

CARS Activity Report 2013–2014

1. General Information

The Centre for Antitrust and Regulatory Studies (CARS) continued its regular publishing, research and educational activities in the 7th (2013) and 8th (2014) year of its existence. This was an exceptional time for CARS's evolution, which has given its activities a truly international dimension. The Academic Society for Competition Law (ASCOLA) granted CARS the privilege of organizing its 9th annual conference, which was ultimately held in June 2014 in Warsaw. Simultaneously, CARS has set up a network of academic cooperation in research on competition and pro-competitive regulation in Central and Eastern Europe and Balkans – the Competition and Regulation Academic Network Europe (CRANE - Visegrad, Balkan, Baltic, East). The year 2014 had a remarkable influence on CARS's institutional development also. On 1 October 2014, CARS received the status of an independent organizational unit subordinate to the Dean of the Faculty of Management, University of Warsaw. This was a significant institutional upgrade for CARS keeping in mind that until then, that is for the first seven years of its existence, CARS had acted solely in the form of a research group constituted of ordinary and affiliated members as well as permanent co-operators. As a result, CARS is now a fully institutionalized scientific research centre specializing in economics, competition protection and sector specific regulation.

CARS continued also to grant awards for outstanding academic monographs on the law and economics of competition protection. The 2013 CARS Award honoured Professor Dawid Miąsik (Institute of Law Studies, Polish Academy of Sciences) for his outstanding book entitled 'The interface between competition and IP laws' (Wolters Kluwer, Warsaw 2012). Dr hab. Agata Jurkowska-Gomułka received the 3rd edition of the CARS Award in 2014 for her excellent monograph on 'Public and private enforcement of prohibitions of anticompetitive practices: searching for a sustainable model' (Wyd. Naukowe Wydziału Zarządzania UW, Warsaw 2013). Both awards were once again generously funded by PKO BP, one of Poland's biggest banks.

The years 2013 and 2014 were also an active period for CARS's advisory activities. In April 2013, a specially formed CARS research team prepared a reply to the European Commission's call for input in the public consultation on its Green Paper on Unfair Trading Practices in Business-to-Business Food and Non-Food Supply Chain in Europe. In 2014, CARS prepared its first publicly available academic expertise.

CARS continued also to publish the English-language ‘Yearbook of Antitrust and Regulatory Studies’ (YARS) – one volume of YARS (vol. 6(8)) was released in 2013 and two volumes in 2014 (vol. 7(9) and 7(10)). In addition, CARS published also the Polish-language journal – ‘internetowy Kwartalnik Antymonopolowy i Regulacyjny, iKAR (‘internet Quarterly on Antitrust and Regulation’). Overall, three volumes of YARS and nine volumes of iKAR were published between 2013 and 2014. Five new publications were also added in 2013 to the CARS Publishing Series ‘Antitrust and Regulatory Monographs and Textbooks’.

2013 and 2014 saw CARS organizing two national conferences as well as the international 9th Annual ASCOLA Conference Warsaw 2014. CARS arranged two workshops in 2013, held its first two ‘guest lectures’ and three sessions of the Open PhD Seminar (2013-2014). A Regulatory Student Workshop series was held in 2014.

Importantly, CARS signed a cooperation agreement in 2014 with the Office of Competition and Consumer Protection (UOKiK).

2. Research and academic expertise

In April 2013, CARS submitted to the European Commission a written position prepared by a specially formed CARS Working Group within the public consultation process on the Green Paper on Unfair Trading Practices in Business-to-Business Food and Non-Food Supply Chain in Europe. The Working Group was headed by Professor Tadeusz Skoczny and included researchers from the Faculty of Management as well as representatives of suppliers and retail chains. The answers of the CARS Working Group to the Commission’s questionnaire are accessible via its website (<http://www.cars.wz.uw.edu.pl/tresc/doradztwo/08/Responses.pdf>).

CARS’s advisory activities had a two-fold character in 2014. First, CARS prepared a scientific expertise entitled ‘Legal and economic analysis of the insurance clause in mortgage agreements requiring a small deposit’ commissioned by one of Poland’s banks. The paper is available on the CARS website (www.cars.wz.uw.edu.pl). The main goal of the expertise was to address the question whether the typical insurance clause contained in mortgages that require only a small deposit (a low ‘down payment’) has an economic and regulatory justification or whether it could be considered a potentially illegal clause in the light of Article 385¹ of the Polish Civil Code – a so-called abusive clause.

In terms of its advisory activity, CARS prepared also two separate lists of academic journals which publish papers on, respectively, competition protection and on sector-specific regulation (www.cars.wz.uw.edu.pl/doradztwo-12.html). The lists are intended to help CARS members (as well as other individuals, such as young academic employees, PhD candidates and practitioners) choose the academic journal best suited to their publication needs – offering them a wide spectrum of readers and a high number of points.

3. Publications

3.1. Yearbook of Antitrust and Regulatory Studies (YARS) www.yars.wz.uw.edu.pl

The 8th volume of YARS (YARS 2013, vol. 6(8)) is characterised by its wide geographical scope – it presents competition protection and sectorial regulation discussed not only from the Polish, but also Central-Eastern European and Balkan perspective. Contributions written by foreign authors largely outweighed Polish papers. YARS 2013, vol. 6(8) contains: six articles related to the issue of competition protection in Poland, Slovenia, Estonia, Serbia, Bosnia and Hercegovina, and Hungary; six overviews of legislation and jurisprudence related to competition protection in countries such as Poland, Czech, Hungary, Slovenia, Macedonia; three case comments to Polish, Slovak and Czech jurisprudence; two book reviews – one Polish and one Serbian; CARS's annual report for 2012; as well as an antitrust and regulatory bibliography for 2012 based on publications from Poland, Czech, Slovakia, Hungary, Estonia, Macedonia and Croatia.

The 9th volume of YARS (YARS 2014, vol. 7(9)) was prepared in order to commemorate the 10th anniversary of the 2004 EU accession of ten new Member States deriving, among others, from the Central-Eastern European region. This volume contains contributions from authors originating in the Czech Republic, Moldova, Poland, Slovakia and Hungary. The 10th volume of YARS, the 2nd of 2014 (vol. 7(10)), constitutes a special issue. It contains selected papers presented during the 'Competition Policy Workshop' organized within the 9th Annual ASCOLA Conference Warsaw 2014.

3.2. Internet Quarterly on Antitrust and Regulation (*internetowy Kwartalnik Antymonopolowy i Regulacyjny, iKAR*) www.ikar.wz.uw.edu.pl

The recognisability of iKAR as an antitrust and regulatory journal has increased substantially since 2013 strengthening its position on the Polish market of academic journals. Eight separate volumes of iKAR were published in 2013 – four were 'general' in nature containing articles on a variety of topics within the competition protection and sector specific regulation fields (nr 1(2), 3(2), 5(2), 6(2)). The remaining four volumes were specialised – one was dedicated to the topic of 'slotting allowances' (nr 2(2)), the three remaining focused on regulated sectors: rail transport (vol. 4(2)) and telecommunications (vol. 7(2) and 8(2)).

The year 2014 was very productive also. Out of the nine volumes of iKAR published in 2014 overall, four were general in nature (volumes 1(3), 3(3), 6(3), 9(3)). The remaining five volumes were once again specialised: volume 4(3) was dedicated solely to the issue of consumer protection; the remaining three dealt with specific regulated sectors: post (nr 2(3)), finance (nr 5(3)), rail transport (nr 7(3)) and telecommunications (nr 8(3)).

3.3. Monographs and research reports

3.3.1. 'Exchange of Information among competitors in the assessment of competition protection authorities' (ISBN: 978-83-63962-18-0)

This monograph written by Antoni Bolecki constitutes the 11th position in the CARS Textbooks and Monographs Publishing Series. It contains a legal and economic analysis of one of the most interesting economic phenomena in the competition protection field – information exchange between entrepreneurs. The author presents therein the forms and methods of information exchange as well as the scope of information available to other entrepreneurs, competitors in particular. The analysis of the character of the exchanged information, and the method of its exchange, leads to the assessment of the influence of entrepreneurs' behaviours on competition. The conclusions are presented in relation to Polish and European jurisprudential and case law practice concerning the information exchange process. The author concludes the book by providing business managers with some practical guidelines on the provision of safe information flow between competitors (adopting the perspective of competition protection rules).

3.3.2. 'Private and public enforcement of prohibitions of practices restricting competition' (ISBN: 978-83-63962-23-4)

The 12th position of the CARS Textbooks and Monographs Publishing Series is written by Agata Jurkowska-Gomułka. The book focuses on the correlation between two competition law enforcement modes. The author shows interdependent relations between the two modes in the area of the interests pursued by each of the two manners of implementing the prohibitions placed on restrictive practices, proving a violation of these prohibitions, as well as the mutual impact of verdicts and sanctions used in both modes. One of the most important conclusions drawn by the author implies that it is not possible to ensure complete equality of the two enforcement modes, as this would weaken the overall enforcement system. Nonetheless, it is possible and desirable to create a sustainable model, which would ensure the optimal effectiveness of both, the two modes of enforcing competition rules as well as of the system as a whole. This book was honoured by the CARS Award of 2013.

3.3.3. 'Polish Airports in the European Union – Competitive Challenges, Regulatory Requirements and Development Perspectives' (ISBN: 978-83-63962-25-8)

The 13th book in the CARS Textbooks and Monographs Publishing Series provides a compilation of updated articles published previously (in Polish) in the form of two volumes edited by Filip Czernicki and Professor Tadeusz Skoczny. The included articles provide an overview of a research project on competition and regulatory issues related to airport activities undertaken by the employees of the Faculty of

Management, University of Warsaw and the employees of the State Enterprise ‘Polish Airports’ (Przedsiębiorstwo Państwowe ‘Porty Lotnicze’).

3.3.4. ‘Judicial control of the decisions of the President of the Office of Electronic Communications’ (ISBN: 978978-83-63962-45-6)

The 14th position in the CARS Textbooks and Monographs Publishing Series is authored by Mateusz Chołodecki, PhD. It presents the model of judicial control exercised over the decisions taken by the President of the Office of Electronic Communications (the National Regulatory Authority responsible for the Polish telecommunications sector). The author analyses the legal basis of the judicial control model used in order to assess its homogeneity and to identify significant differences between the two judicial control methods (control by administrative courts and by the Court of Competition and Consumer Protection) applied within this model. The author makes an attempt at defining the concept of a regulatory decision taken by the Polish Telecoms NRA.

3.3.5. ‘Telecommunications Regulation in Poland’ (ISBN: 978-83-63962-48-7)

The end of the 2013 was marked by the release of a book edited by Professor Stanisław Piątek. This publication compiles a variety of articles dedicated to the evolution of Polish law and regulatory practices in the telecommunications sector. EU regulatory frameworks for telecommunications form the reference point for the various analyses made in this book. Most of the papers go further than just discussing the areas of complete, or incomplete compatibility of national provisions with EU law. They also identify and analyse the legal solutions, which in the light of EU law had to be accepted in Poland because of the specificity of the national telecommunications sector.

4. Conferences and workshops

4.1. National conferences

4.1.1. ‘Slotting fees. Necessity for amending regulations or their interpretation?’

A conference dedicated to the regulation of so-called ‘slotting fees’ was held on 19 March 2014 at the Faculty of Management, University of Warsaw. An introductory speech was delivered by Maciej Bernatt, PhD (Faculty of Management, University of Warsaw). The conference programme covered two panels. The first panel was moderated by Professor Tadeusz Skoczny (Faculty of Management, University of Warsaw); it was entitled ‘What is “an unfair competition practice” defined in Art. 15(1)(4) of the Act on Combating Unfair Competition?’. Professor Adam Noga

(Leon Koźmiński Academy, Warsaw) moderated the second panel entitled ‘Where does the problem lie: in not making things difficult or in the lack of equivalence? Economic problems related to the application of Art.15(1)(4) of the Act on Combating Unfair Competition’.

The conference was primarily attended by business representative. Papers based on speeches delivered during this conference were published in iKAR 2013, vol. 2(2).

4.1.2. Impact of European law on Polish competition law and sector specific regulation

CARS organised a conference focusing on the ‘Impact of European law on Polish competition law and sector specific regulation’. The conference was held on 21 May 2014 in order to commemorate the 10th anniversary of Poland’s accession to the European Union. The goal of the conference was to discuss the most interesting aspects of the impact that EU law has on Polish competition law and sector specific regulation.

The conference was attended by 78 participants, both practitioners and academics representing 10 different research institutions.

4.2. International conference

CARS organized the 9th Annual ASCOLA Conference Warsaw 2014 held on 26-28 June 2014 in Warsaw – it was the event of the year in the field of competition protection in Poland. The conference was organized by CARS at the request of the ASCOLA Board (www.ASCOLA-conference-warsaw.2014.wz.uw.edu.pl). The conference focused on the topic of ‘Procedural fairness in competition proceedings’. Its programme contained four plenary sessions and a ‘Competition Policy Workshop’.

The conference was attended by 84 participants from as many as 5 different continents, 18 countries, representing 23 universities as well as a large group of invited guests. The post-conference materials were published in the book ‘Procedural Fairness in Competition Proceedings’ edited by Paul Nihoul and Tadeusz Skoczny released in 2015 by Edward Edgar Publishing as a part of its ‘ASCOLA Competition Law series’. Selected papers presented during the ‘Competition Policy Workshop’ were published in YARS 2014, vol. 7(10).

4.3. Workshops

4.3.1. ‘Current problems of restricting the right to access files in proceedings before the Court of Competition and Consumer Protection (SOKiK)’

This workshop held on 16 April 2013 was inspired by two separate orders issued by the Polish Court of Competition and Consumer Protection (SOKiK) in January and March 2013 (XVII AmA 112/12 i XVII AmA 113/12). An introductory speech was delivered by the President of SOKiK, Judge Andrzej Turliński. The workshop was attended by a large number of lawyers.

4.3.2. ‘The application of the prohibition of competition restricting agreements to agency agreements’

The workshop held on 20 June 2013 was inspired by practitioners facing major problems and expressing doubts about the antitrust assessment of agency agreements. Grzegorz Materna, PhD (Institute of Law Studies, Polish Academy of Sciences) delivered an introductory speech. His presentation focused primarily on the interpretation of Polish rules (contained in the Polish Competition and Consumer Protection Act (PCCPA) and in the Polish Regulation on the Block Exemption of Vertical Agreements from the Prohibition of Agreements Restricting Competition) meant to identify the category of agency agreements which is subjected to an assessment based on competition rules. In the following discussion, participants focused on differences in defining agency agreements in Polish and EU law as well as on the difference between the definition of agency agreements provided by competition and civil law.

4.4. Guest lectures

In 2013, CARS organized three guest lectures. On 1 March 2013, Eduardo Pereira (STR Holding, Managing Director & Chief Legal Officer) delivered a speech entitled ‘International Upstream Investments: Legal Framework’. On 22 May 2013, Zbigniew Grycan (the President of the supervisory board of the company ‘Grycan - Lody od Pokoleń’) delivered a speech on ‘How to achieve success on a competitive market?’ The 3rd guest lecture was delivered by Professor Andrzej Wróbel, Judge of the Polish Constitutional Tribunal, during the ceremony for the CARS Award 2012 which took place on 6 June 2013. The lecture focused on ‘EU freedoms and fundamental rights after the Lisbon Treaty’.

5. Open PhD Seminar

5.1. ‘Competition and financial stability in the banking industry. The interplay between sector regulation and competition policy’

The 16th meeting of the CARS Open PhD Seminar took place on 24 October 2013. Wojciech Podlasin, PhD candidate (Faculty of Management, University of Warsaw) presented therein the concept of his PhD thesis dedicated to the relations between competition on markets for financial services and the financial stability of banks. Key problems pointed out by the speaker concerned the need for an active role of banking sector regulation in supporting competition on the market for financial services. The speaker considered also the role of competition policy measures as an effective complement for prudential regulation. Noted was also the possibility of coordinating the regulation of the banking sector and competition policy in order to improve consumer welfare and increase the stability of the financial system. Problems

raised by the speaker were discussed by Professor Marcin Olszak (European Centre, University of Warsaw), the Director of the Legal Department of the Polish Financial Supervision Authority.

5.2. ‘Protection of collective consumer interests – the prohibition of practices infringing the collective interests of consumers’

The 17th CARS Open PhD Seminar was held on 12 December 2013. Izabela Wesołowska, PhD candidate from the Faculty of Law, University of Łódź, presented therein the concept of her PhD thesis dedicated to the protection of the collective interests of consumers. The speaker raised the problem of the compatibility of Polish rules on collective interests of consumers with Directive 2009/22/EC as well as with international and constitutional standards. The speaker considered also the effectiveness of the protection system of collective consumer interests and the question of safeguarding the protection of such interests by the President of the Office of Competition and Consumer Protection. The presentation was discussed by Professor Bożena Popowska (Faculty of Law, Adam Mickiewicz University in Poznań) and Professor Kazimierz Strzyczkowski (Faculty of Law, University of Łódź).

5.3. ‘Single economic unit in Polish and European competition law’

This Open PhD Seminar took place on 10 March 2014. The presentation given by Piotr Semeniuk, as well as the following discussion, was dedicated to key aspects related to the concept of a single economic unit in Polish and European competition law. This issue plays a crucial role at different stages of competition law application. It is related to notions of ‘control’ and ‘corporate group’ in merger control rules, it leads to the exemption of some types of agreements (e.g. agency agreements, employee agreements and others agreements ‘within the framework’ of a single economic unit) from the rules on restrictive agreements, and it can be related to assigning responsibility for a competition law infringement.

6. Student Regulatory Workshops

On the basis of a student initiative, a series of Student Regulatory Workshops took place at CARS between February and May 2014. The workshops attracted 24 students from the Faculty of Law, Faculty of Economics and the Faculty of Management. During the workshops, students were able to meet specialists in sector specific regulation relating to telecommunications, audiovisual media, rail and air transport, energy, financial services and the pharmaceutical sector. Participating students were divided into groups of no larger than 12 and had the meetings had a primarily discursive character.

7. Agreement between CARS and the Office of Competition and Consumer Protection

In order to continue expanding the network of agreements concluded by CARS with public authorities responsible for competition protection and sector specific regulation, CARS signed on 5 May 2014 a cooperation agreement with the Office of Competition and Consumer Protection. The agreement envisages extensive cooperation in terms of research, publications and organization of conferences between CARS and Polish National Competition Authority.

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