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AGATA JURKOWSKA-GOMUŁKA

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Editorial foreword

The Editorial Board is pleased to present the 11th volume of the Yearbook of Antitrust and Regulatory Studies (YARS 2015, 8(11)). This volume continues YARS's new mission – presenting developments in antitrust and sector-specific regulation not only in Central and Eastern Europe, as originally envisaged, but also in the Balkans and Caucasus region. YARS has thus invited, for the very first time, authors from Georgia.

The first article in YARS 2015, 8(11) was written by Zurab Gvelesiani. The paper concerns the problem of the need and the necessity of the existence of competition law specifically in small economies (relatively small countries). The problem is presented with reference to the case of Georgia where competition law was abolished in 2005 only to be later re-established (as described in another paper contained in the current volume).

Two following papers are dedicated to the development of private enforcement of competition law – Raimundas Mojsejevas wrote about Lithuania while Maciej Gac focused on Poland. Both authors stress the rather poor condition of this method of antitrust enforcement in Lithuania and Poland, specially comparing to some other EU Member States. They also try to identify the main barriers to making private enforcement more common in their countries of origin.

In his paper, Marcin Kulesza analyzes Polish legislation and enforcement practice on leniency in a wider European context. Polish leniency is quite specific as it covers not only cartels but also vertical restraints. The author tries to make a comparison between Polish legal solutions and the Leniency Model Programme introduced by the European Competition Network.

Special attention should be paid to articles presenting competition law developments in two Balkan countries: Albania (Ermal Nazifi and Petrina Broka) and Kosovo (Orhan Ceku). The two papers create a unique opportunity to broaden foreign knowledge on the legislation and jurisprudence of some of the youngest antitrust regimes in Europe.

The final article in the current volume of YARS is also the only one concerning problems of sector-specific regulation. The author, Ewa Kwiatkowska, delivers a thorough and interesting presentation of economic

determinants of regulatory decisions in the Polish telecommunications sector.

The current volume of YARS contains also a number of legislative and jurisprudential reviews. It opens with a paper by Tadeusz Skoczny (CARS Director, YARS Editor-in-Chief) focusing on a crucial amendment to the Polish Act on Competition and Consumer Protection that entered into force in January 2015. Solomon Menabdishvili presents recent changes to Georgian competition law that resulted from the EU Association Agreement. Petra Joanna Pipková and Ivo Šimeček draw the readers' attention to new procedural notices issued by the Czech Office for the Protection of Competition (on leniency, settlement, alternative problem resolution). Raimundas Moisejevas and Monika Dapkute consider amendments to Lithuanian competition law in 2013. Finally, Hanna Stakhyeva reviews rules for protecting legal professional privilege in the EU, Turkey and Ukraine.

The next part of YARS 2015, 8(11) is devoted to case comments. They include a discussion on the objectives of competition law and the effective conduct of infringement proceedings in judgments rendered by a court in Bosnia and Hercegovina (Alexandr Svetlicini); an analysis of Slovak jurisprudence on bid rigging (Ondrej Blažo and Silvia Sramelova); an assessment of a judgment of the Polish Supreme Court delivered in an vertical price agreement case (Małgorzata Sieradzka) and; an analysis of another judgment delivered by the Polish Supreme Court but this time regarding rules of due process in Polish antitrust procedure (Dariusz Aziewicz).

In its book review section, the current volume of YARS presents the reviews of one competition law book published in Poland in 2013 and 2015, as well as two such books published in Ukraine in 2014 and 2015.

Finally, YARS 2015, 8(11) contains a conference report by Maciej Gac. The volume closes with antitrust and regulatory bibliography for 2013 and 2014 that covers Poland, Estonia, Serbia and Slovakia.

The Editorial Board would like to take this opportunity to encourage the readers of YARS to participate in a conference on private enforcement of competition law co-organised by CARS which will be held in Supraśl (Poland) in July 2015 (the current volume contains an invitation to the conference).

The next regular volume of YARS will be published at the beginning of 2016. A call for papers will be announced shortly on the YARS website.

Warsaw, March 2015

Prof. Agata Jurkowska-Gomułka
YARS Volume Editor

INVITATION
to the International Conference on the Harmonisation of Private Antitrust Enforcement: A Central and Eastern European Perspective, Supraśl (Poland), 2–4 July 2015

Białystok–Warsaw, 2 April 2015

Dear Colleagues,

It gives us great pleasure to invite you to the International Conference on the Harmonisation of Private Antitrust Enforcement: A Central and Eastern European Perspective. The Conference is organised by the Faculty of Law of the University of Białystok and the Centre for Antitrust and Regulatory Studies of the University of Warsaw and will be held on 2–4 July 2015 in Supraśl.

The Conference will provide a forum for the presentation and discussion of original contributions on a whole spectrum of topics relating, in particular, to the Damages Directive 2014/104/EU (Directive of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. The proceedings of the Conference are going to be published in YARS 8(12).

The event includes the following speakers (in alphabetical order):

- Ondrej **Blažo** (PhD, Comenius University in Bratislava, Faculty of Law), *Directive on Antitrust Damages Actions and Current Changes of Slovak Competition and Civil Law*
- Marco **Botta** (Assist. Prof., University of Vienna, Austria) & Alexandr **Svetlicinii** (Assist. Prof., University of Macau, Makau, China), *"Umbrella Pricing" in Private Enforcement of EU Competition and U.S. Antitrust Law: Another Transatlantic Divergence?*
- Petrina **Broka** (PhD, University of Tirana, Albania) & Ermal **Nazifi** (PhD cand., University of Tirana, Albania), *Grounds For the Private Enforcement of Albanian Competition Law*

- Vlatka **Butorac Malnar** (Assoc. Prof., University of Rijeka, Croatia), *EU Directive on Antitrust Damages – Should We Call in the Expert Witness?*
- Katalin J. **Cseres** (Assoc. Prof., University of Amsterdam, the Netherlands), *Harmonising Private Enforcement of Competition Law in Central And Eastern Europe: The Effectiveness of Legal Transplants Through Consumer Collective Actions*
- Aleš **Galič** (Prof. University of Ljubljana, Slovenia), *Disclosure of Documents in Private Antitrust Enforcement Litigation*
- Anzhelika **Gerasymenko** (PhD, Assist. Prof., Kyiv National University of Trade and Economics) & Nataliia **Mazaraki** (PhD, Assist. Prof., Kyiv National University of Trade and Economics), *Antitrust Damages Actions in Ukraine: Current Situation and Perspectives*
- Anna **Gulińska** (legal advisor, Salans FMC SNR Denton Oleszczuk sp.k., Warsaw, Poland), *Collecting Evidence Through Access to Competition Authorities' Files – Interplay or Potential Conflicts Between Private and Public Enforcement Proceedings?*
- Zurab **Gvelesiani** (PhD cand., Central European University, Budapest, Hungary), *The Georgia's First Steps in Competition Law Enforcement: The Role and Perspectives of the Private Enforcement Mechanism*
- Agata **Jurkowska-Gomułka** (Prof., University of Information Technology and Management, Rzeszów, Poland), *How to Throw the Baby Out With the Bath Water. A Few Remarks on the Currently Accepted Scope of Civil Liability for Antitrust Damages*
- Raimundas **Moisejevas** (Dr., MykolasRomeris University, Vilnius, Lithuania), *Consensual Approach to Antitrust Enforcement*
- Anna **Piszcz** (Prof. of the University of Białystok, Poland), *Piecemeal Harmonisation? Remarks on What Received Too Little Attention in the Damages Directive*
- Rafał **Sikorski** (Prof., University of Adam Mickiewicz, Poznań, Poland), *Claims by Consumers as Indirect Purchasers*
- Rimantas Antanas **Stanikunas** (Prof. dr., Vilnius University, Lithuania) & Arunas **Burinskas** (PhD cand., Vilnius University, Lithuania), *Interaction of Public and Private Enforcement of Competition Law in Lithuania*
- Dominik **Wolski** (PhD, legal advisor, Poland), *How the Enforcement of Private Antitrust Claims Will Change as a Result of the Implementation of the Damages Directive?*

The event is going to be accompanied by the first meeting of CRANE (Competition Law and Regulation. Academic Network. Europe – Visegrad, Balkan, Baltic, East) – a new academic network initiated by the Centre for Antitrust and Regulatory Studies (see YARS 7(9), p. 261–261).

For the program of the Conference and more information (e.g. on how to book a place), please visit: http://www.prawo.uwb.edu.pl/prawo_new/wydzial.php?p=1437.

We look forward to seeing you in Supraśl in July 2015.

Prof. Tadeusz Skoczny
Centre for Antitrust and Regulatory Studies, University of Warsaw

Prof. Anna Piszcz
(Chair of the Conference Organising Committee)
Faculty of Law, University of Białystok
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A R T I C L E S

Need for Competition Law – Discussing the Case of Georgia

by

Zurab Gvelesiani*

CONTENTS

I. Introduction
II. Twisted path of Georgian competition law
III. The reasons and motivation for re-introducing competition law in Georgia
IV. The impact of the abolition of Georgia's Antimonopoly Law in 2005
V. Competition law – challenges and expectations
VI. Conclusions

Abstract

The article deals with the question whether the market needs to be regulated and if competition law is a desirable regulatory instrument for developing countries such as Georgia. This issue is not merely theoretical in nature, but reflects Georgia's actual developments throughout the last decade when the country first repelled its existing antimonopoly law, since it was seen as unnecessary and hindering economic development, and yet later reintroduced it once again. For years Georgia was not regulating its market and, as the newly set up Competition Agency is starting to take its first steps, the question of the rationality for pro-competitive state intervention raises again.

The chosen jurisdiction is unique for its unusual development path and history. It is even more special because of this particular point in time, witnessing the birth-phase of yet another competition law jurisdiction and the launching of its competition law enforcement authority. The article is dedicated to questions which are widely disputed in society, among politicians, in the media, within the local NGO sector etc. However, the academic community has not yet written much about

* Zurab Gvelesiani, PhD candidate, Central European University, Budapest; Gvelesiani_Zurab@phd.ceu.edu.

them. This paper aims to fill this gap and encourage further academic discussion on this topic. Due to the limited number of academic sources and case-law in this field, a variety of sources has been used in this paper including: dissertations, reports of international organizations and local NGOs, personal interviews, blogs and so forth. The article is divided into sections. It starts by reviewing the evolution of competition law in Georgia and demonstrates its illogical development pattern. It moves on to outline the background and motivations present in Georgia at moments when breakthrough decisions were taken regarding its competition law regime. The article describes and analyses processes that took place on the un-regulated Georgian market in the last ten years. Based on the findings, it researches the question of the desirability of competition law, that is, whether Georgian market needs such state intervention, and what are the main challenges facing the effective enforcement of its recently adopted competition law.

Résumé

L'article porte sur la question de savoir si le marché doit être réglementé et si le droit de la concurrence représente un instrument réglementaire souhaitable pour les pays en voie de développement comme la Géorgie. Cette question n'est pas purement théorique, mais elle reflète l'évolution réelle de la Géorgie à travers la dernière décennie, lorsque le pays a tout d'abord abrogé sa législation anti-monopole existante, considérée comme inutile et gênante le développement économique, pour la réintroduire après. Pendant des années, la Géorgie ne réglementait pas son marché, mais quand l'Agence de la concurrence nouvellement créée commence à faire ses premiers pas dans ce domaine, la question de la rationalité de l'intervention étatique se pose à nouveau.

La juridiction choisie est unique pour son chemin de développement inhabituelle et son histoire. Elle est encore plus particulière à l'heure actuelle, car elle nous permet d'assister à la naissance d'une autre juridiction du droit de la concurrence et à la création de son autorité de la concurrence. L'article est consacré aux questions largement discutées dans la société, parmi les politiciens, dans les médias, dans le secteur des ONG locales, etc. Cependant, la doctrine juridique n'a pas encore beaucoup écrit sur ces questions. Cet article vise à combler cette lacune et à encourager la discussion académique sur ce sujet. En raison du nombre limité de sources académiques et de la jurisprudence dans ce domaine, une variété de sources a été utilisé dans le présent article, y compris: des dissertations, des rapports des organisations internationales et des ONG locales, des entretiens, des blogs, etc.

L'article est divisé en deux parties. Il commence par l'examen de l'évolution du droit de la concurrence en Géorgie et démontre le caractère illogique de ce processus. Il continue avec la description du contexte et des motivations présentes en Géorgie aux moments quand les décisions cruciales du point de vue du droit de la concurrence ont été prises. L'article décrit et analyse les processus non réglementées qui ont eu lieu sur le marché géorgien dans les dix dernières années. Sur base des résultats de ces recherches, l'article étudie la question de l'opportunité

du droit de la concurrence, c'est-à-dire, si le marché géorgien besoin d'une telle intervention de l'Etat, et quels sont les principaux défis de l'application efficace du droit de la concurrence récemment adopté.

Classifications and key words: competition law; developing state; Georgia; market liberalization; necessity for market regulation; state intervention; transition.

I. Introduction

After more than two decades of earning its independence, rejecting a centrally-planned socialist economy, and starting developing a free and competitive market, Georgia seems to stand now at the starting point when it comes to market regulations. As its new Competition Law[1] is about to get actually enforced, and the recently formed Competition Agency[2] starts operating, part of the business sector and of the society remain uncertain and suspicious of whether competition law and its new enforcement authority are in fact necessary for the Georgian economy[3].

In the last decade, the Georgian market has been shaped by the *laissez-faire*[4] slogan and the outcome does not seem healthy. A number of its markets have become oligopolized and lack transparency, there are signs of anticompetitive practices, existence of cartels and the abuse of power by dominant firms. On the other hand, its new competition law regime promises competitive markets, low prices, high quality of goods and services, production efficiency and dynamic economic development. What may seem self-evidently desirable remains, however, uncertain and disputed in Georgia. The article attempts to analyze the results of the 2005 'market liberalization' reform. In response to the skepticism toward the adoption and enforcement of Georgia's new Competition Law, the paper aims to answer the questions whether the national market needs such state intervention, as well as how satisfactory and sufficient are the steps taken in recent years. The paper will also examine the rationality of persistent societal fears and mistrust towards the launch of a new state authority.

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[1] Parliament of Georgia, Law of Georgia of 8 May 2012, No 6148-Iს on Competition

[2] LEPL Competition Agency; official website: http://competition.ge/.

[3] I. Lekvianidze, 'What an effective competition policy should be like?' *Forbes Georgia*, 13 February 2014.

[4] *Laissez-faire* (French: 'allow to do'), policy of minimum governmental interference in the economic affairs of individuals and society; Encyclopedia Britannica (available at: http://www.britannica.com/EBchecked/topic/328028/laissez-faire).

Development of Private Enforcement of Competition Law in Lithuania

by

Raimundas Moisejevas*

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I. Introduction
II. Legal rules on private enforcement of competition law in Lithuania
  1. Legal background
  2. Conditions of civil liability
  3. Evaluation of evidence
  4. Limitation periods and the duration of proceedings
III. Lithuanian jurisprudence on private enforcement of competition law
  1. *UAB Šiaulių Tara v. AB Stumbras* (2006)
  2. *LUAB Klevo lapas v. AB Orlen Lietuva* (2010)
  3. *AB flyLAL-Lithuanian Airlines v. Air Baltic Corporation A/S and Airport Riga* (2008)
  4. *AB Orlen Lietuva v. the Competition Council of the Republic of Lithuania* (2011)
  5. *UAB Naftos grupė v. AB Klaipėdos nafta* (2014)
  6. Main qualifying features of Lithuanian private enforcement practice
IV. Obstacles for the development of the private enforcement practice in Lithuania
V. Conclusions

Abstract

The article reviews the jurisprudence of Lithuanian courts on private enforcement of competition law and identifies the main obstacles for the development of this practice. The analysis of the jurisprudence makes it possible to summarise that: most rulings of the Lithuanian courts relate to cases on the abuse of dominance; usually,

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dominant undertakings were allegedly applying discriminatory conditions towards the injured party and; most of the claims were presented as follow-on actions after a decision of the Competition Council. The courts held that damages caused by a breach of competition law have to be recovered in accordance with Lithuania's main principles of civil responsibility. At the same time, the courts made it clear that their jurisprudence is based on the rulings of European Courts and the main principles of EU competition law. The main obstacles for the successful development of antitrust damages claims in Lithuania are, *inter alia*: complexity of competition cases; difficulty in obtaining substantive evidence; proving a consequential relationship and; high legal costs. The article also analyses substantial and procedural provisions of Lithuanian legislation that regulate the submission of antitrust damage claims.

Résumé

L'article examine la jurisprudence des cours lituaniens sur l'application privée du droit de la concurrence et identifie les principaux obstacles pour le développement de cette pratique. L'analyse de la jurisprudence permet de constater que la plupart des décisions des cours lituaniens concerne le cas de l'abus de position dominante; généralement les entreprises dominantes prétendument appliquaient des conditions discriminatoires à l'égard des victimes et la plupart des requêtes ont été présentées suite à la décision du Conseil de la concurrence («*follow-on actions*»). Les cours ont conclu que les dommages subis à cause de violation du droit de la concurrence doivent être récupérés conformément aux principes de la responsabilité civile prévus en droit lituanien. En même temps, les cours ont clairement indiqué que leur jurisprudence est fondée sur les décisions des cours européens et sur les grands principes du droit européen de la concurrence. Parmi les principaux obstacles au développement de l'application privée du droit de la concurrence en Lituanie nous pouvons indiquer: la complexité des affaires portant sur la violation du droit de la concurrence; la difficulté pour obtenir des preuves de violation; la difficulté de prouver un lien de causalité; les frais juridiques élevés. L'article analyse également des dispositions substantielles et procédurales de la législation lituanienne régissant les actions en dommages-intérêts en droit de la concurrence.

Classifications and keywords: antitrust damage; antitrust damage claims; Directive on antitrust damages actions; evidence; follow-on action; Lithuania; nullity; private enforcement of competition law; public enforcement of competition law.

I. Introduction

Lithuania's first Law on Competition was adopted in 1992[1]. The Law was significantly amended in 2004 as it was necessary to harmonize the Lithuanian

[1] Lietuvos Respublikos konkurencijos įstatymas (1992 m. rugsėjo 15 d. įstatymo redakcija Nr. I-2878) // Valstybės žinios. 1992. No. 29-841.

Individuals and the Enforcement of Competition Law – Recent Development of the Private Enforcement Doctrine in Polish and European Antitrust Law

by

Maciej Gac*

CONTENTS

I. Introduction
II. Development of the private enforcement doctrine in the European Union
  1. CJEU and private enforcement
  2. EC and private enforcement
III. Private enforcement and the Polish system of antitrust law
  1. UOKiK policy
  2. Polish jurisprudence
  3. Legislative changes
  4. Polish experience with private enforcement – evaluation attempt
IV. 'Private enforcement package' – towards more effective protection of individuals against anti-competitive behaviors
  1. General description
  2. Specific elements
V. Evaluation attempt
VI. Conclusion

Abstract

The following article focuses on the issue of private enforcement of competition law as one of the key elements of the current European and national debate

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on the efficiency of competition law. By analyzing this concept, the article aims to determine the influence of the European private enforcement model on the national competition law enforcement practice. The goal of the analysis is to answer two main questions:

1) Does the current convergence of the national competition law enforcement system towards the European model guarantee the establishment of an effective, public-private system of antitrust enforcement?
2) Under which conditions may the development of private methods of antitrust enforcement lead to an increase in the efficiency of Polish and European competition law?

In order to address these questions, the article analyses the development of the private enforcement doctrine in the European Union and Poland. It refers to European and Polish jurisprudence on private enforcement, the competition policy of the European Commission as well as of the Polish competition authority – the UOKiK President. It also covers recent legislative changes introduced in the European and national legal orders. The analysis leads to the conclusion that the current convergence of the national antirust system towards the European model did not lead to the establishment of an effective mechanism of private enforcement in Poland. Nevertheless, the assessment of recent changes at the European level gives grounds to assume that the adoption of the Directive on Damages Actions, and its transposition into the national legal order, might overcome this problem and allow for better protection of individuals against anti-competitive behaviors.

Resumé

L'article est concentré autour de la question d'application privée du droit de la concurrence comme un des éléments clés du débat européen et national sur l'efficacité du droit de la concurrence. En analysant le concept de «*private enforcement*», l'article vise à déterminer l'influence du modèle européen d'application privée du droit de la concurrence sur la pratique nationale en droit de la concurrence. Le but de l'analyse est de répondre aux deux questions suivantes:

1) Est-ce que la convergence actuelle de système national du droit de la concurrence vers le modèle européen garantit l'établissement du système efficace d'application du droit de la concurrence?
2) Dans quelles conditions le développement des méthodes privées d'application du droit de la concurrence peut mener à l'augmentation d'efficacité du droit polonais et européen de la concurrence?

Afin de répondre aux questions mentionnées ci-dessus, l'auteur analyse le développement de la doctrine du «*private enforcement*» dans l'Union européenne et en Pologne. L'article se réfère à la jurisprudence des cours européennes et nationales sur l'application privée du droit de la concurrence, à la politique de concurrence de la Commission européenne et l'Autorité nationale de la concurrence, ainsi qu'aux récentes modifications législatives introduites dans l'ordre juridique européen et national. L'analyse effectuée mène à la conclusion que la convergence actuelle de système polonais du droit de la concurrence au modèle européen n'a pas permis

d'établir un mécanisme efficace d'application privée du droit de la concurrence en Pologne. Néanmoins, l'analyse des changements introduits récemment dans le domaine de «*private enforcement*» au niveau européen, donne des raisons à croire que l'adoption d'une directive sur les actions privées et sa mise en œuvre dans l'ordre juridique national, peut résoudre ce problème et permettre une meilleure protection des individus contre les violations du droit de la concurrence.

Classifications and key words: collective redress; damages actions; group litigation; private enforcement; public enforcement.

I. Introduction

The concept of private enforcement of competition law has been discussed in Europe for over a decade already and yet, it can still be regarded as a novelty, rather than the standard in the application of competition law. The realization is often stressed that in order to increase the efficiency of antitrust provisions, private enforcement models must be developed, popularized and more commonly used. Nevertheless, once this general standpoint is put into practice, the continuous underdevelopment in the enforcement of competition law by individuals is very noticeable. The European Commission (hereafter, EC) has recently proposed important changes in the area of private enforcement[1] and all EU Member States (hereafter, MS) are required to adapt their national legal systems to the standards developed at the EU level. In today's legal context, it thus seems crucial to answer two key questions:

1) Does the current convergence of a national competition law system towards the European model guarantee the establishment of an effective, public-private system of antitrust enforcement?
2) Under which conditions may the development of private methods of competition law enforcement lead to an increase in the efficiency of Polish and European antitrust law?

This article aims to provide answers to these questions. It will not only evaluate current Polish and European experiences in the area of private antitrust enforcement, but will also create grounds for determining the possible direction for its future evolution. The responses given to the above questions will provide the basis for addressing one of the main problems discussed within the ongoing debate on the enforcement of competition law: how to increase its efficiency and ensure an appropriate balance between public and private enforcement methods?

[1] See Section IV of this article.

Leniency – the Polish Programme and the 'Semi-formal' Harmonisation in the EU by the European Competition Network

by

Marcin Kulesza*

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I. Introduction
II. The European origin of the Polish leniency programme
III. The European Competition Network
IV. Harmonisation of leniency programmes by the ECN
V. Model Leniency Programme and the Polish leniency programme
VI. Closing remarks

Abstract

When studying the legal character of the Polish leniency programme, one cannot overlook its origin and the harmonisation process of such programmes in the EU. From the beginning, the Polish programme has been, as it should be, bound to the EU programme and to the European Competition Network's Model Leniency Programme. The paper briefly presents the European roots of the Polish leniency programme, its original convergence with the Commission's programme and its current convergence with the Model Leniency Programme. In addition, the status of the Model Leniency Programme is analysed and questioned and its provisions are presented in the context of the evolution of Polish leniency. Some additions to the current Polish programme are suggested in conclusion.

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Résumé

Lorsque nous étudions le caractère juridique de programme polonaisde clémence, nous ne pouvons pas ignorer ses origines ainsi que le processus d'harmonisation de ces programmes dans l'UE. Dès le début le programme polonais a été, comme il devrait être, lié au programme de l'UE et au programme de clémencemodèle du Réseau européen de la concurrence. Cet article présente brièvement les racines européennes de programme polonais de clémence, sa convergence initiale avec le programme de la Commission, et sa convergence actuelle avec le programme de clémencemodèle du Réseau européen de la concurrence. En outre, le statut du programme de clémencemodèle est analysé et remis en question. Ses dispositions sont présentées dans le contexte de l'évolution de la politique de clémence en Pologne. Certaines modifications de programme polonaisde clémence sont proposées en conclusion.

Classification and keywords: antitrust enforcement; European Competition Network; harmonisation; leniency; Model Leniency Programme; Poland.

I. Introduction

According to the official justification of the provisions setting forth the original Polish leniency programme of 2004 and to respective documents accompanying further amendments thereto, the Polish scheme is rooted in the programme operated by the European Commission and in the Model Leniency Programme (hereafter, MLP) based on the Commission Leniency Notice of 2002[1]. It is thus interesting to take a look at the Polish programme's origin in the context of the MLP.

The above paragraph identifies both of the main issues studied in this paper. Presented first will be the official references to the sources of the Polish leniency programme, as noted in the justification of the provisions shaping its first version by its authors and its convergence with the MLP at a later stage. Following this, the background of the MLP will be reviewed and its unofficial character questioned. This leads to the conclusion that the Polish programme, 'semi-formal' by itself at a stage where it was clarified and detailed by non-binding guidelines of the Polish Competition Authority – the President of the Office for Competition and Consumer Protection (hereafter, UOKiK), has been shaped by another 'semi-formal' document – the MLP.

[1] Commission notice of 19 February 2002 on immunity from fines and reduction of fines in cartel cases, OJ [2002] C 45/3; hereafter: 2002 Leniency Notice. See C. Gauer, M. Jaspers, 'ECN Model Leniency Programme – a first step towards a harmonised leniency policy in the EU' (2007) 1 *Competition Policy Newsletter* 36.

Competition Law in Kosovo: Problems and Challenges

by

Orhan M. Çeku*

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Abstract

Competition Law is an important aspect of free market economy. It determines the functioning of the economic system based on the free market principles of supply and demand.
Competition law is in the initial stage of its implementation in the Republic of Kosovo. Its development began in 2004 with the adoption of Kosovo's Law on Competition, the country's very first law passed to regulate the legal basis of free market competition. The Law on Competition of 2004 had many shortcomings both with respect to its content and implementation. New legislation was thus passed in 2010 under the name the Law on the Protection of Competition. The latter act is in force now along with an Amendment that entered into force in early 2014. Taken in its entirety, Kosovo's competition law meets the standards and is in accordance with EU legislation. Kosovo, although it is only in the initial stage of its contractual relations with the EU, has aligned most of its laws with the requirements of EU legislation. Kosovo is Europe's youngest country and as such, it has various problems when it comes to the functioning of the rule of law. This paper will discuss several topics related to the development of competition law in Kosovo including: the political, legal and economical situation in the field of competition law; the legal bases for the protection of competition in Kosovo; the Kosovo Competition Authority and the insufficiency in its capacities to combat competition law infringements; legal provisions on restrictive practices and merger control. The paper also includes comprehensive conclusions. A number of competition cases deal with by the Kosovo Competition Authority will be mentioned throughout the paper.

Résumé

Droit de la concurrence est un aspect important de l'économie de marché libre. Il détermine le fonctionnement du système économique basé sur les principes de l'offre et de la demande. Dans la République du Kosovo le droit de la concurrence est dans la phase initiale de sa mise en œuvre. Son développement a commencé en 2004 avec l'adoption de la Loi sur la concurrence, la première loi jamais adoptée pour réglementer les bases juridiques de la libre concurrence. Cette loi avait des nombreuses défauts concernant son contenu et sa mise en œuvre. En effet, une nouvelle législation sous le nom de la Loi sur la protection de la concurrence a été adoptée en 2010, qui est actuellement en vigueur avec un amendement introduit au début de 2014. Pris dans son ensemble, le droit de la concurrence de Kosovo répond aux standards européens et est conforme à la législation de l'UE.Kosovo, même si cela n'est que dans la phase initiale de ses relations contractuelles avec l'UE, a déjà aligné la plupart de sa législation avec les exigences du droit européen. Kosovo est le plus jeune pays de l'Europe et en tant que tel a des divers problèmes concernant le fonctionnement de la règle de droit. Cet article discute plusieurs sujets liés à l'évolution du droit de la concurrence au Kosovo, notamment: la situation

politique, juridique et économique dans le domaine du droit de la concurrence; les bases juridiques pour la protection de la concurrence au Kosovo; l'Autorité de la concurrence de Kosovo et sa capacité limitée pour lutter contre les pratiques anticoncurrentielles; les dispositions juridiques concernant les pratiques restrictives et le contrôle des concentrations. L'article contient des conclusions exhaustives. Il évoque aussi un certain nombre des affaires de concurrence traités par l'Autorité de le concurrence de Kosovo.

Classifications and keywords: abuse; agreement; authority; commission; competition law; concentration; dominant position; Kosovo; state aid

I. Introduction

Competition law is known as antitrust law in the legal terminology of the United States of America. 'Antitrust laws were put in place by federal and state governments to regulate corporations. They keep companies from becoming too large and fixing prices, and also encourage competition so that consumers can receive quality products at reasonable prices. These laws give businesses an equal opportunity to compete for market share. Preventing monopolies ensures that consumer demand is met in a fair and balanced way. There are four sections that the laws focus on including agreements between competitors, contracts between buyers and sellers, mergers and monopolies'[1].

Having been the engine of economic development, competition seams a necessary subject of regulation laws. Thus, the operation of fair competition in the free market economy is regulated by legal provisions which set out the general framework of its operation. Competition law is made by the totality of all legal rules designed by the State to regulate fair market competition.

'Competition law may have two different definitions. The first definition, very large, proposes to review the entirety of competition law rules governing the rivalry between economic agents who are looking for clients or who want to keep them. The second, narrower definition, sees competition law as a set of rules designed to prevent and to fight, if necessary, practices which distort competition'[2].

Kosovo's current Law on the Protection of Competition (hereafter, LPC), approved by the Assembly in 2010, is a reflection of Kosovo's intention to ensure fair competition and to protect its consumers. The LPC is in accordance with the standards, and is roughly in line with the laws and enforcement practices of

[1] http://www.antitrustlaws.org/.

[2] C. Nourissat, *E drejta e biznesit e Bashkimit Evropian*, Papirus 2012, p. 231.

Review of Ten Years of Albanian Competition Law Developments

by

Ermal Nazifi*, Petrina Broka**

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Abstract

Albania was one of the last countries in Europe to adopt a free market economy after suffering from one of the worst dictatorial communist regimes in the world. In order to succeed in its efforts to establish a free market economy, Albania needed to undertake a set of reforms to modernize its economy in order to cope with the new reality of global markets and Euro-Atlantic integration. An important aspect of these reforms is also the implementation of a competition law in line with the *acquis* an its effective implementation. A lot has been achieved in the last ten years but there is a lot to be done still in order to facilitate a competitive economy able

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to cope with Albania's EU integration. The work of the ACA is only one aspect of this process, but it is of utmost importance for the development of the national economy and successful EU membership.

Résumé

L'Albanie est l'un des derniers pays de l'Europe à adopter l'économie de marché libre après avoir souffert d'un des pires régimes communistes dictatoriaux dans le monde. Afin de réussir dans ses efforts pour établir une économie de marché libre, l'Albanie devait entreprendre une série de réformes pour moderniser son économie et faire face à la nouvelle réalité des marchés globaux et l'intégration euro-atlantique. Un aspect important de ces réformes est aussi l'introduction des règles du droit de la concurrence en conformité avec l'acquis communautaire et sa mise en œuvre efficace. Beaucoup a été accompli au cours des dix dernières années, mais il y a encore beaucoup à faire afin de faciliter une économie compétitive, capable de faire face à l'intégration européenne de l'Albanie. Le travail de l'ACA ne est qu'un aspect de ce processus, mais il est crucial pour le développement de l'économie nationale et la réussite du processus d'intégration à l'UE.

Classifications and key words: abuse of dominance; Albania; Albanian competition authority; anticompetitive agreements; competition law and policy; merger review, private enforcement.

I. Introduction

Albania was one of the last countries in Europe to adopt a free market economy after millennia of tumultuous history. In the beginning of the 1990s, Albania finally emerged from one of the worst dictatorial communist regimes in the world with a centrally-planned economy at the core of its superstructure. According to the World Bank, Albania's GDP per capita was less than 330 US dollars in 1992[1], making it one of the poorest countries in the world.

In order to succeed in its efforts to establish a free market economy, Albania needed to undertake a set of reforms to modernize its economy in order to cope with the new reality of global markets and Euro-Atlantic integration. An important aspect of these reforms was the approval of its first Law on Competition (hereafter, LoC) in 1995[2]. The LoC contained provisions against unfair competition, anti-competitive agreements, abuse of dominance, merger

[1] Available at: [http://data.worldbank.org/indicator/NY.GDP.PCAP.CD?page=4].

[2] This is not the first law on competition in Albania, if ancient and medieval history is taken into account. Legal acts such as *Lex Iulia de Annona* (*year 18 A.D.?*) Diocletian's, (301 A.D.),

Economic Determinants of Regulatory Decisions in the Polish Telecommunications Sector

by

Ewa M. Kwiatkowska*

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II. Assessment of market competitiveness
III. Empirical base
IV. Economic criteria used in telecoms decisions of the President of UOKiK and the President of UKE
V. The evolution of the use of qualitative criteria or choice for a particular case?

Abstract

The main policy goals undertaken by public authorities, primarily increasingly competitive telecommunication markets, are achieved through various and distinct administrative actions. *Ex post* public interventions are meant to protect competition by responding to actions that restrict or violate free market competition (proceedings concerning: the abuse of a dominant position and anti-competitive agreements). *Ex ante* interventions shapes the relationships among market participants in the framework of merger control and pro-competitive sector-specific regulation. The aim of this study is to determine to what an extent economic criteria are used in the assessment of the competitiveness of Polish telecommunication markets by the competition authority and the Telecoms Regulator (respectively, the President of UOKiK, and the President of UKE) in four distinct types of competition related proceedings: merger control, abuse of a dominant position, anti-competitive agreements, and sector-specific regulation. The paper presents the results of an analysis of qualitative and quantitative criteria applied in decisions (and resolutions)

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issued by both of the authorities in the past eleven years (2003–2013). To this end, 194 publicly available decisions were analysed.

Résumé

L'objectif principal des actions prises par les autorités publiques, qui est un marché de télécommunication compétitif, est atteint par les différentes actions régulatoires. Des régulations ex post assurent les fonctions protectrices de la concurrence en répondant aux actions qui restreignent ou violent la concurrence (ces procédures concernent: les abus de position dominante, les ententes illicites). Des régulations ex ante influent sur la concurrence en contrôlant les fusions et la réglementation pro-concurrence spécifiques à un secteur, ce qui conditrionne les relations entre les participants d'un marché. Le but de cette étude est de déterminer le degré d'utilisation des critères économiques afin d'évaluer la compétitivité des marchés de télécommunication par les autorités de régulations (le Président de l'Office de protection de la concurrence et des consommateurs, le Président de l'Office des communications électroniques) dans quatre types différents d'action (dans le domaine du contrôle des fusions, les abus de position dominante, ententes illicites, régulations spécifiques à un secteur donné). Cet article présente les résultats des analyses des critères qualitatifs et quantitatifs appliqués dans les règlements délivrés par les autorités de régulations dans les onze dernières années (2003–2013). 194 règlements publiquement disponibles (décisions et résolutions) ont été analysés.

Classifications and key words: competitiveness assessment; decisions; ex ante regulation; ex post regulation; Poland; qualitative criteria; quantitative criteria; resolutions; telecommunications markets

I. Introduction

Telecommunications is particularly dependent on effective regulation as it is a network industry evolving from a centrally planned economy and state-owned monopolies towards a private economy based on free market mechanisms. The sources of such regulations are found not only in the legislative legacy of the sector, but also in its economic and technical aspects. The specificity of the functioning on this kind of markets results from the need to use special infrastructure, which is difficult, or often impossible to duplicate. The so-called incumbent operators often have exclusive or privileged access to such infrastructure. Competition on many Polish telecommunication markets has not yet developed to a degree sufficient to make it possible to move away from the use of the well-tailored tools of sector-specific regulation used by the National Regulatory Authority (hereafter, NRA) responsible for

2014 Amendment of the Polish Competition and Consumers Protection Act 2007

by

Tadeusz Skoczny*

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I. Introduction
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Abstract

The article presents a critical analysis of changes introduced into the Polish Competition Act of 2007 by the Amendment Act of 2014. The declared purpose of the Amendment was mainly to increase the effectiveness of the enforcement of the antitrust prohibitions, including the introduction of conduct remedies in antitrust cases, the settlement procedure and fines for individuals, changes in the Polish Leniency Programme and inspection powers, as well as simplifying and shortening merger control proceedings. Considered in the paper is the thesis that some of these changes were not introduced properly; in particular, that the new provisions

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fail to sufficiently safeguard the rights of undertakings, and that the amendment is an inadequate step towards the convergence of the Polish competition law system with the enforcement rules of the EU and its other Member States. Further changes to the Polish Competition Act of 2007 are therefore needed. The paper does not cover changes introduced by the Amendment Act of 2014 to Poland's consumer protection provisions.

Résumé

Cet article présente une analyse critique des changements introduits par l'amendement de 2014 dans la loi polonaise relative à la protection de la concurrence et des consommateurs de 2007. Le but déclaré de l'amendement visait principalement à accroitre l'efficacité de l'application du droit de la concurrence par l'introduction des mesures correctives dans les affaires du droit de la concurrence, de la procédure de règlement et des sanctions contre les individus, des changements dans le programme de clémence polonais et dans les pouvoirs d'inspection de l'Autorité de la concurrence, ainsi que par la simplification et le raccourcissement de la procédure de contrôle des concentrations. Selon l'hypothèse présentée dans l'article, certains de ces changements n'ont pas été introduits correctement, les nouvelles dispositions ne parviennent pas à préserver suffisamment les droits des entreprises et l'amendement de 2014 constitue un pas insuffisant vers la convergence du système de droit de la concurrence polonais avec les règles d'application du droit de la concurrence dans l'UE et les Etats Membres. En effet, de nouveaux changements de la loi relative à la protection de la concurrence et des consommateurs de 2007 sont nécessaires. L'article ne couvre pas les modifications introduites par l'amendement de 2014 dans le domaine de protection des consommateurs.

Classifications and key words: enforcement of the prohibition of anti-competitive practices; fines for individuals; inspection powers; leniency; leniency plus; merger control proceeding; remedies; settlement.

I. Introduction

The Polish competition law system is already 25 years old[1]. The currently applicable Act on Competition and Consumer Protection (hereafter,

[1] See in detail T. Skoczny, 'Poland: Chapter 3 – Competition Law' [in:] S. Breidenbach, Ch. Campbell (eds.) *Business Transactions in Eastern Europe*, vol. 2 (Lexis Publishing 1977) § 2. T. Skoczny, 'Polish Competition Law in the 1990s – on the Way to Higher Effectiveness and Deeper Conformity with EC Competition Rules' (2001) 2 *European Business Organization Law Review* 777–793; M. Błachucki, *Polish Competition Law – Commentary, Case Law and Texts*, Warszawa 2013 (available in Polish in at: http://www.UOKiK.gov.pl/publikacje.php?tag=2).

New Procedural Notices of the Czech Office for the Protection of Competition: Leniency, Settlement, and Alternative Problem Resolution

by

Petra Joanna Pipková[*], Ivo Šimeček[**]

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I. Introduction

In connection with the 2012 amendment of the Czech Act on the Protection of Competition (hereafter, APC), reported in YARS last year[1], the Czech Office for the Protection of Competition (hereafter, Office) issued three new procedural noticesin November 2013: Notice of the Office for the Protection of Competition of 4 November 2013 on the application of Section 22ba of the Act on the Protection of Competition (hereafter, Notice on the Leniency Programme), Notice of the Office for the Protection of Competition of 8 November 2013 on the Procedure aimed at the speeding up of administrative proceedings by meansof the application for a reduction of the fine according to Section 22ba(2) of the Act on the Protection of Competition (hereafter, Notice on the Settlement Procedure), and Notice of the Office for the Protection of Competition of 8 November 2013 on alternative resolutions of competition problems and on the dismissal of the matter (hereafter: Notice on Alternative Problem Resolutions)[2]. This contribution analyzes the aforementioned three new procedural soft-law instruments.

The new notices react to changes brought about by the 2012 Amendment of the APC (hereafter, 9th APC Amendment) in Czech competition procedure. The 9th APC Amendment incorporated the leniency programme and the settlement procedure into the APC for the first time in the history of Czech competition law. Furthermore, the amendment introduced the instrument of the so-called prioritisation, i.e. the possibility for the Office to dismiss a matter in caseswhere there is no public interest in its prosecution.

II. Notice on the Leniency Programme

Before the 9th APC Amendment, the Czech leniency programme existed only as a soft-law. Thanks to the new legislation, leniency found its way into Section 22ba of the APC. The new Notice on the Leniency Programme will provide interpretational rules for its application as a tool of cartel investigation.

The Notice on the Leniency Programme retains the same structure asits predecessor but it contains changes in its details. Some of these 'little' modifications clarify earlier rules and thus represent a change for the better.

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[1] See R. Neruda, L. Gachová, R. Světnický, '9th Amendment to the Czech Competition Act' (2013) 6(8)*YARS* 159 ff.

[2] All to be found here: http://www.uohs.cz/en/legislation.html.

Competition Policy Developments in Lithuania in 2013

by

Raimundas Moisejevas[*], Monika Dapkutė[**]

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I. Introduction

The most recent Amendment[1] to the Law on Competition of the Republic of Lithuania (hereafter, the Law on Competition[2]) were adopted by the Lithuanian Parliament on 23 December 2013 and came into force on 8 January 2014. The Amendment altered Lithuanian provisions on the payment of fines imposed by the Competition Commission by undertakings. Accordingly, the Law on Competition

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[1] Law of 23 December 2013 Amending Articles 33, 39 of the Law on Competition of the Republic of Lithuania (Register of Legal Acts 2014, item 2014-00064).

[2] Law of 23 March 1999 on Competition (Official Gazette 2012 No. 42-2041) .

gives now the fined undertakings the right not to pay their fine until the courts adopt a final ruling in their case. However, annual interest for period of the payment delay will be calculated and added to the original amount of the fine. The following review focuses on the adoption and effects of this Amendment.

II. Amendment of the Law on Competition

1. Former legal rules

Article 39(1) of the Law on Competition provides that undertakings shall pay their fines within 3 months after the publication of the resolution on the website of the Competition Council. Before the amendments, Article 33(3) of the Law on Competition provided that an appeal would not suspend the resolution of the Competition Council unless the court decided otherwise. Before the Amendment, Article 39(2) of the Law on Competition used to provide also that in the event of a justified request submitted by the economic entity at stake, the Council had the right to defer the payment of the fine, or its part, for a period of up to 6 months if that economic entity was not able to pay the fine on time for objective reasons. Moreover, the court had the right to suspend the validity of the resolution of the Competition Council applying the provisional measures procedure provided by Lithuanian Law on Administrative Proceedings[3]. However, Lithuanian administrative courts used to suspend the validity of the resolutions of the Competition Council only in very exceptional cases[4]. Usually, undertakings had to pay huge fines within 3 months of the original verdict, although courts have sometimes revised the resolutions of the Competition Council afterwards.

2. The aim of the Amendment and its adoption

The aim of the proposed Amendment[5] of the Law on Competition was to protect legitimate interests of undertakings in cases where the courts have not

[3] Law of 14 January 1999 on Administrative Proceedings (Official Gazette 2000 No. 85-2566).

[4] Judgement no. AS-438-241/2013 dated 20 February 2013 of the Supreme Administrative Court of the Republic of Lithuania; judgement no. AS-602-223/2013 dated 21 February 2013 of the Supreme Administrative Court of the Republic of Lithuania; judgement no. AS-146-246/2013 dated 28 February 2013 of the Supreme Administrative Court of the Republic of Lithuania.

[5] Explanatory Memoranda dated 25 April 2013 of the Law Amending Articles 33, 39 of the Law on Competition of the Republic of Lithuania.

Recent Developments in the Competition Law of Georgia. Changes Resulting from the Association Agreement

by

Solomon Menabdishvili*

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I. Introduction
II. Law on Free Trade and Competition of 2012
III. Recent amendments of the existing Law on Competition
IV. Conclusion

I. Introduction

After regaining its independence, Georgia signed the Partnership and Cooperation Agreement (hereafter, PCA) with the European Community in 1996. According to Articles 43 and 44 PCA, Georgia has undertaken to approximate its future laws and standards with those of the European Community. In September 1997, the Parliament of Georgia adopted Resolution #828-IS whereby all legislation and other normative acts adopted in Georgia after 1 September 1998 were to comply with the standards and rules existing in the European Community.

In 1996, the Georgian legislator adopted the Law on Monopolistic Activities and Competition; a competition authority – the Antimonopoly Service – was established in the same year to monitor the application of the Law. The authority played an active role in the promotion of fair competition in Georgia for a number of subsequent years. However, after the 'Rose Revolution' held

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in Georgia in 2003, the newly elected government was of the opinion that Georgia's antimonopoly legislation and its enforcement authority hindered in fact fair competition because of the widespread corruption present in Georgia at that time. The legislation was thus revoked and a new Law on Free Trade and Competition adopted in 2005 for a transitory period. A new Agency on Free Trade and Competition was created, but with limited institutional powers. The Law on Free Trade and Competition was not practically applied. As a result, undertakings were unrestrained in their market activities: they could merge freely, misuse their dominant positions, and engage in cartel activities.

After the war of 2008 between Georgia and the Russian Federation, negotiations begun on a Deep and Comprehensive Free Trade Area (hereafter, DCFTA) between the European Union and Georgia. In this context, Georgia was obliged to meet requirements set forth by the EU as preconditions for the signing the DCFTA agreement. The country was, in particular, obliged to carry out structural and policy reforms.

The European Commission published in May 2011 a Country Report on Georgia on the Implementation of the European Neighborhood Policy in 2010. The report stressed Georgia's preparedness for the DCFTA. The Report stated also that Georgia has made some progress in drafting and adopting strategies and legislation in key areas. According to the opinion of the European Commission, Georgia should successfully accomplish its ongoing reforms.

The aim of this article is to show recent developments in Georgian competition provisions and explain the major flaws of its current Law on Competition (adopted in 2012 and extensively amended in 2014).

II. Law on Free Trade and Competition of 2012

Within the preparatory works on the DCFTA, the Government of Georgia started in 2009 working on reforming the domestic competition law system, issuing a Comprehensive Strategy in Competition Policy[1] in December 2010. The Document stressed the need to adopt new national legislation that would comply with EU rules. It was also said that establishing a new competition law enforcement agency was necessary, with sufficient power to monitor the application of the new legislation. By the decree of the President of Georgia

[1] See, Comprehensive Strategy in Competition Policy, The Government of Georgia, available at: www.government.gov.ge/files/41_32357_225550_Comprehensive20StrategyinCompetitionPolicy.pdf, 20.07.14.

Protection of Legal Professional Privilege in the European Union, Turkey and Ukraine

by

Hanna Stakheyeva*

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I. Introduction

When investigating suspected violations of competition law, competition authorities have wide powers to inspect an investigated company's business premises, as well as home residences, private property and vehicles belonging to the management and employees of the company. Moreover, competition authorities can make copies of documents that may help them to complete

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their investigation. Any written correspondence including letters, faxes, e-mails, notes of meetings, notes of calls, diary entries, hand-written comments about proposed deals, business activities etc. produced by any member of the company could be seized by competition authorities during dawn raids, especially given that much company information is now stored electronically.

The only documents that fall outside the scrutiny of competition authorities are those protected by legal professional privilege (hereafter: legal privilege). Normally, confidential (not disclosed to third parties) communications with lawyers made in relation to and in the interest of a client's right of defence, are protected by legal privilege. The scope of legal privilege varies from one jurisdiction to another. For instance, in common law countries legal privilege also covers communications between in-house lawyers and their clients, provided such communications relate to the clients' legal position. Civil law jurisdictions tend to limit legal privilege to communications with independent external counsel only and, in most cases, it is justified by the general confidentiality duty biding the legal profession (either by statute or professional rules) which prevents lawyers from disclosing client information.

This paper addresses the peculiarities of legal privilege-related rules in a number of jurisdictions and analyses the main similarities and differences between them. It focuses, in particular, on the legal privilege regime in the EU, Turkey and Ukraine. It is suggested in conclusion that some form of convergence in legal privilege rules worldwide would be beneficial for both competition authorities and for the undertakings concerned.

II. Legal privilege under EU competition law

1. Powers of the European Commission and their limitations

The European Commission (hereafter, EC or Commission) has wide investigatory powers in competition law cases. According to Article 20 Regulation 1/2003 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty (hereafter, Regulation 1/2003), the EC is empowered to conduct inspections at the business premises of the company, take copies of or extracts from books/business records, ask for oral explanations on the spot, and undertake other investigations with the view to obtaining information necessary to bring to light infringements

C A S E C O M M E N T S

The objectives of competition law and the effective conduct of the infringement proceedings: Judgments of the Court of Bosnia and Herzegovina in *BH Telecom* and *Telekomunikacije RS*. Case comment to the Judgments of the Court of Bosnia and Herzegovina No. S1 3 U 003765 10 U of 24 April 2013 (*BH Telecom*) and No. S1 3 U 007875 11 U of 10 October 2013 (*Telekomunikacije RS*)

by

Alexandr Svetlicinii*

I. Infringement proceedings of the competition authority

On 16 February 2010 the Competition Authority of Bosnia and Herzegovina (KV)[1] initiated an investigation into the potential margin squeeze and discriminatory practices applied by the incumbent telecom operator *BH Telecom*[2]. The investigation was prompted by the complaint submitted by an independent telecom operator *Akt. online*, which claimed that *BH Telecom* abused its dominant position by obstructing access to the fixed line network and applying discriminatory pricing on call termination services to the domestic providers.

BH Telecom is a public telecom operator, which along with *Telekomunikacije RS* and *Hrvatske Telekomunikacije Mostar* was declared undertaking with significant market power (SMP) by the sector regulator – Communications Regulatory Agency (RAK)[3]. Pursuant to the Law on Communications[4] public telecom operators are obliged to provide interconnection to their networks. The SMP status allows RAK to regulate the interconnection charges in order to assure that they are cost-based. RAK has approved

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[1] *Konkurencijsko vijeće BiH*, http://bihkonk.gov.ba/.

[2] KV Decision No. 01-05-26-028-11-II/2009 dated 16.02.2010. See Alexandr Svetlicinii, The Competition Authority of Bosnia & Herzegovina commences an investigation into potential margin squeeze practices of the incumbent telecom operators (BH Telecom / Telekomunikacije Republike Srpske), 16 February 2010, *e-Competitions Bulletin* June 2010, Art. N° 31479.

[3] *Regulatorna agencija za komunikacije BiH*, http://rak.ba/bih/.

[4] *Zakon o komunikacijama*, Official Gazette B&H No. 31/03, 75/06.

the 'Reference Interconnection Offer' to be applied by the public telecoms. Once the formal criteria for interconnection are met by the third party the incumbent provider must set the term for negotiations and conclude them within ninety days from the set date. *Akt.online* submitted that *BH Telecom* concluded the interconnection agreement only after one year from the commencement of negotiations. Moreover, according to the complainant, *BH Telecom* has effectively delayed the implementation of the interconnection and conditioned it with unrelated requests, which led to termination of *Akt. online*'s agreements with international operators and caused substantial loss of profit.

Akt.online argued before the KV that *BH Telecom* has abused its dominant position based on the ownership of the essential facility (fixed land line networks) thus preventing liberalization of telecommunications market in Bosnia and Herzegovina. *Akt.online* explained that it set out to offer call termination service to foreign telecom operators and for that purpose it had to lease the fixed lines from the incumbent telecoms. The complainant argued that following the EU practice in this field call termination charges for international calls should be equal to those imposed on local calls due to the absence of any cost difference for the network owners. At the same time, there was a minimal difference in price between the call termination fees on the wholesale and retail level. Besides alleging the existence of anti-competitive margin squeeze practices, *Akt.online* submitted that *BH Telecom* was liable for applying discriminatory conditions to the domestic service providers by offering better terms to the foreign telecom operators that concluded their interconnection agreements directly with the incumbent.

On the basis of the available evidence the *KV* decided to open an investigation and following the analysis of the information supplied by the parties was expected to issue a decision on the merits. The B&H Competition Act mandates the *KV* to issue its final decision (concerning existence of abuse or absence thereof) within four months after the commencement of the investigation[5]. The law also allows the *KV* to extend this period for the further three months where it is necessary for the collection of additional evidence or where the investigation concerns important industries or markets, as could be the case with the telecommunications. On 14 June 2010 the *KV* ordered the extension of the investigation in *BH Telecom* case[6]. As explained in the *KV*'s decision the extension was partly caused by the requests of *BH Telecom* asking for more time to submit the requested documents and prepare for the oral hearing. Upon the expiration of the additional three-month period, the *KV* has not, however, issued a decision on the merits. In such cases the B&H Competition Act provides that if the KV does not issue an infringement decision within the prescribed time limits, 'it shall be deemed that concluded agreement or practice of the economic entity is not abuse of dominant position'[7]. Furthermore, at the request of the undertaking the KV

[5] Article 41(1) of the B&H Competition Act (*Zakon o konkurenciji*, Official Gazette B&H, No. 48/05, 76/07, 80/09) defines the following time limits for the *KV*'s procedures/investigations: (a) 6 months for anticompetitive agreements, (b) 3 months for individual exemptions; (c) 4 months for abuses of dominance, and (d) 3 months for the assessment of concentrations.

[6] KV Decision No. 01-05-26-028-48-II/09 dated 14.06.2010.

[7] B&H Competition Act, Article 11(2).

The First Bid Rigging Case in Slovakia After Years of Judicial Disputes

by

Silvia Sramelova[*], Ondrej Blazo[**]

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I. Introduction
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VI. (Non-)disqualification from public procurement
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I. Introduction

In 2006, the Antimonopoly Office of the Slovak Republic (hereafter, AMO) decided its first bid-rigging case concerning a cartel between six construction companies[1]. According to the cartel decision[2], the six construction companies infringed the Act on the Protection of Competition[3] as well as Article 101 TFEU.

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[1] Decision no. 2006/KH/R/2/116 and decision no. 2005/KH/1/137.

[2] The AMO decides on cases on the basis of a 2-instance system. The executive department of the AMO decides on the case in the 1st instance. This decision may then be reviewed by the Council of the AMO. After the 2nd instance decision is taken, the case may be brought before the court. The text below uses a term 'decision' in this context.

[3] Act no. 136/2001 Coll on Protection of Competition and on Amendments and Supplements to Act of the Slovak National Council No. 347/1990 Coll. on Organisation of Ministries and

The illegal conduct at hand related to the tender procedure for construction works on the D1 highway Mengusovce – Jánovce (stretch from 0.00 to 8.00 km). Six construction companies (two Czech, one Portuguese and three Slovak) participated in the tender – five of them participated in the tender in the form of two associations, the sixth of the construction companies participated in the tender on its own. Three bids were thus submitted. The high prices proposed by the bidders raised suspicion of the public procurer – the National Highway Company. Based on the complaint of the latter, the AMO commenced an investigation.

Bids submitted to the tender covered complex construction works with nearly 900 individual price units. The AMO discovered that the ratio of unit prices submitted to the tender showed extremely constant figures. According to the authority, such figures could not be explained otherwise than by collusion of the participating companies.

The fine imposed by the AMO amounted to nearly 45 million EURO. The companies brought the case before the Regional Court in Bratislava. In 2008, the Regional Court in Bratislava[4] annulled the decision of the AMO. The AMO subsequently appealed against the judgement. The Supreme Court of the Slovak Republic[5] changed the decision of the Regional Court in Bratislava and ultimately dismissed the actions of the claimants.

The courts dealt with three key issues in their judgements:

Content of the operative part of decisions in cartel cases;

1) Imposition of sanctions in case of infringements of both the TFEU and the Slovak Act on the Protection of Competition; and
2) Proving the collusion on the basis of circumstantial evidence.

II. On the application of criminal law standards to administrative proceedings

The discussion on the abovementioned issues inevitably leads to another and rather complex difficulty, namely the application of criminal law principles to administrative proceedings.

The problem has two aspects. The first concerns the use of analogy in administrative law. The second relates to the application of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter, Convention).

Competition law infringements belong to the group of the so called 'other administrative offences'. These include offences committed by natural and legal persons in various branches of the law such as: offences in the area of environmental law, offences in construction law, etc.

Other Central Bodies of State Administration of the Slovak Republic as amended as amended (hereafter, Act on the Protection of Competition).

[4] Judgement of the Regional Court in Bratislava no. 2S/430/06-393 of 10.12.2008.

[5] Judgement of the Supreme Court of the Slovak Republic no. 1Sžhpu/1/2009 of 30.12.2013.

Due Process Rights in Polish Antitrust Proceedings. Case comment to the Judgment of the Polish Supreme Court of 3 October 2013 – *PKP Cargo S.A. v. President of the Office of Competition and Consumers Protection* (Ref. No. III SK 67/12)

by

Dariusz Aziewicz*

I. Introduction

The Polish Supreme Court delivered on 3 October 2013 an important ruling (Ref. No. III SK 67/12) concerning the case of PKP Cargo S.A. (hereafter, PKP Cargo) against the Polish Competition Authority – the President of the Office for Competition and Consumer Protection (hereafter, UOKiK).

The reviewed judgment constitutes a crucial precedent with respect to procedural fairness (due process rights) in the enforcement of Polish competition law. It states that when examining appeals from administrative decisions issued by the UOKiK President, civil courts may also rule on violations of procedural provisions (administrative law) committed by the National Competition Authority (hereafter: NCA). Depending on the type and importance of procedural infringements indicated in the appeal, the 1st instance court revising the decisions of the UOKiK President, as well as other relevant courts of higher instances, may rule that an appeal is legitimate and quash the administrative decision of the UOKiK President on procedural grounds only (even without deciding on the infringement of competition law).

II. Judicial review in Polish competition law

Polish rules on the prohibition of agreements restricting competition and on the abuse of a dominant position as well as on pre-emptive control of concentrations are contained in the Act on Competition and Consumers Protection of 16 February 2007

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(hereafter: 2007 Competition Act)[1]. Article 81(1) of the 2007 Competition Act sets out a unique, so-called *hybrid*, procedure for competition law proceedings[2].

In brief, proceedings are divided into two main phases. The administrative proceedings phase comes first and takes place before the NCA – the UOKiK President. It is primarily governed by the provisions of the Administrative Procedure Code[3] (hereafter, KPA). The civil proceedings phase (the judicial review phase) comes second. It starts before a court established specifically to rule on appeals from the decisions of the UOKiK President – the Court of Competition and Consumers Protection (hereafter, SOKiK) – and continues in further civil instances. Civil procedure rules stipulated in the Code of Civil Procedure (hereafter, KPC) apply before all of these courts.

The UOKiK President is, as a central body of public administration, exclusively entitled to initiate administrative proceedings concerning infringements of competition law (violations of the prohibition of agreements restricting competition and the abuse of dominance)[4]. Such proceedings end with the issuance of an administrative decision which may, for example, recognize a practice as restricting competition and order the offender to refrain from pursuing it[5]. The issuance of such decision is the outcome of the so-called 'antimonopoly proceedings' conducted on the basis of administrative procedure[6] which follows the rules of conduct stipulated in the KPA[7]. However, these decisions are not final. Article 81 point 1 of the 2007 Competition Act provides a right to appeal such decisions. Despite the fact that the KPA has its own appeal procedure, the 2007 Competition Act excludes the application of general KPA provisions to competition law cases. It stipulates instead that the review of the decisions of the UOKiK President is conducted by civil courts. And so, such decisions can be appealed to a specially crafted competition law court – SOKiK (XVII department

[1] The Competition Act covers also practices infringing collective consumer interests in the Article 24 of the Competition Act.

[2] R. Janusz, T Skoczny, 'Postępowanie antymonopolowe jako szczególne postępowanie administracyjne' ['Antitrust proceeding as a special administrative proceeding'] [in:] *Instytucje współczesnego prawa administracyjnego* [*Institutions of modern administrative law*], Kraków 2001, 261-275; Z Kmieciak, 'Postępowanie w sprawach konkurencji' ['Proceedings in antitrust cases'] (2002) 4 *Państwo i Prawo* 31-47.

[3] Matters not governed by the Competition Act, as regards the proceedings before the UOKiK President, are subject to the provisions of the Act of 14 June 1960 – the Code of Administrative Procedure, except matters concerning evidence (Article 84 of the Competition Act – prescribing civil procedure) and matters related to inspections (Article 105c 4 of the Competition Act – prescribing procedure).

[4] Proceedings concerning concentrations are instituted upon a request or on an *ex officio* basis based upon Article 49 point 2 of the Competition Act.

[5] Article 10 of the Competition Act.

[6] Article 83 of the Competition Act.

[7] However, because of Article 84 of the Competition Act, to matters concerning evidence in proceedings before the UOKiK President, in the scope not regulated in the Competition Act, Articles 227 to 315 of the Act of 17 November 1964 – the Code of Civil Procedure, apply accordingly.

A Departure from a Formalistic Approach in the Assessment of Restrictive Vertical Agreements in Favour of a More Economics-Based Approach? Case Comment to the Supreme Court Judgment of 15 May 2014 (Ref. No. III SK 44/13)

by

Małgorzata Sieradzka*

I. Background information

The discussed judgment of the Supreme Court is in line with its other jurisprudence with respect to the classification of price agreements as practices restricting competition under Article 6(1)(1) of the Competition and Consumer Protection Act[1] of 16 February 2007 (hereafter: Competition Act 2007). Despite the firm stance taken on the assessment of price agreements by the UOKiK President, the Supreme Court once again emphasizes the necessity for an economics-based approach[2]. In the opinion of the Supreme Court, not every vertical price-fixing agreement results in a threat to the public interest. A departure from a rigorous application of the ban on competition restricting practices (Article 6(1)(1) of Competition Act 2007) to all types of vertical agreements has an impact on the application of legal provisions governing the imposition of financial penalties. Considering the optional nature of fines, the question arises about their purpose in cases where the public interest has not been jeopardized.

II. Facts

In the decision of 11 December 2008 (No. RKT-114/2008), the UOKiK President found a vertical agreement concluded by Zakłady Chemiczne Hajduki S.A. and several undertakings operating in the wholesale market of paints, varnishes and auxiliary

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[1] Journal of Laws No. 50, item 331 as amended.

[2] In a previous judgment of 23 November 2011 in Case *Röben*, Ref. No. III SK 21/11.

products, as a competition restricting practice. The agreement consisted of the direct fixing of sales prices of products manufactured by Hajduki and sold by the contractors. By the decision, the UOKiK President imposed a fine on both Hajduki and on the other participants of the agreement.

The claimant, V – Sp. z o. o. (one of the undertakings participating in the agreement), contested the decision of the UOKiK President before the Court of Competition and Consumer Protection (in Polish: *Sąd Ochrony Konkurencji i Konsumenta*; hereafter, SOKiK). The appeal was however dismissed by SOKiK in the judgment of 11 October 2011. The 1st instance judgment was once again challenged by the claimant this time before the Court of Appeals. This appeal was partially accepted in that the Court of Appeals significantly reduced the amount of the original fine. In turn, the UOKiK President filed a last resort appeal (cassation) against the ruling of the Court of Appeals with the Supreme Court. The Supreme Court dismissed the appeal of the UOKiK President in the reviewed judgment of 15 May 2014.

III. The Supreme Court's ruling

The Supreme Court found no grounds for consideration of the cassation appeal lodged by the UOKiK President. In the judgement discussed, the Supreme Court did not classify the agreements involving minimum or fixed resale prices as agreements restricting competition 'by object' in the meaning of Article 6(1) of Competition Act 2007, but instead, referred to its own views expressed on this matter in the *Röben* judgment of 23 November 2011 (III SK 21/11). The Supreme Court confirmed its earlier findings and upheld the general principle on the classification of agreements setting minimum or fixed resale prices (also derived resale prices, such as margin levels) as falling into the category of agreements restricting competition 'by object' (pursuant to Article 6(1) first sentence of the Competition Act 2007).

The Supreme Court did not share the view of the UOKiK President which extended the prohibition to all vertical price agreements because of their anti-competitive object. Application of the ban contained in Article 6(1) of Competition Act 2007 to all types of price-fixing vertical agreements should be regarded as a formalistic approach. It should be borne in mind that in case of brand competition a positive effect of vertical agreements competition can be observed. According to the Supreme Court, a rigorous application of the prohibition of Article 6(1(1)) of Competition Act 2007 is not justified.

The Supreme Court rightly pointed out that not every agreement belonging to this category threatens the public interest, or infringes values important to antitrust law; or that there always is a need to impose a financial penalty. Any assessment of restrictive vertical agreements must be flexible and must take into consideration the object of such agreements and a threat to or violation of the public interest.

The Supreme Court's ruling must be welcomed for two reasons: first, without questioning the past decision-making practice of the UOKiK President and existing jurisprudence on classifying price agreements as those restricting competition by

BOOK REVIEW & REPORTS

Małgorzata Król-Bogomilska, *Zwalczanie karteli w prawie antymonopolowym i karnym* [*Combating cartels in antitrust and criminal law*], Warszawa 2013, 511 p.

Antitrust law has been shaped in various national (or supranational) legal systems either as administrative or criminal law. Naturally, as the jurisprudence of the European Court of Human Rights has shown, this categorization is not very strict and a few features of criminal law, mainly criminal proceedings, can be attributed to antitrust law even if it is considered administrative in nature in a particular national legal system. Additionally, antitrust law has been facing a worldwide tendency to become criminalized. These two factors make it recommendable to analyse cartels in a double manner – from a (pure) antitrust and a criminal point of view. Nevertheless, such an approach has been rather rare in Polish antitrust doctrine, mainly because domestic antitrust law belongs to the vast area of administrative law (or, to be more precise, to administrative (public) economic law). This gap in Polish literature on antitrust has been largely covered by the book titled *Combating cartels in antitrust and criminal law* written by Prof. Małgorzata Król-Bogomilska, published in 2013 in Warsaw by Wydawnictwo Naukowe Scholar. The Author explains that working on this book was motivated by the conviction that the most important insights come to light while conducting inter-disciplinary research (p. 15).

The book contains 12 chapters followed by final conclusions, which are a separate part of the book albeit not numbered. In the first chapter ('Introduction'), the Author juxtaposes data on cartel fines in the European Union and criminal sanctions for cartels in the United States. She also provides a list of countries where violations of antitrust law have been criminalized. In the EU, these are: the Czech Republic, Estonia, France, Greece, Ireland, Romania, Slovenia and Great Britain. Outside the EU (apart from the US and Canada), they include: Australia, Brazil, Israel, Japan, South Korea, Mexico, and Russia. In the first chapter of the book, the Author formulates five fundamental research questions to be developed in its further parts (p. 27–28). First, Prof. M. Król-Bogomilska asks about the real scale of the similarities and the differences in the legal methods of combating cartels in the field of antitrust (based on the concept of 'administrative delict') and in criminal law (providing a 'standard' criminal liability). Second, the Author considers the consequences of differences that should primarily be searched for in practice. Yet in the Professor's opinion, it is also very important to analyse these consequences with a view to future

developed by the Author as expected amendments to antitrust legislation and practice are rather sophisticated, it is just valuable that such a discussion in Poland was initiated by a reviewed book.

It is worth mentioning that a book refers to and comments on the most recent EU and Polish case law. All the consideration are widely based on domestic and foreign literature concerning a topic. Even if a book was published in Spring 2013, before the Polish Act on Competition and Consumer Protection was seriously amended (July 2014), it touches many new institutions in Polish antitrust law that were prospected in draft amendments (studied by the Author) and finally introduced due to amendments (e.g. remarks on a settlements or remedies – p. 196–197, 201–202).

Certainly, a book by Prof. Bogomilska-Król signs in a general discussion on one of the most influential tendency in modern antitrust, which can be called 'criminalization', and as such should be read by everybody who is interested in this aspect of antitrust. It can be even recommended – and in my opinion it is an advantage of this book – for beginners in antitrust because a scope of book and a method of presenting ideas and concepts make them easily accessible.

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Kseniya Smyrnova,
***Pravove regulyuvannya konkurencii v Evropeis'komu Soyuzi: teoriya i praktuka* [*Legal Regulation of Competition in European Union: theory and practice*], Odessa 2015, 432 p.**

The reviewed monograph written by Kseniya Smyrnova is entitled *Legal Regulation of Competition in the European Union: theory and practice* (*Pravove regulyuvannya konkurencii v Evropeis'komu Soyuzi: teoriya i praktuka* – in Ukrainian). The book was published in Odessa at the beginning of 2015.

Competition policy is about applying rules to make sure companies compete fairly with each other. This encourages enterprise and efficiency, creates a wider choice for consumers and helps reduce prices and improve quality. These are the reasons why the EU fights anticompetitive behaviors, reviews mergers and encourages market liberalization. However, the author argues and proves within the reviewed book that competition has more than just a purely economic function of regulating market mechanisms. It is said that competition has also a social function, promoting benefits for consumer welfare as a result of fair pricing and high quality products.

The author proposed to consider competition in both a broad and a narrow sense. In the broad context, competition can be characterized by three main features: 1) competition is a regulator of pricing policy; 2) it is also a prerequisite for the realization of the rights of consumers and the growth in living standards and, finally; 3) competition is the lawful business conduct in the market, which aims to obtain favorable terms of sales and production of goods. Looking at competition in the narrow sense, competition is a form of legal conduct on the market (in a legal framework). In other words, competition is limited by the law. It should be emphasized that these frameworks are established by national State legislation and by international laws. It seems logical that the broad manner of understanding competition is interdisciplinary and covers economic and social as well as legal principles. The narrow concept of competition is more formalized, and therefore becomes the object of this study.

The book focuses on the systematic evolutionary stages of the origin and development of the idea of free competition, which is subjected to changes depending on the socio-economic factors of the region. The question is whether free competition involves State intervention in economic processes? How far can this State influence affect the development of fair competition? And, most importantly: is free competition justified in terms of getting more benefits to consumers?

of theoretical economic and legal foundations of the origin and functioning of competition rules in the EU and their spreading across the world.

Special attention is paid to the analysis of the EU–Ukraine Association Agreement and especially its "competition clause" (pp. 328-349). The book leaves the reader convinced that Ukrainian competition law does indeed need a reform which should, inter alia, focus on the implementation of the transparency principle and further enforcement of harmonized competition rules.

In conclusion, I would strongly recommend the reviewed monograph to more than just the representatives of the competition law doctrine. Due to the numerous references made in the reviewed book to interdisciplinary (economic & legal) doctrines and extensive jurisprudence, the book may prove to be useful for practical lawyers as well as researchers also. Above all, it demonstrates the intensity of the interactions between those who deal with EU competition law but in their different capacities: as practitioners, as policy-makers, as enforcers, and as academic commentators. I believe therefore that this publication should be found in every legal library concerned with the role of competition in the current system of International and European Law.

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Kseniya Smyrnova, *EU Competition Law*, Odesa 2013, 144 p.

The reviewed study is a welcome addition to European competition law literature. Modern patterns of legal research call upon scholars to take a complex interdisciplinary approach to their work. This book certainly contributes to such attempts.

The unifying theme of this book is the analysis of EU competition policy and the legal foundations of EU competition law. Any scholar interested in the competition policy and the internal market of the EU will benefit from the highly interesting set of information and data presented therein.

The book is well structured and logically construed. The study is divided into six chapters. Chapter 1 deals with an overview of EU competition policy and the legal foundations of its competition law. Explained therein are the concept of competition and the history of EU competition policy against a background of general European integration objectives and achievements. The Author rightly emphasizes here the importance of the trade criterion for EU competition policy.

Chapter 2 offers a comprehensive study of Article 101(1) TFEU and the general provisions of its application. The first part of the chapter shows the difficulties in considering and allying basic legal concepts such as 'undertaking', 'single economic entity', 'appreciability' and so on. Furthermore, the Author provides here an in-depth analysis of the *de minimis* doctrine, the concept of the relevant market as well as looks into the substance of the leniency policy. Considered also is the cooperation between the European Commission and the authorities and the judiciaries of individual EU Member States. Chapter 3 deals with Article 101(3) TFEU covering, *inter alia*, exemptions from the prohibition contained in Article 101(1) TFEU and vertical agreements. In particular, the Author scrutinizes types of exemptions and conditions for block exemptions in the European internal market. Continuing this analysis, Chapter 4 examines cartel practices and exemptions for horizontal agreements in the EU. Therein, the Author defines 'hardcore cartels' in EU law and their impact on horizontal agreements on cooperation.

Chapter 5 tackles the very important issue of abuse of a dominant position within the European internal market. In particular, it depicts various forms of abuse and encapsulates the meaning of the concept of 'dominant' in EU law and the jurisprudence of European Courts.

Chapter 6 provides a substantive overview of EU merger regulations and related jurisprudence of European Courts.

Chapters 2–6 complete the study and make the book work as a whole by drawing together all of the threads identified in the first chapter – they elaborate on the general framework explaining the legal foundation of EU competition policy. Undoubtedly, the study will be very useful for academics and practitioners active in the area of EU competition law and policy. Great added value is provided by the book's case studies (pp. 130–138). They can be used in class and for individual work. Well structured and comprehensive tables offer access-friendly information on the most complicated provisions of EU competition law.

In any event, the book is an invaluable source of information on comparative and international relations which should be a starting point for any closer investigation in this field.

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CONFERENCE REPORT

The Milestones of Law in the Area of Central Europe 2014. Casta-Papernicka (Slovakia), 27–29 March 2014

The 8th annual international conference of PhD candidates and young researchers entitled 'The Milestones of law in the area of Central Europe 2014' was held on 27-29 March 2014 in Casta-Papernicka (Slovakia). It was organized under the auspices of the Dean of the Faculty of Law of the Comenius University in Bratislava. The goal of the conference was to present a general contribution from young scholars to the development of legal sciences in Central Europe. The conference gathered researchers from several countries, mainly from Slovakia, Poland, Czech Republic, Ukraine, Romania, Georgia, Albania, Russia, Austria and Hungary. It was an excellent opportunity for young researchers originating from a great variety of countries to exchange their legal knowledge and scientific experiences, as well as to undertake comparative discussions on various aspects of the law. The conference included an official opening, nine parallel substantive sessions held in Slovakian, one international session held in English, and a short summary.

The participants of the conference were welcomed by Lydia Tobiasova, Vice-Dean for foreign relations and grant policy at the Faculty of Law of the Comenius University in Bratislava. After the official opening, the conference was carried out in parallel substantive sessions covering such legal areas as: administrative law, substantive and procedural civil law, constitutional law, commercial law, financial law, legal theory and history of law, labor law, international and European law and substantive and procedural criminal law. The English language session was chaired by Prof. Tibor Tajti from the Central European University, and was devoted to the following subject: 'Influence of case-law on the formation of legal practice and the influence of legal practice on the formation of case-law'.

Several speeches on competition law, arbitration and specific aspects of commercial law were presented during the English language session, which lasted three days. They covered issues such as: the influence of Post Danmark case-lawon the interpretation of Article 102 TFUE (K. Krzystek, University of Łódź); influence of CJEU's case-law on the establishment of the antitrust private enforcement doctrine in Europe (M. Gac, Jagiellonian University); consumer protection in crowd funding (A. Horvathova, Central European University); influence of case law on international commercial arbitration (J. Glanc, Jagiellonian University); influence of case law on arbitration in consumer credit in the EU and US (A. Gikay/C. G. Stanescu, Central European University) and on the formulation of arbitration clauses in franchise agreements

(P. Zivkovic, Central European University); and finally, influence of case law on shaping specific provisions of commercial law (I. Kisely, Comenius University). Mentioned among other interesting presentations on particular issues of European and international law should be a speech delivered by M. Kiełbasa (Jagiellonian University) on recent changes in EU law concerning the posting of workers, a speech by K. Szczepańska (Adam Mickiewicz University) on the transfer of voting rights in limited liability companies, and a speech by B. Greczner (Wroclaw University) who analyzed the influence of CJEU's case-law on Central European Judges.

The English session was closed by Prof. Tibor Tajti who stressed the strong influence exercised by case law and legal doctrine on the formulation of legal provisions and policies in the analyzed jurisdictions. All speakers agreed that the interrelation between the case-lawof European, international and national courts, and the national legal practice, is increasingly visible, especially in legal areas such as competition law, commercial law and arbitration. Speaker emphasized also the growing importance of scholarship in the formulation, establishment and interpretation of legal provisions.

The conference ended on Saturday with a speech given by Prof. Marián Vrabko, Dean of the Faculty of Law of the Comenius University in Bratislava.

The conference shall be regarded as a great opportunity for young legal scholars to present the results of their work before an international community of researchers. Moreover, due to the complexity of the issues covered, the large number of participants and great diversity of their national backgrounds, the conference proved a perfect platform for the exchange of national experiences within a multicultural environment. The conference must therefore be positively evaluated and can be regarded as an important scientific initiative in the Central European area.

The conference was followed by a post-conference publication comprising all papers presented during the conference[1].

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[1] See 'The Milestones of Law in the Area of Central Europe 2014', Bratislava 2014, ISBN 978-80-7160-371-9, available at: http://www.lawconference.sk/milniky/sprava/files/doc/ZBORNIK%202014.pdf.

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