

Pandemic, crisis, antitrust. On competition protection in the times of the coronavirus
(from the Volume Editor)

ARTICLES

Anna Gulińska, Tomasz Kordala, Merger control in Poland during the coronavirus pandemic and the resulting economic crisis – summary of the practice and *de lege ferenda* postulates

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Summary: The article presents a summary of the most important aspects accompanying merger control during the crisis caused by the coronavirus pandemic and the activities of the Polish competition authority during this time. The analysis covers activities of the Polish competition authority during the pandemic, issues related to the material assessment of concentrations during the economic crisis, and Polish merger control rules, which may help address the issues encountered by undertakings affected by the crisis.

Key words: merger control, substantive assessment, failing firm defence; conditional clearance; exemption from merger control requirement; extraordinary clearance

JEL: K21

Katarzyna Marita Szreder, Mergers at the time of the 'plague' – Challenges for merger control resulting from the coronavirus pandemic from the European perspective

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Summary: This article discusses challenges to merger control posed by the coronavirus pandemic as seen from a European perspective. It provides an overview of these challenges, which it divides into three categories: (i) practical challenges faced by the DG COMP, (ii) issues related to the overall merger control policy and associated pressure for reform, and (iii) challenges to the assessment of concentrations in individual cases notified to the Commission. The article argues for preserving rigorous standards of merger control, while claiming that the tools that the European Commission has in its hands are sufficient to meet the challenges that the coronavirus pandemic may pose for various aspects of competition assessment and competition proceedings.

Key words: merger control, concentration, COVID, coronavirus, failing firm defence, national champions, standstill obligation

JEL: K21

Konrad Kohutek, Three years of applying the Act on the unfair use of contractual advantage: assessment against the background of the decisions of the UOKiK President and in the context of the solutions of the EU Directive

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- V. Final remarks: Has the COVID-19 pandemic contributed to the tightening of the enforcement of the Act?

Summary: This paper presents and evaluates the decisions of the UOKiK President, which were issued under the Act on Counteracting the Unfair Use of Contractual Advantage in Trade in Agricultural and Food Products. Although this Act has been in force for over 5 years, it was only in 2019 and 2020 that the authority interfered, relatively more frequently, with the practices of undertakings, in accordance with the provisions of this Act, often imposing high penalties. The article also takes into account the relevant EU Directive, also considering the context of its implementation into the Polish legal order.

Key words: contractual advantage, UOKiK President, unfair use of contractual advantage, good practice, penalty fine

JEL: K21

Karolina Redlin, Setting maximum prices and margins as a new tool to counteract the effects of the spread of the SARS-CoV-2 virus

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III. Assessment of the adopted solutions

Summary: The article discusses the legal solutions adopted in order to regulate, by the competent ministers, the maximum prices and margins of goods and services, adopted in order to counteract the effects of the spread of the SARS-CoV-2 virus. The Article discusses in more detail the material scope of goods and services whose maximum prices and margins may be administratively fixed, and the consequences of non-compliance with the 'fixed ceiling' of maximum prices and margins.

Key words: maximum prices, maximum margins, wholesale margin, retail margin.

JEL: K21, K23, K42

Joanna Wiszniewska, Compulsory license – a panacea for an epidemic?

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Summary: The SARS-CoV-2 pandemic impeded access to medicines in general. The aim of the article is to analyse whether a compulsory licence may be considered to be a useful tool to remove an unexpected threat to national security caused by the pandemic. First, the article focuses on the premises for granting a compulsory licence as listed in the Polish Industrial Property Law, as well as on the characteristics of a compulsory licence. Second, an analysis of procedural aspects of granting a compulsory licence is provided. In conclusion, the author presents postulates *de lege ferenda*, which will facilitate the faster granting of a compulsory licence and, consequently, an efficient response to the needs arising from a sudden threat, while maintaining the unique nature of this institution, reserved for use in exceptional cases.

Key words: compulsory licence, patent, abuse of a patent, Industrial Property Law.

JEL: K23

Aleksandra Kopeć, State aid in the era of COVID-19**Table of contents:**

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- IV. Final conclusions

Summary: The article describes the development of EU state aid rules set in the era of COVID-19, in particular those set out in the Communication from the Commission – Temporary framework for state aid measures to support the economy in the current COVID-19 outbreak. It also presents basic information on state aid measures developed on the basis of this document. Moreover, the most frequent problems related to the practical implementation of these rules in Poland are discussed.

Key words: state aid; COVID-19; Temporary framework; notion of undertaking.

JEL: H84, K29

Grzegorz Sęga, Soft law as an instrumentation ensuring fair competition protection on the capital market – chosen issues**Table of contents:**

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- V. Conclusion

Summary: The aim of this article is both to show the real influence of *soft law* type regulatory solutions used to ensure fair competition in capital market trade and presenting the impact of *soft law* regulation in relations between supervisory bodies, institutional participants in capital market trade and the clients of those institutional capital market participants.

Key words: Soft law, fair competition, capital market, institutional participant of the capital market, client of the participant of the capital market, capital market supervisory bodies.

JEL: K21

REVIEWS OF LAW AND JURISDICTION

Michał Konrad Derdak, *Between the revolution and self-promotion. Main trends in the responses of competition authorities to the pandemic and the coronavirus crisis*

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Summary: National and supranational competition authorities, acting individually or as part of international networks, reacted widely and rapidly to the outbreak and crisis of the COVID-19 pandemic. It seems possible to identify certain global trends in the activities of these authorities. The purpose of this article is to identify the most important of these trends and then try to assess whether they were adequate, proportionate and evidence-based. As a result of the analysis, it becomes possible to determine, to a certain extent, whether the actions of competition authorities are more of a self-promotion or whether they bring about significant, revolutionary changes in the practice of applying competition law.

Key words: competition law; COVID-19; crisis cartels; cooperation between undertakings

JEL: K21

BOOKS REVIEW

Łukasz Grzejdziak, *RPM in European and American Law, A Comparative Legal Study. (Ustalenie cen odsprzedaży towarów w prawie europejskim i amerykańskim. Studium prawnoporównawcze)*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź, 2020 (Agata Jurkowska-Gomułka)

REPORTS

Report on the webinar 'Antitrust and developing economies in an era of crises', Concurrences & NYU Law, 30.10.2020 (Marcin Mleczeko)