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(From the Editor-in-Chief)

Articles

Dariusz Aziewicz, Validity of an economic analysis with respect to minimum resale price maintenance under Polish competition law

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 2. *Leegin* and the use of an economic analysis with respect to RPM under Polish competition law

Summary: The article addresses the issue of minimum resale price maintenance focusing on pro-competitive effects of this practice. It refers to US federal antitrust law describing its evolving approach to RPM. The article shows also the possibility of using such an approach by the President of the Polish Office of Competition and Consumers Protection.

Keywords: minimum resale price maintenance, competition law objectives, consumer welfare, approach focused on the economic effect of a practice, agreements.

Antoni Bolecki, On-line sale restrictions in distribution agreements

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Summary: Article (a) discusses when - from the perspective of competition law – vertical on-line sale restrictions are permissible and when prohibited as well as (b) clarifies terminology and places these vertical restrictions within the overall competition law system (particularly in the context of the methodology of their analysis).

Keywords: on-line sale; on-line auction; distribution agreement; vertical restriction; active sale; passive sale; brand-product sale; agreement purpose and effect; objective competition-restriction justification; *de minimis* exemption; agency agreement.

Anna Piszcz, Is this a ‘group of companies’ or is it not? Problems of qualification and their consequences

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- I. How did the problem of a few become the problem of many?
- II. Difficulties with the assessment of membership in a group of companies
- III. Results of an incorrect assessment of membership in a group of companies
- IV. Conclusions

Summary: Individual undertakings comprising a ‘group of companies’ (specific economic unit) are, in some respects, treated differently than undertakings which are not members of such group. From the perspective of competition law, such different treatment is to be found in the area of concentrations as well as agreements. However, starting from 20th February 2013, undertakings must assess whether they are members of ‘groups of companies’, within the meaning of the newly amended Polish Competition Act, not only with respect to concentrations and agreements, but also in connection with their participation in public tender procedures. However, the definition of a ‘group of companies’ and its ‘components’ may make it difficult for a normal undertaking to assess clearly if the nature of its relationship with others should result in classifying them as a group of companies or not. This article identifies these problems as well as the consequences of an incorrect qualification as a group member, or not. The author attempts to unravel what could be done to minimize the associated risks.

Key words: group of companies, control of an undertaking, public contract award procedure, statement of an economic operator.

Competition law abroad

Konrad Kohutek, Australian competition law: selected issues

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- I. Introduction
- II. Objectives of the Act, the concept of competition; scope of application
- III. Anticompetitive agreements
- IV. Unilateral practices
- V. Merger and Acquisitions
- VI. Final remarks

Summary: The paper presents selected issues of competition law in Australia. It is based both on the provisions of Australian competition and consumer Act of 2010 and on available case-law. The article focuses on the substantive aspects of competition rules in Australia (i.e.: the scope of application of the act; the concept of competition; definition of anticompetitive agreements; as well as when a corporation with substantial degree of market power is unlawfully taking advantage thereof). It also contains comparative comments considering the provisions of Polish and EU competition law, as well as general thoughts on the legislative technique of Australian competition law and some of its concepts.

Key words: corporation; substantial lessening of competition standard; authorization; contracts, arrangements and understandings; misuse of market power; third-line forcing; informal merger clearance.

A. Laszczyk, Collective dominant position on telecommunications markets on the example of the case-law of Spanish competition authorities

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- I. Introduction
- II. Market situation on Spanish telecommunications markets
- III. Decision of the Basque competition authority
- IV. Decision of the Spanish competition authority
- V. Conclusions

Summary: The aim of this article is to discuss two decisions issued by the Spanish and the Basque competition authorities concerning abuse of dominance in telecoms. The author focuses on the arguments raised therein when invoking the existence of collective dominance. The analysed decisions deserve special attention as far as the Polish competition authority's on-going proceeding concerning potential abuse of a collective dominant position held by the three main Polish telecom undertakings.

Key words: collective dominance, tacit collusion, telecom sector.

Nemo iudex in sua causa, Commissio? Judgement of the Court of Justice of 6 November 2012 r. in case C-199/11 *Europeen Community v. Otis NV i inni* (Ilona Szwedziak-Bork)

Merger control – State liability for actions of the competition authority's officials. Judgement of the *Landgericht Köln* (Germany) of 26 February 2013, Az. 5 O 86/12. (Wojciech Podlasin)

Legislation and case law reviews

Anna Piszcz, Overview of Polish antitrust law developments in 2012

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- I. Introduction
- II. Amendments to the Code of Civil Procedure (kpc)
- III. "Soft law" of the President of the Competition and Consumer Protection Office (UOKiK)

Summary: This article acts as a continuation of an earlier overview of Polish antitrust law developments in 2010-2011 published in last year's iKAR. Analyzed here are the 2012 amendments to legal provisions on judicial antitrust proceedings. Presented also are some developments in the area of the legally non-binding guidelines of the UOKiK President.

Key words: judicial antitrust proceedings; non-admission of evidence; *amici curiae*; guidelines of the UOKiK President.

Tables of judgments of the Supreme Court (Elżbieta Krajewska)

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

Tables of decisions of the President of the Competition and Consumer Protection Office – from January to March 2013 (Anna Archacka)

Regulation of Telecommunications – imposition of a network connection obligation on operators without significant market power. Judgement of the Supreme Court of 19 October 2012, III SK/3/12 (Bożena Marciniak)

Antitrust – silent approval of a price offer as concertation (concerted practice). Judgments of the Competition and Consumer Protection Court of 18 March 2013, AmA 40/10 i XVII AmA 41/10 (Agata Jurkowska-Gomułka)

New books

Mateusz Błachucki, *System postępowania antymonopolowego w sprawach kontroli koncentracji przedsiębiorstw* [*System of antimonopoly proceedings in concentration cases*], Publication of the Competition and Consumer Protection Office, Warsaw 2012 (Piotr Warchoł)

Antoni Bolecki, *Wymiana informacji między konkurentami w ocenie organów ochrony konkurencji (między antykonkurencyjną koordynacją a prokonkurencyjną kooperacją)* [*Information exchange between competitors in the practice of competition authorities (between anti-competitive coordination and pro-competitive cooperation)*], University of Warsaw Faculty of Management Press, Warsaw 2013 (Dariusz Aziewicz)

Rafał Sikorski, *Funkcjonowanie zasobów patentowych w prawie konkurencji Unii Europejskiej* [*Functioning of patent pools in European competition law*], C.H. Beck, Warsaw 2013 (Kamila Radomska-Piętka)

Contents, summaries and key words