

**Starting to monitor the application of the newly amended Act on Competition and Consumer Protection and the initial preparation of it further amendment** (from the Volume Editor)

**Amendment of the Polish Competition Act.**

Speech by Bernadeta Kasztelan-Świetlik, Deputy President of the Office of Competition and Consumers Protection

**Articles**

Grzegorz Materna, Agata Zawłocka-Turno, **Changes in substantive and procedural provisions on practices restricting competition and practices infringing collective consumer interests**

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- II. Inspections and searches in the proceedings before the UOKiK President
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**Summary:** This article presents the most important changes in substantive and procedural provisions introduced as a result of the recent amendment of the *Act on Competition and Consumer Protection*. These changes concern, in the first place, inspections and searches carried out by the UOKiK President. The article considers also a number of new institutions in the field of anticompetitive practices, such as managers' liability, remedies and settlement. Discussed subsequently are changes in the provisions on practices infringing collective consumer interests, that is, the power of the UOKiK President to issue public warnings.

**Key words:** inspection; search; managers' liability; remedies; voluntary settlement; public warnings.

Sławomir Dudzik, **Control of concentrations in the light of latest legislative amendments**

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**Summary:** This article provides a critical analysis of the latest legislative amendments concerning Polish proceedings on the control of concentrations. The Author indicates that the latest amendments

to the Act on Competition and Consumers Protection did not, in fact, introduce a two-phase system of merger control proceedings (along the lines of those conducted before the European Commission and in several EU Member States). Subsequently, the Author critically evaluates the newly created institution of objections towards a concentration indicating, in particular, that it does not ensure proper protection of procedural rights of interested parties. The Author claims also that the procedure of introducing conditions, which allows the UOKiK President to clear a concentration, requires further amendments. In conclusion, the Author indicates five most important areas relating to concentration control which require urgent legislative amendments in Poland. These are: (i) the scope of concentration control (such as the exclusion of non-full-function joint ventures); (ii) cooperation with the European Commission in the scope of case referrals; (iii) protection of procedural rights of entities taking part in the concentration as well as of interested 3<sup>rd</sup> parties; (iv) the decision-making process within the competition authority (including the introduction of collective decision-making elements to the current process); (v) issues concerning extraordinary decisions stipulated in Article 20 point 2 of the Competition Act.

**Key words:** control of concentrations; proceedings before the President of the OCCP; objections towards concentration; conditional decision.

## Anna Piszcz, **New Elements of the Legal Framework for Fines in the Act on Competition and Consumers Protection**

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**Summary:** This article presents the most important changes in the legal framework concerning the imposition of fines contained in the Act on Competition and Consumers Protection which came into effect on 18 January 2015. The Author examines the amendments regarding, in particular: the base used to calculate fines for substantive infringements; rules for immunity from fines and fine reductions; a new type of fine which can now be imposed on managers; as well as factors taken into account while calculating the amount of the fine. At the same time, the Author outlines which

of the old problems seem to have been resolved now, and what new difficulties might emerge as a result of the new legal provisions.

**Key words:** fines; leniency; liability of managers.

Konrad Kohutek, **Substantive provisions of the Act on the Protection of Competition and Consumers: postulates *de lege ferenda***

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**Summaries:** The article includes an assessment of selected norms of substantive competition law from the perspective of their *de lege ferenda* modifications. The paper postulates are merely linguistic or structural changes, but also the introduction of some far-reaching amendments (e.g. with respect to resale price maintenance). The paper focuses on the institution of the abuse of a dominant position and on the prohibition of anti-competitive agreements.

**Key words:** notion of undertaking; resale price maintenance; general clause of the prohibition of anti-competitive agreements; definition of the dominant position; objective justification.

Maciej Bernatt, Bartosz Turno, **The need for procedural improvements in the newly amended Act on Competition and Consumer Protection**

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**Summary:** This article points out a series of shortcomings related to the recent amendment to the Act on Competition and Consumer Protection that came into effect on 18 January 2015. First and foremost, the article enumerates those legal mechanisms which were not (and yet should have been) included in the amendment. They include: proper guarantees of the right to be heard, amendments to administrative hearings, and legal professional privilege. The second part of the article takes a deeper look at new legal instruments introduced into the Competition Act by the amendment – the settlement procedure and financial liability of managers. The Authors list deficiencies within their scope, and make an attempt at suggesting ways to improve them by making *de lege lata* and *de lege ferenda* proposals.

**Key words:** right to be heard; oral hearing; *Legal Professional Privilege*; settlements; personal liability in competition law.

## Małgorzata Modzelewska de Raad, **System of pecuniary sanctions in Polish competition law – the need and direction for further changes**

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**Summary:** In its initial part, the article discusses the drawbacks and inconsistencies in the sanctioning system provided by the current Act on Competition and Consumers Protection (the “Act”). In the Act, pecuniary fines are expressed as a % of the turnover, as a lump-sum, or a multiplication of the average income; some are set out in PLN, others in EUR. Such an inconsistent approach may thus lead to unfair differences in the fines imposed by the UOKiK President (President of the Office for Competition and Consumer Protection). The paper explains also that pecuniary sanctions and their execution should be carefully balanced with other types of sanctions envisaged for antitrust violations in a given jurisdiction. In the following part of the paper, the Author anticipates possible (and required) changes in the actual execution of fines, in particular those that are promoted by the amended Act. One of the crucial issues here is the establishment of the base amount for the fine calculation. It is claimed that proportionality and fairness should make the sanctioning authority look at the income reached from the sales of the goods/services subject of the violation. The paper strives also to identify major problems surrounding sanctioning policy in antitrust

enforcement in the EU and the US. Many competition authorities and legislator continue to work on designing the most effective measures possible to discourage antitrust violations, which are often repeatedly committed by the same companies. Indeed, apart from effectiveness, the fine should be fair and proportional, a consideration to which the rest of the paper is devoted. Hence, several questions arise in light of Polish jurisprudence in this area: should the fine for the same type of violation have the same reference base; should the first violation of a given type be sanctioned more leniently, or should fines for procedural actions be kept in proportion to fines for substantive violation. The paper's purpose is not to answer these questions in an exhaustive manner but to make legislators aware of a broader context and interdependencies of their sanctioning policy in order to create effective, but also fair and proportional, enforcement of competition rules in Poland.

**Key words:** anti-trust; sanctions; enforcement instruments; pecuniary sanctions; sanctioning policy; anti-trust fines; fines on individuals; fair fine; optimal fine.

Dawid Miąsik, **Inter-temporal provisions of the 2014 Amending Act of the Competition and Consumer Protection Act**

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**Summary:** This paper deals with the temporal aspects resulting from the Act of 10<sup>th</sup> June 2014 amending the Act on Competition and Consumer Protection and the Code of Civil Procedure ("Amending Act"), which influence the interpretation and application of various legal institutions of the Act on Competition and Consumer Protection.


**Keywords:** inter-temporal rules; application *rationae temporis*; responsibility of managers; leniency; limitation period; program leniency.

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