180/10 (Konrad Kohutek)

Telecommunications regulation – resolving disputes between undertakings.

CCPC judgment of 15 March 2012 in case AmT 230/09 (Stanisław Piątek)

Energy regulation – imposing fines without legal basis.

CCPC judgment of 9 March 2012 in case AmE 99/10 (Bartłomiej Nowak)

Energy regulation – just right of a party to have the tariff changed.

CCPC judgment of 12 March 2012 in case AmE 170/11 (Bartłomiej Nowak)

Books Reviews

Dawid Miąsik, *Stosunek prawa ochrony konkurencji do prawa własności intelektualnej* [The interface between competition and IP laws] (Agata Jurkowska-Gomułka)

Małgorzata Sieradzka, *Pozew grupowy jako instrument prywatnoprawnej ochrony interesów konsumentów z tytułu naruszenia reguł konkurencji* [Class action as an instrument of private law protection in virtue of infringements of competition rules] (Maciej Bernatt)

Events and Activity Reports

Rights of entrepreneurs in antimonopoly proceedings.

Scientific conference of the Institute of Legal Sciences of the Polish Academy of Sciences – with co-operation of the Centre for Antitrust and Regulatory Studies, Warsaw, 23 April 2012 (Agata Jurkowska-Gomułka)

Security and safety, and effectiveness of airports.

Seminar of the Centre for Antitrust and Regulatory Studies and the State Enterprise “Airports”, Warsaw, 24 May 2012 (Anna Zirk-Sadowska)