CARS Honorary Award 2017. Big Owl for Professor Anna Fornalczyk

Competition law in the European Union: new phenomena and tendencies in jurisprudence
(From the Volume Editor)

Articles

Maciej Toroń, Katarzyna Wiese, The UBER application or how to fit the sharing economy into the existing legal framework?

Table of contents:
I. Introduction
II. How the UBER application works
III. Controversies connected with the functioning of the application
IV. Objections regarding competition law
V. Conclusions

Summary: The Authors analyze in this article, on the example of the UBER application, problems arising from the dissemination of new business models commonly referred to as belonging to the sharing economy. While the development of the sharing economy is enthusiastically welcomed by the European Commission, it is difficult not to notice that the Member States of the EU, as well as some entrepreneurs, do not share this optimistic approach. In this article, the Authors consider to what extent their objections are justified. Furthermore, the compatibility of the functioning of the application with competition law requirements is also checked.

Keywords: UBER; sharing economy; modernization of competition law; new technologies; digital single market; mobile applications; price fixing

JEL: K21

Kamil Bułakowski, Rebates applied by dominant undertakings in the light of 2011–2015 ECJ judgments

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V. The Post Danmark II case
1. Judgment of the European Court of Justice
2. Reception of the judgment

VI. Summary

Summary: This article is dedicated to the problematic issue of rebate schemes applied by dominant undertakings under EU competition law. The said problem is presented in the light of the more economic approach, and in accordance with ECJ judgements published between 2011-2015: Tomra (2011), Intel (2014) and Post Danmark II (2015). Moreover, the article includes an analysis of the Opinion of the Advocate General Nils Wahls to the Intel Case, issued in October 2016.

Key words: dominant position; abuse of the dominant position; exclusionary practices; rebates; conditional rebates; loyalty rebates; more economic approach; Tomra; Intel; Post Danmark II.

JEL: K21

Mateusz Małdy, Possibility to limit parallel trade in medicinal product by marketing authorisation holders in view of competition law

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VII. Assessment of the application of competition law on possibilities to limit parallel trade by marketing authorisation holders

Summary: Parallel trade of medicinal products is a very important issue, mainly due to its scale. It contradicts the obligation to ensure the availability of medicinal products as well as threatens the economic interests of the producers of medicinal products, which are defined as marketing authorisation holders. These are the reasons why marketing authorisation holders are trying to limit parallel trade by various means. Their actions comprise the refusal to supply full orders, double pricing, and direct to pharmacy schemes, all of which raise concerns in view of competition law. The aim of this article is to analyse the possibilities to limit parallel trade of medicinal products by marketing authorisation holders in view of competition law. The article concludes with an assessment of the application of competition law on the pharmaceutical market and presents some recommendations on how the problem should be approached in the future.

Key words: competition law; parallel trade of medicinal product; limitation of a parallel trade; marketing authorisation holders

JEL: K21
Marcin Mleczko, Commitment decisions in EU case-law – a dispute over the scope of application of the principle of proportionality

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**Summary:** The author presents current EU case-law on commitment decisions. Presented first are an overview of the institution and the statistics of its application. Then, judgments of the CJEU relating to commitment decisions are debated. The essence of the article is the analysis of the current interpretation of the principle of proportionality in the context of commitment decisions by EU courts, and the consideration of its possible implications. The article also discusses the admissibility of appeals against commitment decisions and the scope of their judicial review, as well as other issues raised in case-law.

**Key words:** commitment decision; CJEU; TSUE; proportionality principle; EU case-law; art. 9 of Regulation 1/2003.

**JEL:** K21, K23, K41, K42

Kseniia Smyrnova, Models of competition regulation and international law forms of implementing competition policy

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II. European and American models of competition law regulation

III. Competition law regulation in international trade

IV. ‘Global competition policy’ – mission achieved?

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**Summary:** The basics of Keynesian Economics and ordoliberalism have been implemented in national legislations. On the basis of a comparative analysis, it is possible to differentiate two models of competition law regulation – the American and the European model. The difference
between these two models results from divergent understandings of the content and goals of competition law regulations. While American legislation aims to protect the economy as a whole, European enforcement practice shows that its main goals are to protect social rights in the context of the Internal Market. The article shows the tendency to converge of national legal conditions of competition protection with the conclusion of international agreements and the inclusions into the latter of competition rules.

**Key words**: international trade; concentrations; competition; state aids; European Union; USA; anticompetitive behaviour.

**JEL**: K21, K33, L49

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**Case Law Review**

Mateusz Mroczek, *Admissibility of the use of unlawfully obtained evidence in cartel proceedings before the European Commission. Case comment to the Judgment of the General Court of 8 September 2016 in case T- 54/14 Goldfish and Others v Commission*

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**Key words**: admissibility of evidence; European Commission; unlawfully obtained evidence; cartel proceedings.

**JEL**: K21

Łukasz Stępkowski, *Selectivity of a taxation system for the purposes of Article 107(1) TFEU with regard to equal treatment and discrimination. Case comment to Judgment of the Court of 21.12.2016 in Joined Cases C-20/15 P and C-21/15 P European Commission v World Duty Free Group SA and Others*

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**Key words**: selectivity, discrimination, general principle of equal treatment, tax system, law of the European Union

**JEL**: K21, K29, K41, K42

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**Key words:** single infringement; continuous infringement; cartel; exchange of information.

**JEL:** K21

Marta Michalek, *Infringement of a right to be heard as a basis for an annulment of a merger decision. Case comment to the judgment of the General Court of 07.03.2017 in case T-194/13 United Parcel Service, Inc. v. European Commission*

**Table of contents:**
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**Key words:** concentration; a right of defence; a right to be heard; annulment of a decision; UPS.

**JEL:** K40

**Book reviews**


**Reports**

*Annual Conference on European State Aid Law, Trier, 24–25 November 2016* (Emilia Wardęga)

A voice concerting the rationalising of conditional clearance in concentration cases (about a possibility of change of conditional clearance decisions), Instytut Nauk Prawnych PAN, Warszawa, 30 maja 2017 r. (Jarosław Łukawski, Grzegorz Materna)

**CARS Activity Report 2016** (Nina Łazarczyk)