

Confirmation of the exceptional value of commentators notes on key judgments – from the Editor-in-Chief

About the Project of Amendments of the Competition and Consumer Protection Act as well as the Guidelines thereto

Szymon Syp, On the issue of financial liability of managers in the new Polish Competition Act

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Abstract: The article focuses on the proposed amendments to the Polish Competition Act which would introduce the institution of an individual's liability for allowing an undertaking to commit a violation of the prohibition of anti-competitive practices. Discussed first is the liability of individuals on the basis of current provisions of the Act on Competition and Consumer Protection (i.e. procedural infringements liability). Presented next are the main assumptions surrounding an individual's liability as currently proposed by the Polish Antitrust Authority (i.e. substantive liability *sensu stricto*). These assumptions are confronted with the comments already submitted by, among others, the Polish Competition Law Association and the CARS Working Group. Presented in conclusions is the Author's own evaluation of an individual's liability taking into account the comparative law approach and the achievements of the doctrine.

Key words: liability of individuals; changes in competition law; competition policy; fines.

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.

Articles

Małgorzata Kozak, Agency in the light of Article 101 TFEU. How to chase a rabbit without actually catching it ?

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Abstract:

Distribution systems have become more and more complex and tend to use different legal solutions to fulfill the aims of the producer. One of them can be agency. From the perspective of competition law, agency holds a special status, resulting from the fact that an agent is present in two distinct relevant markets. In one market an agent represents the principal in the conclusion of a contract, in the second market it offers its own services as an agent. This specific causes some practical difficulties and is interesting from a theoretical point of view. The erroneous qualification of a distributor as an agent could result in fines being imposed by competition authorities.

However, as to the first of the aforementioned markets, according to an interpretation of Article 101 TFEU, an anticompetitive agreement cannot be concluded between the same person. This could lead to agency agreements being immune from competition law requirements. It is imperative to recognize the difference. The criteria for the application of Article 101 TFEU to agency agreements were set out by the European Commission in 1962 and repeatedly considered by the jurisprudence of the Court of Justice of the European Union. Nevertheless, the *enigma* is far from being resolved since the proposed solutions tend to be incoherent. One of them concentrates on the single economic entity doctrine. Another refers to auxiliary theory. The most recent approach focuses on risks undertaken by an agent in relation to the contracts that it negotiated.

The analysis carried out and solutions reached show that other elements must also be taken into account in assessing whether an agency relationship exists including an assessment of the effects of an agreement.

Key words: antitrust; application of article 101 TFEU; definition of an undertaking.

Agata Zawłocka-Turno, *Bid rigging or action allowed by law? The interplay between competition law and public procurement law.*

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- II. Joint bidding
- III. Possibility to file separate bids by undertakings belonging to the same capital group
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Abstract: The Article presents some problematic issues due to the interaction between competition law and public procurement law. The latter which aims at fostering competition within the specific tender may at the same time promote bid rigging among bidders. Therefore, problems analysed in this Article relate to joint bidding and possibility to file separate bids by undertakings belonging to the same capital group (multiple bidding). Moreover, the Article elaborates on the oversight competences as regards bid rigging.

Key words: bid rigging, joint bidding, bidding consortia, multiple bidding.

Elżbieta Krajewska, *Settlement in the light of European experiences. In search of optimal solutions*

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- V. *Settlement* in Polish competition law – some remarks on the envisaged procedure
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Abstract: The purpose of this paper is to analyze *settlement* procedure in competition law on the basis of experiences arising from European law and national laws of Great Britain, France and Germany. In the first part the paper compares different legal frameworks according to the several chosen criteria. This description is then illustrated with the decisional practice of competition authorities. In the

next part the rationale behind different solutions is discussed, taking into account the basic aim of the *settlement*, which is to achieve procedural economy on the one hand and being attractive for entrepreneurs on the other hand. Key problems identified are (i) procedural economy versus respecting legitimate interests of engaged undertakings (ii) meeting critical balance between attractiveness of *settlement* and maintaining deterrence effect of fines (iii) meeting the fundamental expectations of participants which are: certainty, transparency and predictability. Last but not least, some comments on the envisaged *settlement* procedure in Polish law are formulated.

Key words: settlement; early resolution agreements; la non-contestation des griefs; right of defence; due process requirement.

Legislation and Case Law Reviews

Tables of judgments of the Supreme Court (Elżbieta Krajewska)

Tables of judgments of the Court of Appeals in Warsaw (Elżbieta Krajewska)

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Judgment of the Court of Appeals in Warsaw of 17 May 2012, VI ACa 1428/11 (Maciej Bernatt)

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Collective consumer interest – Criticism of the setting of the amount of fines in the case of innovative promotions that benefit consumers

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Judgments of the Competition and Consumer Protection Court of 14 May 2012, XVII AmA 41/11
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Judgment of the Court of Competition and Consumer Protection of 1 June 2012, XVII AmA 229/09
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Energy regulation – Violation of obligations concerning the issuance of network connection requirements resulting from concessions on energy distribution activity

Judgment of the Court of Appeals in Warsaw of 19 January 2012, VI ACa 1411/11 (Mikołaj Jasiak)

Competition Law Worldwide

Małgorzata Anna Nesterowicz, *New Brazilian Act on Competition Protection System*

Book Reviews

Book review: Marcin Stoczkiewicz, *Pomoc państwa dla przedsiębiorstw energetycznych w prawie Unii Europejskiej [State aid for energy companies in EU law]*, Wolters Kluwer Polska, Warsaw 2011, 436 p. (Anna Nykiel-Meteo)

Konrad Kohutek, *Praktyki wykluczające przedsiębiorstw dominujących. Prawidłowość i stosowalność reguł prawa konkurencji [Exclusionary practices of dominant undertakings. Correctness and applicability of competition law]*, Lex a Wolters Kluwer business, Warsaw 2012, 643 p. (Anna Laszczyk)

Events and Activity Reports

Judicial control model in competition law and regulatory cases

Conference of the Centre of Antitrust and Regulatory Studies (Warsaw, 4 June 2012).

Reported by Maciej Bernatt and Agata Jurkowska-Gomułka

Smart grids – Market, consumers and sustainable growth

Conference of the Energy Regulatory Office and the National Fund for Environment Protection and Water Industry (Warsaw, 18 September 2012).

Reported by Elżbieta Krajewska.

2nd International Competition Law Forum.

Conference of the Office of Competition and Consumer Protection (Warsaw, 27 September 2012).

Reported by Elżbieta Krajewska.