

## CARS Activity Report 2018

### 1. General Information

#### 1.1. Board and cooperators

1. The year 2018 proved to be another – already the 11<sup>th</sup> – year of activity and development for the Centre for Antitrust and Regulatory Studies (CARS). The management of CARS and the CARS Advisory Board remained unchanged, albeit Ms Magdalena Kielkiewicz has taken over the position of CARS National Coordinator and technical editor of YARS and iKAR as of November 2017. In 2018, Dr. Agnieszka Kunert-Diallo became part of the ‘CARS affiliated member’ group, while Dr. Andrzej Nałęcz, Dr. Paweł Zagrajek and Dr. Laura Zoboli (Italian national) joined ‘CARS close academic cooperators’. Dr. Laura Zoboli won an international competition for the position of Assistant Professor in the Department of European Economic Law, Faculty of Management, University of Warsaw; she has taken up her position on 1 September 2018. Dr. Zoboli specialises in competition and intellectual property law, with special emphasis on new technology markets and big data. Since 1 January 2019, she acts as the coordinator of the CARS ‘Digital Market and Big Data’ research field and the Head of the ‘CARS Digital Market and Big Data Laboratory’. Prof. Cezary Banasiński, long time ‘CARS close academic cooperator’, became the coordinator for the railway transport sector and the Head of the ‘CARS Rail and Public Transport Laboratory’.

#### 1.2. CARS Awards

2. 2018 brought already the 7<sup>th</sup> competition for the CARS Scientific Award. This time, for the 5<sup>th</sup> time, the Award honored an outstanding academic monograph on legal and economic problems in the field of competition protection (Antitrust Award). After the initial voting – which, for the 2<sup>nd</sup> time, took place remotely, 6 monograph with the largest number of votes were nominated to the 2018 Scientific Award. They were authored by D. Aziewicz, M. Gac, Ł. Grzejdziak, D. Kostecka-Jurczyk, G. Materna and R. Molski. Ultimately, the Award Committee granted the **CARS Antitrust Award 2018 to Prof. Rajmund Molski**, from the Faculty of Law and Administration, University of Szczecin, for the monograph *Prawne i ekonomiczne aspekty polityki promowania narodowych czempionów* [*Legal and economic aspects of national champion*

*policy*], published by the University of Warsaw Faculty of Management Press, Warsaw 2015. The award ceremony was held on 20 June 2018.

3. In 2018, for the 3<sup>rd</sup> time, CARS presented also its Honorary Award (the so-called ‘Wielka Sowa’ [**Grand Owl**]) for exceptional scientific and applied achievements in the field of broadly understood competition law. The 2018 Award honoured, for the overall achievements in the competition law field, **Dr. Stanisław Gronowski, retired judge of the Supreme Administrative Court, the first President of the Polish Antimonopoly Court, later – Court of the Competition and Consumer Protection**. The award ceremony was held on 20 June 2018.

### **1.3. National and International Cooperation**

4. Further two co-operation agreements with Polish entities were signed in 2018. The ‘Cooperation Agreement between Warsaw University Faculty of Management – Centre for Antitrust and Regulatory Studies and the Faculty of Law, Economics and Administration of the University of Wrocław – Centrum Badań Problemów Prawnych i Ekonomicznych Komunikacji Elektronicznej (CBKE)’ was signed on 14 February 2018. On the basis of this agreement, a national scientific conference will be organised in 2019.

5. Pre-existing cooperation between CARS and the Polish Association of Corporate Lawyers (PSPP) was also formalised on 1 February 2018. After signing the Cooperation Agreement, the PSPP President, att. Waldemar Koper, took part in a national scientific seminar organised by CARS and held on 7 March 2018. The seminar was devoted to *‘Wyzwaniom w relacjach handlowych w łańcuchu dostaw produktów spożywczych po wejściu ustawy o przewadze kontraktowej’* [*Seminar on new Polish law against the abuse of bargaining power in the food supply chain*].

6. 2018 saw also a continuation and deepening of scientific cooperation between CARS academics who are members of the Academic Society of Competition Law (ASCOLA) as well as those cooperating within the CRANE network (Competition and Regulation. Academic Network. Europe – Visegrad, Balcan, Baltin, East). In the framework of this network, a research project is being realized since 2017 on the ‘Instruments and effects of combating unfair use of superior power in trade of agriculture and food products’ (2017-2019)’. The project will be completed in 2019.

### **1.4. Guest lectures**

7. On invitation of the ‘CARS Civil Aviation Laboratory’, two prominent academics dealing with problems of air transport agreements and airport construction came to CARS from

abroad. On 18 June 2018, **Prof. Alan Tan** from the University of Singapore **held a guest lecture on *European Union – Association of Southeast Asian Nations Comprehensive Air Transport Agreement***, devoted to a planned air transport agreement between the European Union and ASEAN.

**8.** On 19 October, **CARS** was visited by **Prof. Jürgen Mueller** from the Hochschule für Wirtschaft und Recht Berlin (HWR Berlin), who held a guest lecture on the *New Berlin Airport (BBI): Too late, too expensive and too small! A case study on the politics of airport construction*. The lecture was devoted to the history of the construction of the Berlin-Brandenburg airport, including the reasons of its failures.

## **2. Research activity**

**9.** Within the scope of its normal research activities, CARS saw, already on 1 October 2017, the commencement, started on CARS's initiative, of an **open research project entitled *'Instruments and effects of combating the unfair use of superior bargaining power in trade of agriculture and food product'*** (2017-2019). The research team is led by Adam Jasser, CARS deputy director.

An one-day national scientific seminar on *'Statute on combating unfair use of superior power – interpreting and applying; important challenges'* was the first event organised in the framework of this project in CARS on 7 March 2018.

In the framework of **CRANE (Competition and Regulation. Academic Network. Europe)**, broad comparative research on the legal grounds and practices in this field, in particular in countries of Central and Eastern Europe, was conducted in 2018 by an international team of leading academics from Central Europe.

The research revealed that in recent years, several countries in Central and Eastern Europe have adopted legislation tasking competition agencies, or other regulators, with countering the 'abuse of bargaining power' by big retailers or suppliers. In some countries, this is regulated under private law along the lines of unfair trading practices. It also emerged that, not just in Central Europe, special treatment of the food sector is a hot topic, as instances of abuse of contractual power against food producers have been identified. The need for state intervention is often justified by reasons of 'food security' – the need to protect consumers from disruptions to supply as well as the need to protect farmers. Critics argue that regulation of contractual relations in this sector proves inefficient, and often produces results opposite to their underlying intentions. The debate and conflicting views make this an interesting research

subject. Making this issue even more topical, the European Commission published in April 2018 a draft directive regarding ‘unfair trading practices in relations between enterprises in the food supply chain’, which is currently undergoing public consultations.

The first phase of this project concluded in February 2019 through the creation of national reports concerning the legal bases and practical experiences in the covered countries. The reports will be published in Spring 2019 as a monograph edited by Adam Jasser and Anna Piszcz. An international scientific conference will be the final product of this research project discussing the analyzed topics, which will be organized by CARS in autumn 2019. Its results (a number of horizontal reports that present an in-depth comparative analysis of key issues), will be published in the *Yearbook of Antitrust and Regulatory Studies*.

### **3. Academic expertises (expert opinions)**

**10.** In 2018, CARS’s activities included the preparation of externally commissioned expert opinions and their publication on the CARS website. In winter 2017/2018, **an expert opinion** was prepared in the ‘CARS Electronic Communication Laboratory’ by Dr. Andrzej Nałęcz (Faculty of Management, University of Warsaw) **entitled ‘Analysis of the Transparency Measures under Article 4 Section 1 of the Regulation 2015/2120 with Examples from the Polish Telecommunications Market’.**

This expert opinion was commissioned by the Polish telecommunications regulator UKE (Urząd Komunikacji Elektronicznej – Office of Electronic Communications). The aim of the expert opinion was to analyze selected transparency measures under Article 4 section 1 of the EU ‘Open Internet’ Regulation 2015/2120 and their implementation by Internet access service providers in Poland. The analyzed issues include: the concepts of the minimum, actual, maximum, estimated maximum and advertised download and upload speed; the transparency of information provided in contracts to end-users about the quality of their Internet access service, with particular attention to offering Internet access at a fixed location utilizing mobile technology; the obligation to publish relevant information; remedies available to consumers; and good and bad practices of Polish Internet access service providers.

### **4. Publications**

**11.** The CARS Publishing Programme continued to grow in 2018. In the CARS Publishing Series ‘Antitrust and Regulatory Textbooks’, CARS published the monograph written by Dr. Dariusz Aziewicz entitled *Ocena siły rynkowej przedsiębiorcy w nadzorze nad*

*horyzontalnymi koncentracjami przedsiębiorców* [Assessment of single undertaking's market power in supervision over horizontal mergers]. The book is the first publication in Poland that deals with antitrust assessment of the economic effects of horizontal mergers. The purpose of the book was to construct models for assessing the effects of horizontal mergers, which are based upon available economic knowledge. Application of these models should lead to increased effectiveness of state supervision over this kind of economic operations. The book was based upon an economic analysis of the law and contained elements of legal and comparative analysis of the Polish legal system and the antitrust laws (including a broad analysis of case law) of Germany, Great Britain, France, the European Union and the USA. Models for the assessment of horizontal merger effects have been divided by the author along the characteristics of the relevant markets into: differentiated products markets, homogeneous product markets, and bidding markets. Legal and comparative analysis, as well as the application of economic concepts, was based on the foundations and general principles of Polish administrative law and public commercial law. The main aim of the author of the book was to present models of the assessment of horizontal mergers that in the light of the aims of Polish competition law should be used by the Polish competition authority.

The book is based upon the Phd thesis defended by Dr. Dariusz Aziewicz with distinction at the University of Warsaw, Faculty of Law and Administration.

**12.** In 2018, CARS published two new volumes of the *Yearbook of Antitrust and Regulatory Studies* (YARS<sup>®</sup>) – its well established English-language periodical [www.yars.wz.uw.edu.pl](http://www.yars.wz.uw.edu.pl). The first, YARS<sup>®</sup> 2018 (vol. 11(17)), co-edited by Professor Anna Piszcz (Faculty of Law, University of Białystok), and Prof. Amedeo Arena (University Naples 'Federico II'), contains, among others, several articles, the draft of which were presented during the First Conference 'Gaetano Filangieri' on 'Freedom of Commerce. Recent developments in EU Competition Law'. The Conference was held at the School of Law, University Naples 'Federico II' on 8-9 May 2018.

The second volume, YARS<sup>®</sup> 2018, vol. 11(18)) – the so-called 'regular number' – edited by Prof. Maciej Bernatt (Faculty of Management, University of Warsaw), published different articles written by academics from Poland, Portugal, Serbia, Ukraine and Hungary who work at different universities around the world.

**13.** In 2018, CARS published also eight volumes of the Polish-language journal *internetowy Kwartalnik Antymonopolowy i Regulacyjny*, iKAR ['internet Quarterly on Antitrust and Regulation'] (iKAR) [www.ikar.wz.uw.edu.pl](http://www.ikar.wz.uw.edu.pl)). Four of them had a general nature and contained varied contributions on competition and consumer protection matters (volumes

2(7), 3(7), 6(7), 8(7)). The remaining four volumes were dedicated to the regulation of post (vol. 1(7)), energy (vol. 5(7)), transport (vol. 7(7)) and tourism (vol. 4(7)).

## **5. Conferences**

### **5.1. International Conferences**

**14.** Five scientific conferences – two international and three national – were organised or co-organised by CARS in 2018. The **conference on ‘*The impact on economy of hub airports operation and infrastructure development*’** was held on 6-7 September 2018 by the **Poznań University of Economics and Business and CARS**. The Conference constituted another event for the international scientific community in the area of air transport, centered on the research project ‘COST Air Transport and Regional Development (ATARD) Programme COST ATARD’, concerning relations between air transport and the economy.

The topic of the conference was related to the creation of a central airport for Poland to be built in the next five years and to the shutting down of Warsaw Airport, which is close to its capacity limits. The conference constituted a contribution to the discussion on hub airports in Central and Eastern Europe and their impact on regional development.

**15.** Another international event, a **conference entitled ‘*Judicial Deference in Competition Law*’**, was organized on 11 October 2018 by CARS, most notably by Prof. Maciej Bernatt, CARS Scientific Secretary. The conference aimed at discussing the place for judicial deference in the area of law that requires expert knowledge and involves policy questions: competition law. The discussion included theoretical and axiological aspects of judicial deference in administrative law, the place for judicial deference to a competition authority’s economic assessment and determinations regarding fines, as well as the link between the institutional and the procedural organization of proceedings before a competition authority and the intensity of judicial review.

The conference was organized in the framework of the research project ‘The Limits of Judicial Assessment in Competition Law’ funded by the Polish National Science Centre (UMO-2014/15/D/HS5/01562).

The conference was supported by Clifford Chance, Gessel and Modzelewska&Paśnik law firms.

### **5.2. National conferences and seminars**

**16.** A national scientific conference was held on 7 March 2018 at the Faculty of Management, University of Warsaw, and dealt with the ‘*New Polish law against abuse of bargaining*’

*power in the food supply chain*'. The conference was devoted to the newly introduced Act of 12 July 2017 prohibiting the abuse of bargaining power in contractual relations in the food supply chain in Poland. The aim of the conference was to evaluate the first effects of this Act and to analyze its possible legal and business consequences for the food sector. The discussion focused first of all on whether public enforcement in this sector was really justified in the absence of companies with a dominant market position and relatively low level of concentration among retailers. However, even critics of the new Act agreed that unfair trading practices were evident in the food supply chain more than in other sectors. This supported the view that inconclusive attempts at self-regulation had left a space open for public enforcement.

The conference, organized together with law firms Gessel and Markowski & Sroczyński, and with the co-operation of the Polish Association of Corporate Lawyers (PSPP), was part of CARS's ongoing research project concerning the abuse of bargaining power in the food sector in Central and Eastern Europe.

**17.** On 20 June 2018, at the Faculty of Management, University of Warsaw, a **national scientific conference** was held on *'A proposal for a directive on unfair trading practices in business-to-business relationships in the food supply chain and the Polish Act on counteracting unfair use of bargaining power'*. The aims of the draft of this directive, published by the European Commission in April 2018, were similar to those imposed by the Polish legislator on the Polish Office for Competition and Consumer Protection – that is, the protection of small and medium food producers and related companies. The discussion during the conference centred on the state of the works on the directive and its potential interaction with the Polish Act against the abuse of bargaining power in the food supply chain, including the evolution of trade relationships between suppliers and retail chains in the context of the new regulation.

The Conference was organized by CARS and its partners – law firms Affre & Co., Lubasz & Co. and Markiewicz & Sroczyński.

**18.** A seminar on *'Distribution agreements in competition law'* was held on 18 October 2018, at the Faculty of Management, University of Warsaw. It was organized by CARS and the law firm Modzelewska & Paśnik with cooperation of the law firm SWKS. The organization of this seminar was inspired by the publication in July 2018 by Wolters Kluwer of a book entitled *'Distribution agreements in competition law. European Union- Poland'*.

**19.** CASR organized also on 13 December 2018 at the Faculty of Management, University of Warsaw, an Open PhD Seminar (OSD) focused on the research of Mr Tomasz Walczak,

previously member of staff at the Polish Competition and Consumer Protection Office, PhD student at the Faculty of Law and Administration of the Adam Mickiewicz University (WPiA UAM). Mr Tomasz Walczak prepared, under the supervision of Prof. Wojciecha Piątka (WPiA UAM) and Dr. Mateusza Chołodeckiego (WPiA UAM) a PhD dissertation entitled '*Postępowanie w sprawach z zakresu ochrony zbiorowych interesów konsumentów jako szczególny model postępowania administracyjnego*' [*'Proceedings in cases relating to the protection of collective consumer interest as a special type of administrative proceedings.'*]

## **6. Sectorial Laboratories**

**20.** CARS's four sectorial laboratories continued their activities in 2018 with respect to academic expertises (eg Electronic Communication Laboratory), publications (eg Postal Markets Laboratory) and conferences (eg Civil Aviation Laboratory). Some of the laboratories were joined by new expert cooperators (Civil Aviation Laboratory, Postal Markets Laboratory).

**21.** The 'CARS Civil Aviation Laboratory' was the most active in 2018. It was joined by Prof. Małgorzata Polkowska – a lawyer dealing with international aviation and space law. The Civil Aviation Laboratory organized in 2018 two conferences – one international, one national – as well as two guest lectures by prominent academics from the area of law and economics of aviation law; some of the Civil Aviation Laboratory members took part in *TAIEX Regional Workshop on State Aid Rules in Aviation: Enhancing Air Transport Connectivity in the Western Balkans*, which was held in Podgorica (Montenegro) on 25-26 July 2018. The Head of the Laboratory, Dr. Jan Walulik, co-edited in 2018 one volume of the *internet Antitrust and Regulatory Quarterly [iKAR]*, as well as edited a book *Harmonizing Regulatory and Antitrust Regimes for International Air Transport*, to be published by Routledge. The book includes contributions presented at the *CARS Airline Regulatory and Antitrust Conference held in 2017*. The book will be published in spring **2019**.

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