

**iKAR as a place for further discussions and polemics as well as for taking up new issues**  
(From the Editor-in-Chief)

## Articles

Grzegorz Materna, **Application of the prohibition of anticompetitive agreements to agency agreements under block exemption regulation of 30 March 2011**

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- I. Introduction
- II. Agency agreements in Polish and EU competition law
- III. Agency agreements and the objective scope of the block exemption Regulation of 30 March 2011
- IV. Agency agreements and the Polish block exemption Regulation of 30 March 2011
- V. Conclusions

**Summary:** Relationships between members of a distribution system can be based on agency agreements and agreements similar to them. From the perspective of Polish competition law, the status of agency relations does not seem clear, however. Arrangements between an agent and a principal within a distribution system are indisputably vertical agreements between undertakings. Nevertheless, a deeper analysis is required with respect to the application to agency agreements of the restrictive agreements prohibition and the rules of the Polish Council of Ministers' Regulation of 30 March 2011 on the exemption from the prohibition of competition restricting agreements of certain vertical agreements. The article presents a proposal on how to approach agency agreements for the purpose of the application of the ban on anticompetitive agreements, taking into account both the literal interpretation of the 2011 block exemption, previous legislation and relevant case-law. The article presents arguments for an EU competition law inspired approach when assessing agency agreements under Polish competition law.

**Key words:** agency; competition law, prohibition of anti-competitive agreements; exemption of certain categories of vertical agreements.

Bartosz Targański, **Active and passive sales in online marketing services**

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- I. Introduction
- II. Specifics of online sales
- III. Division into active and passive sales
- IV. Online marketing services
  1. Search engine optimization
  2. Sponsored links
  3. Mailing
  4. Promotion in social networks
- V. Conclusions

**Summary:** Using competition law concepts and classifications, which were developed for “brick and mortar” commerce, may lead to many practical problems in the e-commerce environment. The article aims (i) to apply the distinction between active and passive sales to the most popular online marketing services (search engine optimization, sponsored links, mailing, promotion in social networks) and (ii) to identify the limits for the use of these services that suppliers would be allowed to impose on their exclusive retail distributors in accordance with Polish and EU competition law.

**Keywords:** active sales; passive sales; Internet; online marketing; vertical restraints; search engine optimization; sponsored links; mailing; social networks.

Piotr Semeniuk, **Who holds a dominant position in the internet? Some remarks on internet services and the nature of advertising under Polish and European competition law**

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- II. Practice of European and Polish competition authorities regarding the analysis of online markets
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    - 4.1. Substitution between offline and online advertising
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- IV. Is the market power of internet services providers anticompetitive?
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  3. Conclusions: is the market power of internet service providers anticompetitive?
- V. Non-competition related temptations of competition law

**Summary:** The paper discusses the practice of the Polish and the EU competition authorities with regard to the definition of relevant markets and market power in the internet (excluding internet sales). It is concluded that competition authorities should show more restraint in their interference

with the business of internet services providers because demand substitution on internet advertising markets is relatively high and a decrease in the supply of internet advertising would be unlikely to be anticompetitive under competition law.

**Key words:** competition law, internet markets, advertising markets, demand substitution, anticompetitive nature of advertising, online services, market power, dominant position, contextual advertising, targeting, search advertising, portals.

Anna Piszcz, **Commission “package” on actions for damages based on EU competition law infringements and collective redress**

**Table of contents:**

- I. Introduction
- II. Documents regarding actions for damages for infringements of EU competition rules
- III. Documents regarding collective redress

**Abstract:** This article presents Commission documents (“package”) on actions for damages based on infringements of EU competition rules and collective redress which were published on 11 June 2013. The article provides a brief overview of the measures contained in the package and indicates potential difficulties if it became necessary to transpose or implement them into the domestic legal system by the Polish legislature.

**Key words:** EU competition rules, actions for damages, collective redress.

Justyna Matuszczak-Piasta, **Qualitative arguments used in the evaluation of the market position of an undertaking within antimonopoly proceedings**

**Table of contents:**

- I. Introduction
- II. Use of a qualitative analysis in the proceedings before the Polish Competition Authority
- III. Opportunity to present qualitative arguments by entrepreneurs
- IV. Analysis of selected decisions of the Polish Competition Authority
- V. Possibility of extending the use of a qualitative analysis
- VI. Summary

**Summary:** This paper assesses the use of qualitative arguments in antitrust proceedings before the Polish Competition Authority relating to abuse of dominance. The article indicates in what number of decisions was the evaluation of market position supported by qualitative research, in relation to the total number of decisions. The paper analyses the content of relevant decisions with respect to the impact of quality-related arguments on the evaluation of the market position of the participant. Presented also is a review of qualitative arguments. Finally, propositions are made concerning an extended approach to the selection of qualitative arguments.

**Keywords:** market position, qualitative analysis, quantitative analysis, dominant position, President of the OCCP.

Piotr Nowaczyk, Szymon Syp, **International commercial arbitration and competition law – selected legal issues from the perspective of an arbitrator**

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- I. Introduction
  1. International commercial arbitration and competition law – general remarks
  2. Case scenario – facts
- II. (Can) the arbitrator apply competition law as far as the admissibility of the submission of a dispute to international commercial arbitration?
- III. Which competition law should the arbitrator apply?
- IV. Recapitulation

**Summary:** The subject-matter of this article encompasses selected legal issues on the relationship between international commercial arbitration and competition law. The main perspective used in this paper is that of an arbitrator (clearly being only one of several possible). The paper points to two main issues of universal (international) meaning in response to the following questions: 1) Can (or in fact must) the arbitrator apply competition law (in terms of admissibility of the submission of the dispute to arbitration)? 2) which competition law should the arbitrator apply? The arguments presented in the paper refer to a potential fact scenario of a dispute (one that would have to be settled by arbitration), which will be settled by the Authors. A few conclusions will be drawn *de lege lata* and *de lege ferenda* concerning the relationship between competition law and international commercial arbitration for the main actor resolving disputes – an arbitrator.

**Key words:** competition law; arbitration; international commercial arbitration; dispute resolution; EU competition law.

**Legislation and case law reviews**

**Tables of judgments of the Supreme Court for the period of time between January and June 2013** (Elżbieta Krajewska)

**Tables of judgments of the Court of Appeals in Warsaw for the period of time between January and June 2013** (Elżbieta Krajewska)

**“I know that I don’t know anything” – how to escape a penalty for a single continues infringement?** Judgment of the Court of Justice of the European Union of 6 December 2012 in case C-441/11 *KE v. Verhuizingen Coopens NV* (Ilona Szwedziak-Bork)

**Empik/Merlin and Czerwona Torebka/Merlin merger decisions – why did everyone want to get Merlin?** (Ilona Szwedziak-Bork)

**ICC Rules of Arbitration** (Piotr Nowaczyk, Szymon Syp)

**Book reviews**

**Agata Jurkowska, *Publiczne i prywatne egzekwowanie zakazów praktyk ograniczających Konkurencję* [Public and Private Enforcement of the Prohibitions of Anti-competitive Practices],** Wydawnictwo Naukowe Wydziału Zarządzania Uniwersytetu Warszawskiego, Warszawa 2013, 486 s. (Dariusz Aziewicz)

**Małgorzata Król-Bogomilska, *Zwalczanie karteli w prawie antymonopolowym i karnym* [Combating Cartels in Antitrust and Criminal Law],** Wydawnictwo Naukowe Scholar, Warszawa 2013, 511 s. (Ilona Szwejdziak-Brok)

**Anna Piszcz, *Sankcje w polskim prawie antymonopolowym* [Sanctions in Polish Antitrust Law],** Wydawnictwo Temida 2, Białystok 2013, 483 s. (Hanna Suchodolska)

**Bartosz Turno, *Leniency. Program łagodzenia kar pieniężnych w polskim prawie ochrony konkurencji* [Leniency. Programme of Immunity from and Reduction of Fines in Polish Antitrust Law],** Lex a Wolters Kluwer business, Warszawa 2013, 812 s. (Anna Laszczyk)

## **Event and activity reports**

### **Award ceremony for the CARS Price 2013**

Warsaw, 6 June 2012 (Wojciech Podlasin)

### **5. CARS Workshop. Application of the Prohibition of Anticompetitive agreements to agency agreements in the light of Council of Ministers Regulation of 30 of March 2011.**

Warsaw, 20 June 2013 (Agata Jurkowska-Gomułka)

### **CARS Activity Report 2012** (Agata Jurkowska-Gomułka)