

Continuation of the discussion concerning the essence of the prohibition of anti-competitive agreements – from the Editor-in-Chief

Articles

Antoni Bolecki, Agreements by object or effect – current trends in EU case law

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Abstract: The article presents current trends in EU case law and publications concerning the distinction between agreements which are prohibited due to their object and those which are prohibited on grounds of their effect in light of the significant changes that have recently occurred in this field. These changes are manifested particularly by the continuous expansion of the open list of agreements which are prohibited by object, meanwhile in the absence of the application of agreements which are prohibited solely because of the anti-competitive effect they may cause. This trend is accompanied by increasing demand for the consideration of the wider economic environment already at the stage of analyzing the objects of an agreement.

Key words: agreements restricting competition; agreements by object; agreements by effect; economic approach; current EU jurisprudence concerning agreements.

Jarosław Fidala, Imposing minimum and fixed resale prices from the perspective of its object and market effects

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Abstract: The aim of this article is to assess the correctness of the Polish competition offices' approach to consider vertical agreements related to the imposition of fixed and minimum resale prices as forbidden *per se* due to their object and the possibility to reformulate the principles which apply to the

assessment of such agreements in light of their positive market effects. The assessment is carried out by analysing the concept of anti-competitiveness of agreements in light of the object or effects criterion and the aim of competition law. This analysis leads to the conclusion that as far as vertical agreements related to the imposition of fixed and minimum resale prices are concerned, it is impossible to predetermine in an *a priori* manner that they have an anti-competitive object and that the mere fact of concluding them results in a law violation. Given the possible positive effects of such agreements, it seems necessary to carry out a deeper analysis of their anti-competitiveness on the basis of the assessment of their effects.

Key words: object or effect, agreements, imposing fixed and minimum resale prices, aim of competition law, consumer's welfare.

Patrycja Szot, Adam Zięba, Distribution agreements in the motor vehicle industry in the new system of block exemptions

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Abstract: This article presents the new exemption framework for distribution agreements in the motor vehicle sector, in force since June 2010, which will be fully effective with respect to agreements on distribution of new motor vehicles as of June 2013. The paper aims to explain the principles governing the new set of rules, the rationale behind incorporating the previously applicable sector specific provisions into a general regime of the vertical restraints block exemption and the reasons for which the Commission decided to maintain particular provisions regarding after-sale services. The article includes a practical assessment of issues traditionally crucial to the functioning of the motor vehicle sector rather than commenting provision after provision. These relate to non-compete requirements, the application of direct or indirect quantitative selection criteria, the use and sourcing of spare parts, among others. Mentioned is also the Polish block exemption applicable in the motor vehicle industry and attempts are made to explain in a business-friendly manner the principles behind the general prohibition of agreements restricting competition and the exemption system.

Key words: vertical agreements; concerted practices; distribution, motor vehicle sector; vertical restraint; block exemption; multi-branding 330/2010; 461/2010; 1400/2002; 2790/1999.

Legislation and Case Law Reviews

Anna Piszcz, Remarks to the Guidelines for issuance of commitment decisions in cases of competition-restricting practices and practices infringing collective consumer interests

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- II. Conditions of issuance of commitment decisions
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Abstract: In this article, the author examines the Guidelines for issuance of commitment decisions in cases of competition-restricting practices and practices infringing collective consumer interests. The draft Guidelines published by the President of the OCCP has been available for consultation until June 26th, 2012. On July 26th, 2012 the President of the OCCP published the Guidelines. The text of the Guidelines is exactly the same as in the published draft document. The author analyses each section of the document to identify the questions that may arise on the document and recommend some changes thereto.

Key words: commitment decision; competition-restricting practices; practices infringing collective consumer interests.

Tables of judgments of the Competition and Consumer Protection Court (Elżbieta Krajewska)
Resale Price Maintenance – Time for Changes.

Case comment to the judgment of the [Polish] Supreme Court of 23 November 2001 in case III SK 21/11 *Röben Cermaika Budowlana* (Antoni Bolecki)

Professional standards within corporations that constitute competition restricting agreements
 Wyrok Sądu Ochrony Konkurencji i Konsumentów z 25.05.2012 r., XVII AmA 215/10 (Agata Jurkowska-Gomułka)

Imposition of unfair contractual obligations by a dominant undertaking

Judgments of the Competition and Consumer Protection Court of 22 February 2012, XVII AmA 66/10
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Practices infringing collective consumer interests – Article 17 of the Act on the freedom of economic activity and the unlawfulness of entrepreneur’s activity. Average consumer.

Judgments of the Competition and Consumer Protection Court of 24 May 2012, XVII AmA 31/11
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Practices infringing collective consumer interests – reputation matters.

Judgments of the Competition and Consumer Protection Court of 28 June 2012, XVII AmA 58/11
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Energy regulation – release from tariff approval obligation

Judgment of the Competition and Consumer Protection Court of 15 June 2012, XVII AmE 193/11
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Energy regulation – unjustified withholding of energy supply

Judgment of the Competition and Consumer Protection Court of 18 June 2012, AmE 208/10 (Mikołaj Jasiak)

Book Reviews

A. Bolecki, S. Drozd, S. Famirska, M. Kozak, M. Kulesza, A. Madała, T. Wardyński, *Prawo konkurencji [Competition Law]*, wyd. 1, LexisNexis, Warszawa 2011 (Ilona Szwedziak)

Events and Activity Reports

CARS 2012 Antitrust Reward.

The official award ceremony (Warsaw, 4 June 2012)

Reported by by Agata Jurkowska-Gomułka