Summary: The Draft Amendment of the Competition and Consumer Protection Act of 2007 approved by the Council of Ministers provides for, among others, the introduction of some changes to the merger control area. The author discusses the most important of these amendments including: two-phase merger control proceedings, statements of objections towards planned concentrations, secrecy for the execution deadline of conditional decisions, and the introduction of new rules on 'multiphase concentration'. The latter in particular is subject to some controversy since it is meant to prevent the circumvention of the law through the execution of a range of smaller concentrations covered by the *de minims* rule. The proposed changes are critically analyzed by the author, who at the same time suggests a number of solutions that make it possible to eliminate the amendment's drawbacks.
Key words: draft of the Amendment Act; merger control; two-phase procedure; conditional decisions; 'multistage concentrations'.

Summary: This article attempts to critically assess solutions related to the *legal professional privilege* proposed during the legislative process and finally adopted by the authors of the drafted amendment to the Act on Competition and Consumer Protection of 2007. However, aside from pointing out numerous interpretational and practical difficulties associated with the solutions chosen in the draft amendment act, proposed in this article is also an alternative content of the new Polish LPP provisions, which could be included in the amended Act. The authors of this article

are of the opinion that Poland's new solutions should basically be concurrent with those adopted in EU competition law.

Key words: *Legal Professional Privilege*; LPP; inspection; search; right of defence; antimonopoly proceedings.

Anna Piszcz, Principles of calculating the amount of fines according to the draft act amending the Act on Competition and Consumer Protection and some other acts

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Summary: The article is concerned with the discussion of some of the proposals outlined in the draft act amending the Act on competition and consumer protection and some other acts. First, emphasis is laid on the base amount used to calculate fines. Second, the author explains some of the issues related to the proposals on changes to the factors to be taken into account while calculating fines. Last, the author focuses on proposed mitigating factors and aggravating factors.

Key words: fines; base used to calculate fine; mitigating factors; aggravating factors.

Małgorzata Sieradzka, The Competition and Consumer Protection Act – the need for changes to provisions that cause interpretation doubts

Table of contents:

Summary: The aim of this paper is to present some of the provisions of the Competition and Consumer Protection Act, which have caused interpretational dilemmas when used in judicial practice. Statutory provisions in force since 16 February 2007 have in some cases not only proven to be in need of revision but sometimes ever proven in need of repealing. Proposals to amend the Competition Act answer this need but provoke also the need for a deeper reflection upon the suggested amendments. The proposed changes are insufficient – they do not resolve all the problems identified in the practical application of the Act. The author highlights some of the provisions left out from the revision process including consumer protection provisions and rules on the protection of business secrets in proceedings before the UOKiK President. The author provides justifications for changes that he suggests should be made to the Act and proposes possible solutions to outstanding problems.

Key words: explanatory proceedings; business secret protection; offence to the detriment of consumers; execution of a decision to discontinue a practice of infringing collective consumer interests; time-limits for execution of a decision.

Articles

Piotr Semeniuk, "**Polish bid rigging" – critique**

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Summary: The paper discusses the specific, novel form of bid rigging that was the basis for recent bid rigging cases in Poland. The analyzed scheme is conceptually different from canonical bid rigging which is usually meant to over-charge the public purchaser. By contrast, the "Polish bid rigging" scheme involves two entrepreneurs participating in the same tender and one entrepreneur withdrawing his lower bid after he was chosen by the procuring public authority (allowing the latter entrepreneur to win the tender).

The author discusses the economic considerations standing behind "the Polish bid rigging strategy" and argues that, in most cases, the Polish scheme constituted a unilateral practice rather than an agreement captured by competition laws.

Key words: "Polish bid rigging"; bid rigging; single economic unit; withdrawal of an offer; economic analysis; bid suppression.

Elżbieta Krajewska, Economic analysis of companies' decision to settle in competition cases

Table of contents:

Summary: The purpose of this paper is to analyze, from the economic perspective, the companies' decision to settle in competition cases with special emphasis placed on costs and benefits of challenging a *settlement* decision in courts. The paper starts with the presentation of the main factors determining the companies' incentives to settle comparing them also to other competition law instruments (i.a. *leniency* and *commitment decisions*). This relationship is illustrated in the following section by way of a simple model of the companies' *settlement* decision problem. The interplay of various factors means that the defendant's net incentive to settle will depend on the strength of various effects among which timing and cost of capital appear to be decisive.

Keywords: *settlement*; *settlement* decision problem; costs and benefits of *settlement* procedure.

Włodzimierz Szpringer, Two-(multi)-sided e-business models and competition law

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Summary: In the markets of ICT-technology standardization, interoperability of equipment and product compatibility are crucial. Disclosure and sharing of knowledge accelerates the formation of innovation. The phases of the development of knowledge follow one another, referring to the predecessors. Access to global achievements is thus very important for progress. However, exclusive rights are not always used in favor an innovative competition, but also to create strategic barriers to entry for competitors. The current model of closed innovation, which is based on complete

control of IPRs, is evolving towards a model of open innovation. Diffusion of knowledge and profits higher than those under a IPRs monopoly are present thanks to positive network effects. The combination of closed and open innovations can reflect the need to compromise between openness and covering the costs of organizing the platform, but also a strategic element of overall efforts to increase market share. Competition authorities should pay more attention to the perspective of dynamic competition and innovation, offering the opportunity to market and improving consumer welfare in the long run. Methods of sharing the intangible assets on ICT technology markets require a new look, as well as the synthesis of two trends: public regulation, primarily addressed to dominants, which forces them to share information and knowledge in situations where failure to do so makes it difficult/impossible for others to act (essential facility), as well as sharing assets voluntarily by an undertaking possessing a market standard which sees long-term benefits of this strategy, primarily related to the development of services on a platform built around the value chain based on a specific standard market and the related network effect. Sharing the value of various customer groups are defined as two-, (multi)-sided markets, which are often a marketplace of cooperation between competitors.

Keywords: open innovation; ICT technology market; cooperation between competitors; dynamic competition; market standards; patent wars; FRAND; two-(multi-) sided e-business models.

Maciej Fornalczyk, Public service obligation vs. commercial activity of Polish communal companies

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Abstract:

The financial crisis makes it necessary to put forth certain procedures focused on increasing the efficiency of public assets, especially where communal entities are at stake. Every commune is required to introduce the best available public services, what requires increased spending. Simultaneously, public authorities are facing certain budgetary restraints and, as a result, companies owned by public authorities that are entrusted with public service obligations (PSO) must think of ways to minimize the necessary compensation. One of the most popular vehicles for reaching this strategic goal is the expansion of non-PSO (commercial) activities. That may give positive financial results for both the communal company as well as the public authority. Nevertheless, a company that is a beneficiary of an in-house order is facing restrictions on non-PSO activity. This article puts a spot light on the issue of finding the balance between meeting strategic financial objectives staying in-line with legal framework at the same time.

Key words: Public services; Public transport; In-house contract; Economic activity within Teckal regime; Financing public services; Economic merits of PSO granting.

Rafał Wolski, Selected issues in light of judgments concerning slotting allowances and fees

Table of contents:

Summary: The issue of slotting allowances or slotting fees still causes many doubts and disputes. This article discusses the most important problems which appeared in light of a number of Polish judgments in this type of cases. Mentioned among them can be the boundaries of freedom of contract in the context of Article 15(1)(4) of the Unfair Competition Act 1993 on symptoms of limitations of access to the market and the character of this prerequisite in jurisprudence as well as a number of issues connected thereto such as burden of proof, equivalency of benefit provided by retail-chains to cooperating suppliers and the legal character of rebates and bonuses in relations between them. These issues are discussed in the context of the attitudes of the doctrine and business practice in this economic field. This rather wide treatment of each of these problems makes it possible to comment on the chosen judgments including their correctness. The Author did not avoid to present a critical voice in this debate wherever he believed that the direction taken in a given judgment demands rethinking and possible revision.

Key words: unfair competition act; slotting allowances and fees; freedom of contract; burden of proof; limitation of access to the market; presumption; equivalency.

Legislation and case law reviews

Tables of judgment of the Supreme Court (Elżbieta Krajewska)

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

Tables of judgments of the Competition and Consumer Protection Court (Elżbieta Krajewska)

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Attempt to justify a price clause by Article 15 (1)(1) of the Unfair Competition Act
Judgment of the Competition and Consumer Protection Court of 27 November 2012,
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Collective consumer interests – juridical review of the fine amount.
Judgment of the Competition and Consumer Protection Court of 8 October 2012,
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Collective consumer interests – consequences of mistakes made in the sentence of a decision issued by the President of UOKiK
Judgment of the Competition and Consumer Protection Court of 15 October 2012,
XVII AmA 17/11 (Dawid Miąsik)

New books

Zbigniew Jurczyk, ***Kartele w polityce konkurencji Unii Europejskiej*** *[Cartels in the EU competition policy]*, C.H. Beck, Warsaw 2012, 427 p. (Jarosław Fidala)

Krystyna Kowalik-Bańczyk, ***Prawo do obrony w unijnych postępowaniach antymonopolowych. W kierunku unifikacji standardów proceduralnych w Unii Europejskiej*** *[Right to defence in EU antitrust proceedings. Towards the unification of procedural standards in the European Union]* LEX a Wolters Kluwer business, Warsaw 2012, 632 p. (Agata Jurkowska-Gomułka)

Tadeusz Skoczny, ***Zgody szczególne w prawie kontroli koncentracji*** *[Special clearances in merger control law]*, University of Warsaw Faculty of Management Press, Warsaw 2012, 482 p. (Szymon Syp)

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