

## Competition Law or Free Competition Law? *(from the Volume Editor)*

**Dr. Monika Zielińska, Obituary** *(Maria Królikowska-Olczak)*

### Articles

Jan Polański, **Informant reward schemes under European competition regulations**

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**Summary:** The article discusses the idea of informant reward schemes as one of the new cartel detection methods. Informant reward schemes are supposed to enhance the reactive detection capabilities of competition authorities by lowering their reliance on leniency programmes in the early stages of cartel investigations. The article provides: (i) an overview of the main rationales behind the idea of providing financial rewards in antitrust enforcement; (ii) an analysis of the informant rewards schemes introduced in the United Kingdom, Hungary, and the Slovak Republic; (iii) recommendations regarding the implementation of such schemes in practice. An extended English version of this article is available at: <http://ssrn.com/abstract=2457450>.

**Key words:** cartel; detection; enforcement; informant; reward schemes; whistle-blowing; United Kingdom; Hungary; Slovak Republic.

Dariusz Aziewicz, **Control over acquisition of minority shareholdings in the planned reform of the Regulation 139/2004**

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- II. European Commission's merger control regime – current legal status
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- V. Proposals of the Commission in the scope of a notification requirement for minority shareholdings
- VI. Proposals of the Commission and the Polish law
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**Summary:** The article is devoted to the planned reform of merger control regime in the European Union. In July 2014 the European Commission issued a White paper: „Towards more effective EU merger control.” The article is focused on economic aspects of the reform provided by the European Commission and several legal studies. Moreover, the article concerns the effects which the planned regime may take, while assessing transactions in which one of the parties will be a Polish company. Furthermore, it indicates possible amendments to the Polish commercial law, which should be undertaken to preserve the principle of effectiveness of the European law.

**Key words:** competition law, merger control, concentrations, minority shareholdings.

Maciej Marek, **Slotting fees versus price-setting mechanisms**

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- II. Freedom to set prices
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- IV. Remuneration set as a fraction of turnover
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**Summary:** Ban on slotting fees, stemming from art. 15 par. 1 pt. 4 of Act on combating unfair competition, has been too loosely interpreted by the Polish courts. In particular, wrongly qualified as slotting fees are payments which are primarily price-setting measures and which are generally neither unfair nor harmful. The category of price-setting payments includes payments defined as a fraction of a value of a turnover and payments due after specified level of sales is reached. The prerequisites of art. 15 par. 1 pt. 4 of Act on combating unfair competition may be met by fixed payments, but even those often do not create unfair barriers to entry, but improve economic efficiency and consumer welfare.

**Key words:** slotting allowances; slotting fees; price; rebates; discounts; premiums; bonuses; remuneration for services provided by retail chains; fixed payments; percentage payments;

Bartosz Wojtaczka, **Incentive effect in state aid law**

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- II. Incentive effect
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**Summary:** One of the requirements of a compatibility of State aid with the internal market, arising from art. 107 (3) of TFEU, is its necessity. The aid granted from the State has to be necessary to execute a project – it should be a kind of an incentive to pursue projects, which are compatible with the economic policy of a State. In other case, the granted aid will only lead to improvement of financial position of a beneficiary. The aim of this article is to present some legal solutions connected with an incentive effect, which were lately accepted by European Commission in its guidelines and in a new regulation which declares certain categories of aid compatible with the internal market.

**Key words:** Incentive effect, necessity of aid, guidelines of European Commission, regulation declaring certain categories of aid compatible with the internal market.

Justyna Kulawik-Dutkowska, **Correct determination of SME status in the context of State Aid for companies**

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- II. Elements of SME definition in the light of EU and Polish Law
- III. SME definition in the light of EU case law
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- V. Legal consequences of incorrect assessment of SME status by an enterprise
- VI. Closing remarks

**Summary:** Despite the introduction of SME definition in the EU and Polish legal acts, this notion raises a number of doubts in the economic practice, in particular in the context of making certain types of State Aid conditional on possessing status of a micro, small, or medium-sized enterprise. The EU and Polish regulations governing this issue leave a significant interpretation gap, filled by the decisions of national administration and European Commission, as well as judgments of EU and national courts. The aim of this article is to discuss the range of problems related to correct assessment of SME status, taking into account legal provisions and established jurisprudence, in order to avoid negative consequences of any mistakes in this regard.

**Key words:** SME definition; SME status; size of a company; enterprise; single economic unit; single economic unit; State Aid

## Legislation and Case Law Reviews

Robert Stefanicki, **The effects of “price umbrella”. Comments on the judgment of the Court of Justice of the European Union of 5 June 2014 in C-557/12 Kone AG and others**

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- IV. Adequate causal link determination
- V. The justification for the concept of liability under the effects of “price umbrella”
- VI. The program of voluntary cooperation between business and competition authorities
- VII. Conclusions

**Summary:** EU competition law is implemented by public and private law measures for the protection of individual victims of practices contrary to the law. With immediate effect the prohibitions laid down in the Treaty flows that any person may request compensation for harm suffered where there is a causal link between the damage and the violation of the law. EU case-law uses a broad definition of entities authorized because it points to “any entity”. The title judgment reinforces this construction providing that civil law liability for cartel damages may also include the so-called effects of “price umbrella”.

**Key words:** private enforcement; action for damages; the effects of price umbrella; adequate causal link; the effectiveness principle

Justyna Matuszczak-Piasta, **Concept of the asymmetric competitive pressure. Polish competition authority’s decisions in Auchan Polska and Jeronimo Martins cases in the light of British experience**

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- I. Introduction
- II. Defining of the relevant market
- III. Analysis of the retail grocery market in the UK
- IV. The use of concept of asymmetric competitive pressure in Poland
- V. Conclusions

**Summary:** This article presents the concept of asymmetric competitive pressure in the jurisprudence of antitrust authorities in the UK and indicates economic tools used in order to determine the relevant markets for the activities of grocery retailers. This paper discusses also the application of the concept of asymmetric competitive pressure by Polish competition authority.

**Key words:** asymmetric competitive pressure; relevant market; retail sale; economic analysis; quantitative analysis

**Extended effect of the Competition Court judgments concerning unfair consumer terms. Case comment to the Polish Supreme Court’s judgment of 12 February 2014, no. III SK 18/13 (Paweł Gutkowski, Miłosz Malaga)**

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- I. Introduction
- II. Introductory remarks

- III. Analysis of Supreme Court's arguments concerning the Polish legal system of protection against unfair contract terms
- IV. Analysis of Supreme Court's arguments concerning the European Union law
- V. Conclusions

**Summary:** In this case note we comment the Polish Supreme Court's judgment issued on 12 February 2014 which deals with an issue of extended effect of judgments by District Court of Warsaw – Court for Competition and Consumer Protection (hereinafter: District Court). In these judgments contract terms used by entrepreneurs may be declared unfair and abusive. The Supreme Court supported the view, according to which a judgment declaring unfairness of a contract term – on the basis of which this term is entered into a register of unfair contract terms – does not bind entrepreneur who was not a party to proceedings in the District Court. The authors of this contribution disapprove of such approach. In this case note we provide arguments, deriving both from EU and Polish law, that support the necessity of adopting a wide approach towards interpretation of an issue of extended effect of judgments of the District Court.

**Key words:** unfair contract terms, register of unfair contract terms, consumers protection, extended effectiveness of the judgment by Competition and Consumer Protection Court, Directive 93/13

**Rebates granted by dominant undertakings – can the recent case law of the Court of Justice be defended?** Judgment of the General Court of 12 June 2014 in case T-286/09 – *Intel Corp. v European Commission* (Emilia Wardęga)

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**Summary:** The case comment attempts to seek arguments to defend the formalistic approach adopted by the General Court in a recent judgment regarding rebates granted by undertakings holding dominant position. However, in spite of certain advantages of such approach, it does not seem appropriate for the assessment of conditional rebates and it is not in line with the recent developments of competition law. The case comment criticizes in particular the *per se* prohibition of loyalty rebates adopted by the General Court and the depreciation of the usefulness of the AEC test as a tool to demonstrate exclusionary effects of certain rebates. The last part of the case comment presents some *de lege ferenda* remarks.

**Key words:** abuse of dominant position; microprocessors market; loyalty rebates; as-efficient-competitor test; form-based approach; effects-based approach; foreclosure effect; unavoidable trading partner; exclusionary effect

**Merger control and financial markets – relevant market delineation in European Commission’s decisions. Cases: No. COMP/6166 Deutsche Borse / NYSE Euronext and No. COMP/M.6873 Intencontinental Exchange NYSE Euronext (Dariusz Aziewicz)**

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- II. Relevant market in the Competition law
- III. Cases Deutsche Borse / NYSE Euronext and Intencontinental Exchange NYSE Euronext
- IV. Relevant market for securities in the Commission’s practice
- V. Relevant market for derivatives in the Commission’s practice
- V. Conclusions

**Summary:** The article concerns the way of delineation of a relevant market for mergers between stock exchanges assessed by the European Commission. Focus here is placed on the delineation of markets for securities and for derivatives, on the basis of Deutsche Borse / NYSE Euronext and Intencontinental Exchange NYSE Euronext decisions.

**Key words:** Competition law, merger control, merger prohibition, financial markets, securities, derivatives

**The beginning of period of limitation for instituting competition proceedings. Supreme Court judgment** of 20 February 2014, no. III SK 26/13 (Ilona Szwedziak-Bork)

**State aid – Acquisition ban as a measure for limitation of aid to the minimum necessary. Judgment of General Court of 8 April 2014 in the case T-319/11 – ABN Amro v European Commission** (Wojciech Podlasin)

**Book Reviews**

Sarah Riddell, William Schubert, Spencer Weber Waller, **Antitrust in Pop Culture: A Guide For Antitrust Gurus** (Maciej Bernatt)

**Event and Activity Reports**

**Consumer Rights Law – opportunities and risks**, Faculty of Law and Administration, University of Łódź, 15 September 2014 (Mateusz Izicki)

**Enforcement of competition law in Poland – law and practice**, Warsaw, 28 November 2014 (Agata Jurkowska-Gomułka)