

**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****Table of contents:**

- I. Introduction
- II. Rebates in the light of the *more economic approach*
  1. *More economic approach*
  2. Pro-competitive effects of rebates
- III. The *Tomra* case
  1. Decision of the Commission
  2. Judgment of the European Court of Justice
- IV. The *Intel* case
  1. Decision of the Commission
  2. Judgment of the General Court

3. Reception of the judgment
4. Opinion of the Advocate General

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

**Table of contents:**

- I. Introduction
- II. Possibilities to limit parallel trade
- III. Refusal to supply of medicinal products in view of Article 101 TFEU
- IV. Double pricing of medicinal products in view of Article 101 TFUE
- V. Refusal to supply of medicinal products in view of Article 102 of TFEU
- VI. Direct to Pharmacy Scheme in view of competition law
- 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**

### Table of contents:

- I. Introductory remarks
- II. Commitment decisions in EU competition law
  1. Introduction – overview of the institution
  2. Decisional practice of the European Commission
- III. Commitment decisions in EU case-law
  1. Judgment of the Court of Justice in *Alrosa*
  2. Judgment of the General Court in *Morningstar*
- IV. The current framework of the commitment decision procedure after *Alrosa* and *Morningstar*
  1. Admissibility of appeals against commitment decisions
  2. Principle of proportionality
    - 2.1. Introduction
    - 2.2. Judgment of the Court of First Instance
    - 2.3. Advocate General's opinion
    - 2.4. Judgment of the Court of Justice
    - 2.5. Conclusions
  3. Judicial review
- V. Final remarks

**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 interantional law forms of implementing competiiton policy**

### Table of contents:

- I. Wprowadzenie
- II. European and American models of competition law regulation
- III. Competition law regulation in international trade
- IV. 'Global competition policy' – mission achieved?
- V. Wnioski

**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

### 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***

#### Table of contents:

- I. Introductory remarks
- II. Facts of the case
- III. Legal findings of the Court
  1. General rules on admissibility of evidence in EU law
  2. Admissibility of undisclosed recordings in the jurisprudence of EHCR
  3. Proceedings before the European Commission and rules for gathering evidence in Member States
- IV. Assessment of the Court's position
- V. Summary

**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***

#### Table of contents:

- I. Theses of the judgment
- II. Description of the case and the course of the proceedings
- III. Commentary to the judgment
- IV. Judicial context and further developments in the case-law

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

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

Szymon Gołębiowski, **Collusion on the market of smart card chips. Case comment to the judgment of the General Court of 15.12.2016 in Joined Cases T-758/14 *Infineon Technologies AG v. Commission* and T-762/14 *Koninklijke Philips NV and Philips France v. Commission***

**Table of contents:**

- I. Introductory remarks
- II. Facts of the case
- III. Exchange of information as a restriction of competition by object
- IV. Single and continuous infringement
- V. Fine
- VI. Conclusions

**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:**

- I. Introductory remarks
- II. Facts of the case
- III. Judgement of the General Court
  1. Admissibility of a claim
  2. Infringement of a right of defence
- IV. Comment

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

**JEL:** K40

**Book reviews**

***Algorithms and Collusion* – Background Note by the Secretariat, DAF/COMP(2017)4, OECD – Directorate for Financial and Enterprise Affairs Competition Committee, 2017** (Agata Jurkowska-Gomułka)

**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)

**2nd International Conference: *Harmonization of Private Antitrust Enforcement. A Central and Eastern European Perspective.* Supraśl, 29–30 czerwca 2017 r. (Magdalena Knapp, Paulina Korycińska-Rządca)**

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

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