## ARTICLES



**Summary:** The article concerns the draft of Regulation on contestable and fair markets in the digital sector (Digital Markets Act) – a legislative proposal of the European Commission aimed at ensuring contestable and fair markets in the digital sector. The object of the article is to present the proposed regulations and its' impact on competition law. The article contains a preliminary analysis of the relationship between proposed regulation and provisions regarding the abuse of a dominant position, as well as considerations regarding the best enforcement model of the Regulation.

**Key words:** Digital Markets Act, digital market; access guard; abuse of a dominant position; internet platforms; competition law.

**JEL:** K21

**Summary:** At EUIPO, it is possible to register, within a few days, a Community design that is protected throughout the EU. The registration procedure does not require checking whether the design meets the statutory requirements (the so-called registration system). Recently it has been used to monopolise the sale of products that have been on the market for years. The case concerns only sales platforms, because they apply IPR infringement regulations, which automatically treat the granted industrial property rights and qualify other sellers as infringers. Given that online sales are largely made through sales platforms, the issue assumes significance. The aim of the article is to analyse whether, based on legal acts concerning online sales, such as the Regulation Platform-to-Business or the still pending Digital Services Act, the President of the Office for Competition and Consumer Protection is competent to influence the content of regulations on IPR infringements on sales platforms. Such action would fall within the scope of consumer protection and protection of entrepreneurs' interests undertaken in the public interest.

**Key words:** Platform-to-Business; DSA; IPR; sales platforms; Community designs; powers of the President of the OCCP
**JEL:** K21, K39

**Agnieszka Anusz**, Obtaining and exercising patent rights from the perspective of competition law with particular emphasis on pharmaceutical sector

**Table of contents:**



**Summary:** The article discusses the issue of obtaining and exercising patent rights from the perspective of competition law in order to decide whether the process of obtaining patent rights may be qualified as an anticompetitive practice as well as how exercising patent rights mat infringe competition law. In a reference to obtaining patent rights, the article leads to the conclusion that the actions of entrepreneurs performed in the process of obtaining patent rights may constitute a violation of competition law. These practices may be sanctioned on the basis of already existing antitrust regulations, however, due to the specificity of the procedure of obtaining patent rights, i.e. the procedure pending the Patent Office, it may be more effective to provide the Patent Office with the power to intervene in the event of anticompetitive practices in the process of obtaining patent rights. With regard to anticompetitive practices related to the exercise of patent rights, antitrust regulations should be considered as sufficient, simultaneously emphasizing the necessity

of infringement of the public interest as a factor of particular importance in the case of exercising and obtaining patent rights.

**Key words:** patent law; antitrust law; smoke-screen patenting; patent thickets; patent pools; patent trolling

**JEL:** K21, K39

**Filip Wiaderek, Zofia Wiaderek**, Breaking the divisions between labor and competition protection, or how to protect *gig economy* participants?

**Table of contents:**



**Summary:** Gig economy is an economic model based on the operation of the intermediary platforms linking those interested in using a specific service with those ready to provide it on request. The development of this model is one of the manifestations of the fragmentation of the labor market, in which atypical employment is becoming widespread. A related threat is the precarisation of the labor market, which historically was the crucial social problem accompanying the development of the labor law. Collective bargaining enables to counteract the negative social consequences of the analyzed phenomenon. However, the permissibility of its application in the gig economy raises doubts on the grounds of competition law. Participants of the gig economy are usually

formally entrepreneurs and the antimonopoly law, in principle, limits the ability of entrepreneurs to coordinate their market behavior. The purpose of this article is to present the described conflict of competition law and labor law in the context of the original systemic assumptions of both the abovementioned branches of law.

**Key words:** gig economy, precarious work, fragmentation of labour market, self-employed, labour law, antitrust law, collective bargaining, the goals of competition law
**JEL:** J80, J83, K21, K31, L40, L49

**Aleksandra Lisicka-Firlej**, Assessment of the amendment of the EC Communication on Important Projects of Common European Interest (IPCEI)

**Table of contents:**



**Summary:** From 1 January 2022, a new Communication from the European Commission on Important Projects of Common European Interest (IPCEI) applies. IPCEIs are the cornerstone of the EU industrial policy and on the one hand, they aim to improve the competitiveness of European enterprises in the world, but on the other hand, they can significantly distort competition in the EU internal market. This article is aimed at assessing the amendment of the EC Communication on IPCEI of 2021 in terms of taking into account the allegations made in the previous version of the Communication by the Member States, entrepreneurs and non-governmental organizations during public consultations.

**Key words:** IPCEI; industrial policy of the EU; public aid; strategic autonomy; innovation policy
**JEL:** O25, O31, K21

## REVIEWS OF LAW AND JURISDICTION

**Edyta Rutkowska-Tomaszewska, Artur Zwaliński**, Decisions of the President of the Office for Competition and Consumer Protection on the application of prohibited clauses in contractual patterns concerning financial services for 2020-2021

**Table of contents:**

**Summary:** This paper reviews the decisions of the President of the Office of Competition and Consumer Protection (OCCP) issued in 2020-2021 concerning prohibited consumer practices in the financial market consisting in the use of prohibited contractual clauses in model financial services agreements. All decisions issued by the President of OCCP concerning these practices (the so-called clause decisions) were analysed and assessed. However, due to the limited scope of the study, a detailed discussion concerns some of them, due to their similarity to other, most significant and interesting ones, within the category identified by the authors. They are divided into certain groups of leading problems in relation to the so-called “clause decisions” into: modification clauses, in the field of remuneration for financial services (cost clauses) and spread (exchange rate) clauses.

**Key words:** financial services, prohibited contractual clauses, consumer protection, model contracts, modification clauses, spread clauses, cost clauses
**JEL:** K12, K15, K42

**Konrad Kohutek**, Calculation of the statute of limitations for antitrust damages claims. Gloss to the judgment of the District Court of 9 July 2021, X GC 114/20

**Table of contents:**



**Summary:** The subject of this case comment is the assessment of the position taken by the District Court in Warsaw in the judgment of 9 July 2021 (X GC 114/20). In this ruling, the court dismissed the plaintiff’s claim for compensation (by awarding him with appropriate compensation) for the damage caused to him as a result of infringement of competition law . The case comment to a large extent is critical of the court’s argumentation, focusing on issues relating to the statute of limitations of the said claim (therefore, first of all, the issue of the interpretation of Art. 4421 § 1 of the Civil Code). It is also worth noting that in the case under assessment it was undisputed that the infringement was committed (by the defendant); it was found in the decision of the President of the Office of Competition and Consumer Protection).

**Key words:** Antitrust damage; limitation of the claim ; infringement of competition law; the decision of the President of the Office of Competition and Consumer Protection; private enforcement
**JEL:** K21

**Anna Mlostoń-Olszewska**, Municipal consumer ombudsman as a public administration authority – gloss to the sentence of the Supreme Administrative Court of 12.11.2019, I OSK 2617/19

**Table of contents:**

**Summary:** The Supreme Administrative Court by sentence of 12.11.2019, I OSK 2617/19 dismissed the cassation appeal against the sentence of the Provincial Administrative Court in Łódź of 28.06.2019, III SAB / Łd 18/19 on rejection of the complaint against the inactivity of the municipal consumer ombudsman. The motive for the sentence was the statement that the municipal consumer ombudsman is not an administrative body, as he does not conduct administrative proceedings and does not take any imperative actions, the same letters of the ombudsman refusing to initiate proceedings cannot be attributed the characteristics of acts or activities that are subject to control by administrative courts. This gloss partially criticizes the opinion presented by the court on the legal status of the consumer ombudsman, showing that although the court rightly found that, as a rule, the consumer ombudsman does not take any imperative actions and his actions are not subject to review by administrative courts, there are, however, a number of arguments. in favor of assigning him both the status of an administrative authority – a municipal authority, and a legal protection authority.

**Key words:** administrative law; consumer protection law; consumer protection authority; consumer ombudsman
**JEL:** K23

**Paulina Komorowska**, Abuse of dominant position by violation of personal data protection. The case of the Bundeskartellamt vs Facebook

**Table of contents:**



**Summary:** The intersection between competition and data protection law regimes in the digital economy has been becoming increasingly distinct. The article discusses one of the related issues, i.e. abuse of dominant position by violation of privacy, using the example of the Facebook case brought by the German competition authority (Bundeskartellamt). The article presents the

main arguments raised by the Bundeskartellamt and the courts in the proceedings, oftentimes expressing opposing views. The text pays particular attention to the issue of the exploitative nature of the practice, including the aspect of providing personal data as a form of "consideration" for the use of services, and the issue of the application of the provisions of the General Data Protection Regulation (RODO) by competition authorities.
**Key words:** digital economy; abuse of dominant position; exploitative practice; GDPR; data protection
**JEL:** K21; L40

## REPORTS

**Report from the INP PAN seminar "Towards new EU exemptions of vertical agreements from the prohibition of competition-restricting agreements", Warsaw, November 8, 2021** (Artur Szmigielski)

**Report from the INP PAN seminar "New technologies, new monopolies: current trends in EU antitrust case law", Warsaw, May 19, 2022** (Kamil Flis)

**Contents, Summaries and Key words**