The role of the court in competition law (from the Editor-in-Chief)

Articles

J. Affre, R. Czerwiec, The notion of a 'capital group' in competition law *vs.* 'franchising' in the jurisprudence of administrative courts

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Summary: The article presents discrepancies in the understanding of 'franchising' and 'capital group' in view of competition law and pharmaceutical law. Pharmaceutical inspection authorities sometimes consider that the franchisee is part of the capital group of the franchisor who organizes a network of pharmacies. If it is established that too many pharmacies have been concentrated in one capital group, the authorities refuse to issue an authorization for operating an additional pharmacy. Complaints against the decisions of pharmaceutical inspection authorities are subject to review by administrative courts, which in some cases recognize that the inclusion of franchisees in the capital groups of their franchisors was justified. The position that the franchisee is part of the franchisor's capital group is different from that adopted in the legal acts, doctrine and case law of competition law, where the franchisee is considered to be an independent entrepreneur, acting in his own name and on his own account. The discrepancy in the interpretation is hard to comprehend because the provisions of pharmaceutical law do not contain their own definition of a capital group, but refer to the definition provided in the Act on Competition and Consumer Protection. The article presents the views of competition law on franchising, and on the concept of a capital group, comparing them with the views expressed in the jurisprudence of administrative courts decided in light of pharmaceutical law. The article indicates a need for a systematic interpretation of the law in order to avoid discrepancies in its application.

Key words: franchising; capital group; control; taking control; pharmaceutical law; pharmaceutical inspection
JEL: K12, K21, K23

J. Kownacka, The role of the Hearing Officer in competition law proceedings conducted by the European Commission for the enforcement of Articles 101 and 102 TFEU

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Summary: The article examines the role of the Hearing Officer in competition law proceedings conducted by the European Commission for the enforcement of Articles 101 and 102 TFEU. Currently the Hearing Officer acts as a safeguard to the effective exercise of procedural rights throughout competition law proceedings before the Commission, while at the same time contributing to the objectivity, transparency, and efficiency of proceedings. The article also offers a review of possible changes of the terms of reference of the Hearing Officer, and analyses the prospects of implementing the institution of a Hearing Officer into Polish competition law procedures.

Key words: right to be heard; oral hearing; commission; hearing officer; antitrust
JEL: 210

M. Trepka, E. Buczkowska, The court as a guarantor of the protection of rights of parties to antitrust proceedings – practical observations

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Summary: The aim of this article is to present the constantly evolving role of the Court of Competition and Consumer Protection (SOKiK) in appeal proceedings against decisions of the President of the Office of Competition and Consumer Protection (UOKiK). The paper also considers the challenges facing the Court in connection with the dynamic development of EU competition law and, consequently, national competition law as well. The authors make this presentation against the background of one recent decision of the President of UOKiK, as well as two recent court rulings. In the said decision of the President of UOKiK, the concept of a ‘single economic unit’ was used for the first time as a tool for enforcing competition law compliance. The first of the aforementioned

judicial proceedings concerns the determination of the limit up to which the conduct of a full evidentiary proceeding by the Court should lead to the revocation of the reviewed decision of the President of UOKiK, rather than the issuance of a decision of a reformatory nature. The second judgment, on the other hand, concerns the admissibility of joining the appeal proceedings against a decision of the President of UOKiK by an entity that intends to initiate private law proceedings concerning the very same violation of competition law as the infringement established in the disputed decision of the said authority. Based on the presented proceedings, the authors justify the thesis of the growing role of the Court in ensuring consistency in the application of competition law, the growing expectations towards the Court, and the importance of the Court's careful and balanced approach to the presented legal issues, in order to protect the interests of the parties to competition law infringement proceedings.
Key words: abuse of competition law; revocation of the decision of the President of the Office; decision of the Court of Competition and Consumer Protection; private enforcement
JEL: K210

Rafał R. Wasilewski, The settlement of appeals before the Competition and Consumer Protection Court (SOKiK) – selected issues

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Summary: A special legal instrument has been in force in Polish law for over 2 years now – an agreement on an appeal to the Court of Competition and Consumer Protection (SOKiK). However, only one such agreement has been concluded so far. Although it is not a settlement in the traditional sense, it should be considered as a new form of amicable (negotiated) application of antitrust and consumer protection law. The subject of the settlement is the fate of a given party's appeal against a decision of the President of the Office of Competition and Consumer Protection (UOKiK). However, the terms of the settlement allow for various methods of not only ending the appeal procedure, but also the final conclusion of the antitrust case. The mere conclusion of a settlement is not enough, because the settlement must also be approved by SOKiK. When assessing a settlement, the Court must take into account criteria set out in the law that may require SOKiK to refuse to approve a given settlement. In this regard, it is problematic to what extent SOKiK should respect the will of the parties to conclude a settlement (in particular the will of the antitrust authority in the field of competition and consumer policy), and to what extent should the settlement be confronted with the protection of the public interest and its impact on the legal situation of third parties.

Key words: appeal proceedings; settlement of appeals before the Competition and Consumer Protection Court; antitrust settlement
JEL: K21, K41

A. Bolecki, Procedural errors of the Polish Competition and Consumer Protection Authority (UOKiK) in antitrust proceedings concerning restrictive practices and the powers of the Court of Competition and Consumer Protection (SOKiK)

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IV. Summary

Summary: The aim of this article is to familiarize readers with the issue of the capacity the Polish Court of Competition and Consumer Protection (SOKiK) to annul a decision of the President of the Office of Competition and Consumer Protection (UOKiK) due to procedural errors committed in the course of antitrust proceedings. On the basis of jurisprudence and the views of academics, the author attempts to formulate an open list of procedural errors that justify the annulment of a decision of the President of UOKiK, as well as those that do not constitute sufficient grounds for an annulment.

Key words: SOKiK; SOKiK's powers; court proceedings; procedural errors; annulment of decision
JEL: K21, K40

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