

CARS Activity Report 2008

1. Basic information

In 2008 Centre of Antitrust and Regulatory Studies developed its activity according to a plan of development of the Centre. Activities of CARS focused mainly on venues oriented for a wider public (conferences, publications) – apart from research objectives such a strategy served for enhancing an institutional visibility of the Centre. Additionally, the Centre concentrated its efforts on gaining new partners (organization of workshops altogether with law firms) and on intensifying a co-operation with earlier partners (e.g. with Energy Regulatory Office - URE). In 2008 CARS performed its activities in forms invented in previous years, e.g.: conferences, workshops, PhD seminars and publications.

In a relevant period CARS organized a conference and co-organized (with URE) a series of three conferences. Two workshops (with law firms) and three PhD seminars were organized last year, either. The CARS's publishing series – “Studies and Monographs on Antitrust and Regulation” – increased by two books.

2. Conferences

2.1. Conference “Regulation of telecommunications markets”

The conference was held on 23 April 2008, its programme consisted of two parts: presentations of papers and panel discussion. Papers presented in the first part of the conference (moderated by Prof. M. Wierzbowski, Faculty of Law, Warsaw University; a member of YARS Advisory Board) focused on assessments of competitiveness of telecommunications markets, duties imposed on companies with a significant market position, and procedural problems associated to a regulation of markets. The panel discussion (moderated by Prof. S. Piątek, Faculty of Management, Warsaw University, Vice Chairman of YARS Advisory Board) concentrated on assessments of effects of regulation of telecommunications markets. The conference gave an opportunity to present the first book from the CARS's publishing series – “Regulation of telecommunications markets”, published

in 2007 and edited by Prof. S. Piątek. A review of the book and a detailed report from the conference can be found in a current YARS volume 2(2).

2.2. Series of conferences on energy markets: “What competition model in energy sector?”

The co-operation of CARS with the President of URE resulted in 2008 (and at the beginning of 2009) in a series of conferences (under a bundle title “What competition model in energy sector?”) dedicated to energy policy and regulation of energy in Poland. Conferences became a platform for an intensive exchange of opinions by researchers and representatives of the industry.

The first meeting was held on 21 February 2008. Papers and following discussion concentrated on an assessment of competition on an energy market after a consolidation of an energy sector and on a position of buyers on that market after a liberalization of energy prices for industrial purchasers. The second conference of the series, organized on 20 May 2008, was dedicated to selected directions of Polish energy policy till 2030, directions of an evolution of energy market, and methods for financing new investments. The third conference, held on 28 January 2009, focused on problems of regulating energy prices, mainly factors influencing prices, costs and benefits associated to a process of liberalization.

A detailed report on the series of conferences is presented in a current YARS volume 2(2).

3. Workshops

3.1. “Antitrust law and copyright law – a point of crosscutting”

A workshop, co-organized by a law firm Markiewicz & Sroczyński sp.j., was held on 6 March 2008. The workshop was directly inspired by an antitrust case *ZAIKS/Brathanki*, ended with a judgment by the Supreme Court, ultimately confirming an infringement of the Competition and Consumer Protection Act by a collecting society (ZAIKS). Papers presented during workshops concentrated mainly on Polish and EC experiences in activities of collecting societies. The workshop gathered practitioners of antitrust law and copyright law, researchers, as well as representatives of various collecting societies.

3.2. “Antitrust protection and sector-specific regulation: confrontation or co-operation?”

The workshop was co-organized with a law firm Wierzbowski Eversheds on 23 October 2008. A key problem of the workshop – a confrontation of antitrust protection and regulation – was presented with a telecommunications sector as an example. A programme of the workshop consisted of two speeches and a discussion focusing on objectives and values of

Competition and Consumer Protection Act and regulatory laws. The meeting was attended by legal practitioners, representatives of regulatory authorities and researchers.

A detailed report on the workshop is presented in a current YARS volume 2(2).

4. PhD seminars

PhD seminars are organized as discussions on the thesis presented by a speaker (not necessarily a CARS member), open to a wider public. A speaker may be either a CARS member or an outer person. During seminars either merit research problem or methodological issues connected to a preparation of PhD dissertation are debated on. In 2008 three PhD seminars were held.

The first PhD seminar in 2008 was held on 30 January. A topic of a seminar was competences of the Polish competition body in issuing decisions in proceedings initiated on the basis of Article 81 and 82 of EC Treaty, with a special regard to a judgment of 29 October 2007 by Court of Competition and Consumer Protection: *Tele 2 v the President of the Office of Competition and Consumer Protection*, ref. no XVII Ama 122/06. The introduction to the discussion was made by Dr. Monika Bychowska – Director of Department of Competition Protection at Office of Competition and Consumer Protection. The introductory speech and the follow-on discussion concentrated on an interpretation of Article 5 of Regulation 1/2003, precisely – a trial of responding a question if that Article was a proper legal basis for a decision declaring a non-infringement of Article 82 of EC Treaty by Polish competition body. On 27 June a seminar with Dr. Konrad Kohutek, presenting problems linked to a concept of an abuse of a dominant position, was held. A background of a presentation were documents by the European Commission, published within a process of a reform of Article 82 of EC Treaty. The discussion concentrated on issues such as: establishing a fact and a scope of “consumer damage”, relations between consumer damage and competition damage, or finally possibilities of achieving a level of legal certainty for dominant undertakings regarding their market activities.

The last PhD seminar, organized on 3 December 2008, was dedicated to limits of antitrust intervention in a form of imposing a duty of IPR licensing as a remedy for practices restricting competition. A key problem in a speech of Małgorzata Surdek was a relation between competition law and IPRs. Issues raised by the speaker, and then being vividly discussed, were as follows: a refusal to license on a basic and neighbouring market, economic effects of a refusal to license, conditions for objective justification of a refusal to license, criteria for imposing by a competition authority a duty to license.

5. Publications

5.1. „Block exemptions from the prohibition of restrictive agreements in the EC and Poland” (ISBN: 978-83-61276-10-4)

A book constituting a collection of articles, edited by A. Jurkowska i T. Skoczny is the second publication of the CARS's series “Studies and Monographs on Antitrust and Regulation”. The book is the final result of an extensive research project commenced by CARS in 2007, on a demand of the Office of Competition and Consumer Protection, concerning the existence, validity and necessity of issuing block exemptions from the prohibition of anticompetitive agreements. The publication illustrates the evolution and current state of the EC and Polish block exemptions (considered to be the basic tool for making the prohibition of anticompetitive agreements relative by way of normative acts). The book contains analysis of group exemptions in Polish and EC law, these are exemptions for co-operation agreements, vertical agreements, agreements in motor vehicle sector, technology transfer agreements, agreements in insurance sector, agreements in maritime transport sector and in air transport sector. Additionally, the book contains texts of key Polish and EC legal acts.

A review of the publication is presented in a current YARS volume 2(2).

5.2. „Microsoft - case study. Competition Law on the New Technology Markets” (ISBN: 978-83-61276-16-6)

A book being a collectin of articles, edited by D. Miąsik, T. Skoczny and M. Surdek, is a product of workshop organised jointly by CARS and the law firm CMS Cameron McKenna in November 2007. The book contains, apart from a detailed presentation of a Microsoft case, two key articles dedicated to: Microsoft's refusal of transferring to its competitors a set of information guarantying interoperability of their operational systems with a Windows platform and to tied sales of Windows operational system with Windows Media Player. Moreover, the book contains an article on Microsoft case in the US and the analysis of economic and strategic challenges of IT market in a context of Microsoft case. A list of publications dedicated to Microsoft case and a shortened version of a CFI's judgment can be also found in the book.

The book is the third publication in the CARS's series “Studies and Monographs on Antitrust and Regulation”.

A review of the book is presented in a current YARS volume 2(2).

6. Research

In 2008 CARS conducted, on demand of Telekomunikacja Polska S.A., a research project on antitrust aspects of non-price discrimination. The project resulted in a report titled “Non-price discrimination – legal analysis of a problem in Polish and EC competition law”. The report

presented an interpretation of a concept, prerequisites and criteria of a non-price discrimination as a practice of an abuse of a dominant position in Polish and European antitrust case law. The analysis of the case law led to an identification of following parameters of non-price discrimination: quality (of a product/service), time, access to information, pararegulatory competences of a dominant undertaking, quantity. Different character of criteria (and as a consequence – reflections) of non-price discrimination imposes on competition bodies a special duty of observing high standards of proof in antitrust proceedings regarding abusing a dominant position through a discrimination. Criteria for discrimination (specially time and quantity) can be quantified – thus antitrust authorities must be recommended to point quantitative proofs while declaring practices of non-price discrimination. Application of antitrust law may be successfully supported by a record of regulatory cases in telecommunications. The report declares that telecommunications operators – on the basis of previous case law and positions of regulators – are able to monitor on their own indicators deciding on an implementation by an operator a duty of non-discrimination – the example of that can be found in the second part of the report. A specific character of a discrimination that may be introduced by a vertically integrated operator requires the analysis of indicators for a potential discrimination either on a wholesale market (where an operator acts as a deliverer for undertakings on retail market and thus he is not their competitor) or retail market (where an operator competes directly with undertakings – purchasers of his services on a wholesale market).

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