

**Tadeusz Skoczny, Agata Jurkowska (eds.),**  
***Orzecznictwo sądów wspólnotowych w sprawach konkurencji***  
***w latach 1964-2004***  
**[*Jurisprudence of the European Community Courts in competition matters***  
***in years 1964-2004*],**  
**Oficina a Wolters Kluwer business, Warszawa 2007, 920 p.**

The subject of the study edited by Prof. Tadeusz Skoczny and Dr. Agata Jurkowska of the University of Warsaw (Centre of Antitrust and Regulatory Studies) is the jurisprudence of the European Community Courts (hereafter, EC Courts) concerning European competition rules. It focuses on the provisions relating to undertakings (Articles 81–82, 86 Treaty establishing the European Community – TEC) while the case law concerning state aid and other forms of infringements of competition law by Member States of the European Union is omitted. The review presents the jurisprudence of the EC Courts both in matters relating to the interpretation of competition rules (issued on the basis of Article 234 TEC) and in matters concerning the legality of the application of these rules (Articles 226–228, 230–233, 235–243 TEC). The jurisprudence under review covers the activities of the Court of Justice of the European Communities (hereafter, ECJ) and the Court of First Instance (hereafter, CFI) from the first judgments concerning competition rules decided in the 1960's<sup>1</sup> until the 30<sup>th</sup> of April 2004.

About 650 judgments were issued in the period covered, of which 72 are presented in this book by 27 different authors (including the editors), both scholars and practitioners. The relevant extracts of the judgments are translated from English by the authors. Bearing in mind the subject matter of this book, the choice of which judgments should be incorporated in it is of fundamental importance. The selection of 72 out of the over 600 competition-related judgments is, in itself a challenging task. The book opens with a broad introduction to various European competition law doctrines, developed over the years by the jurisprudential activity of the EC Courts. The introduction is followed by 3 chapters covering the selected judgments presented in chronological order, a table of all judgments issued in competition-related matters, a list of legal acts referred to and an index of key issues discussed in this book.

The introduction to the jurisdictional doctrines relating to competition rules, written by the editors (p. 25–66), covers various aspects of European competition law. The editors see 4 main fields of activity for EC Courts in this respect: 1) setting

---

<sup>1</sup> The very first judgment being 13/61 *Bosch v de Geus*, [1962] ECR of 6<sup>th</sup> April 1962. This case is not presented in the book under review here.

the scope of the application of competition rules; 2) interpreting the basic concepts established in the TEC; 3) supporting the creation of the internal (initially: common) market; 4) setting the procedural rules (p. 26–28). They also give detailed information on the number and character of all the proceedings in competition matters (p. 30–33). Furthermore, the main analysis concerns different doctrines developed by the ECJ and the CFI in this field (p. 33–62), such as the “relevant market” doctrine (p. 33), the “*de minimis*” doctrine (p. 34), the “single economic unit” doctrine (p. 36), the “collective dominant position” doctrine (p. 43, 45) and many others. The introduction indicates obviously only the main ideas of the key judgments. It can, nevertheless, be of use for those readers that need a brief and comprehensive overview of all important aspects of European competition law jurisprudence.

The main study is divided into 3 chapters: the jurisprudence of the ECJ from 1962–1989 (p. 69–286, containing 28 judgments), the jurisprudence of the CFI from 1989–2004 (p. 287–519, containing 22 judgments) and, the jurisprudence of the ECJ from 1989–2004 (p. 521–774, containing 22 judgments). In each of these chapters the judgments are presented in chronological order rather than grouped according to their jurisprudential subject matter. The decision to present the selected jurisprudence in this particular way seems legitimate considering the variety of different legal matters under consideration. The index at the end of the book is thus of vital importance for those readers, who are looking for references to a specific competition-related issue. The presentation of each judgment covers its key-words, summary, and legal findings of the EC Courts. In cases where the factual situation and important judicial input are presented, this is followed by the authors’ comments on the judgment.

Referring to the 4 categories of activity of the EC Courts indicated by the editors, the judgments presented in this book concentrate on the first 2. The scope of the application of European competition rules is considered in several judgments including *Züchner*<sup>2</sup> (commented on by Justyna Majcher), where it is explained for the first time that competition rules apply to the financial sector (banks). The *Verband der Sachversicherer*<sup>3</sup> judgment, covered by Agata Jurkowska, further clarifies that Article 81 TEC applies to the insurance sector and defines the meaning of a “decision by an association of undertakings”. *ANTIB*<sup>4</sup>, presented by Małgorzata A. Nesterowicz, shows that general rules on competition also apply to transport on inland waters, regardless of Regulation 1017/68. The *Lucas Asjes*<sup>5</sup> judgment, discussed by Dawid Miąsik, answers two important questions: the fact that competition rules fully apply to the transport sector, regardless of the Council’s lack of activity under Article 84 TEC (in this case: air transport), and that Article 81 and 82 TEC are addressed both

<sup>2</sup> 172/80 *Gerhard Züchner AG v Bayerische Vereinsbank AG*, [1981] ECR 2021, no. 15 in the book.

<sup>3</sup> 45/85 *Verband der Sachversicherer e.V. v Commission of European Communities*, [1987] ECR 405, no. 23 in the book.

<sup>4</sup> 272/85 *Association Nationale des Travailleurs Independents de la Batellerie (ANTIB) v Commission of European Communities*, [1987] ECR 2201, no. 24 in the book.

<sup>5</sup> 209–213/84 *Ministere Public v Lucas Asjes*, [1986] ECR 1425, no. 22 in the book.

to undertakings and Member States of the European Union. *Woodpulp I*<sup>6</sup>, covered by Agata Jurkowska, is important mainly because it clarifies the scope of the territorial application of European competition rules. Furthermore, the *Almelo*<sup>7</sup> judgment, commented on by Marcin Kolasieński, confirms that energy should be treated as a “good” and that Articles 81 and 82 TEC are fully applicable to the energy sectors. *Connect Austria*<sup>8</sup>, presented by Piotr Lissoń, is one of the few judgments concerning the application of competition rules into the telecommunications sector.

The interpretation of basic concepts used in the TEC constitutes the core of the reviewed jurisprudence. Several judgments concern the very basic notion of “undertaking”. Among them are: *Höfner*<sup>9</sup> (presented by Michał Markowski); *Poucet & Pistre*<sup>10</sup> (covered by Małgorzata Kozak); *Albany International*<sup>11</sup> (commented on by Marcin Wnukowski) and *Wouters*<sup>12</sup> (discussed by Małgorzata Grzelak). One of the last judgments in this book – *Aéroports de Paris*<sup>13</sup> (presented by Krzysztof Murawski), confirms the broad definition of the notion of “undertaking” as an entity that, apart from its economic activity, can also exercise some public power.

The meaning and scope of Article 81 TEC is also extensively analysed. Its application to vertical restraints, mainly exclusive distribution and exclusive supply contracts, is analysed in the first judgments reviewed in this book (they include: *Société Technique Minière*<sup>14</sup>, *Völk v J. Vervaecke*<sup>15</sup> presented by Marek Sachajko; *Consten & Grundig*<sup>16</sup>, *Brasserie de Haecht*<sup>17</sup> and *Béquelin*<sup>18</sup> covered by Piotr Dębowski). Selective distribution systems are

---

<sup>6</sup> 89, 104, 114, 116, 117, 125–129/85 *Woodpulp Producers v Commission of European Communities*, [1988] ECR 5193 of 27 September 1988, no. 27 in the book.

<sup>7</sup> C-393/92 *Gemeente Almelo & others v NV Energiebedrijf Ijsselmij*, [1994] ECR I-1477, no. 58 in the book.

<sup>8</sup> C-462/99 *Connect Austria Gesellschaft für Telekommunikation GmbH v Telekom Kontrol Kommission & Mobilom Austria AG*, [2003] ECR I-5197, no. 71 in the book.

<sup>9</sup> C-41/90 *Klaus Höfner & Fritz Elser v Macroton GmbH*, [1991] ECR I-1979, no. 52 in the book.

<sup>10</sup> C-159/91, C-160/91 *Christian Poucet v Assurances Generales de France et Caisse Mutuelle Regionale du Languedoc Rousillon, Daniel Pistre v Caisse Autonome Nationale de Compensation de l'Assurance Vieillesse des Artisans*, [1993] ECR I-637, no. 54 in the book.

<sup>11</sup> C-67/98 *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie*, [1999] ECR I-5751, no. 65 in the book.

<sup>12</sup> C-309/99 *J.C.J. Wouters, J.W. Savelbergh, Price Watercoopers Belastingadviseurs BV*, [2002] ECR I-1577, no. 69 in the book.

<sup>13</sup> C-82/01 *Aéroports de Paris v Commission of European Communities*, [2002] ECR I-9297, no. 70 in the book.

<sup>14</sup> 56/66 *Société Technique Minière v Maschinenbau Ulm GmbH*, [1966] ECR 235, no. 1 in the book.

<sup>15</sup> 5/69 *Franz Völk v Etablissements J. Vervaecke*, [1969] ECR 295, no. 4 in the book.

<sup>16</sup> 56/64, 58/64 *Consten GmbH und Grundig-Verkaufs-GmbH v Commission of European Communities*, [1966] ECR 299, no. 2 in the book.

<sup>17</sup> 23/67 *Brasserie de Haecht v Wilkin and Wilkin*, [1967] ECR 407, no. 3 in the book.

<sup>18</sup> 22/71 *Béquelin Import Co v S.A.G.L. Import Export*, [1971] ECR 949, no. 5 in the book.

analysed in light of Article 81 in *Metro I*<sup>19</sup> (presented by Piotr Dębowski). In *Pronuptia de Paris*<sup>20</sup>, discussed by Eliza Misiejuk, the first judgment concerning franchise agreements for the distribution of goods in light of Article 81 TEC, the ECJ states that such agreements do not restrict competition in principle, as they are beneficial for both sides of the agreement and enable the creation of new markets. The *Windsurfing*<sup>21</sup> judgment, commented on by Justyna Majcher, concerns the legality of licensing agreements. *Société d'Hygiène Dermatologique de Vichy*<sup>22</sup> (presented by Piotr Dębowski) concerns the problem of admissibility of selective and exclusive distribution systems. *Delimitis*<sup>23</sup> (also discussed by Piotr Dębowski), the presentation of which opens chapter 3 of this book, concerns the legality of distribution agreements, in particular, the so called "beer ties" where networks of similar agreements are present. *Metro Grossmärkte*<sup>24</sup> (covered by Rafał Poździk) demonstrates the ECJ's position on selective distribution systems. The *Matra Hachette*<sup>25</sup> judgment, discussed by Agata Jurkowska, mostly concerns the application of Article 81(3) TEC to horizontal agreements. *Fiatagri*<sup>26</sup> (presented by Marek Sachajko) elaborates on the notion of "facilitating practices" as practices limiting competition.

The definition of a "concerted practice" and the first example of a horizontal cartel is analysed in *ICI*<sup>27</sup> by Agata Jurkowska who also further presents the *Suiker Unie*<sup>28</sup> judgment, which concerns both Articles 81 and 82 TEC, where the notion of "concerted practices" is defined more precisely, together with a test for its occurrence (p. 134). Also relevant in this context is the aforementioned *Züchner*<sup>29</sup> judgment, which clarifies that parallel behavior is one of the criteria suggesting the presence of concerted practices provided, that some other element of coordination of behavior also exists. In the judgment *Zink Producers*<sup>30</sup> (presented by Agata Jurkowska) two

<sup>19</sup> 26/76 *Metro SB-Grossmärkte GmbH & Co. KG v Commission of European Communities*, [1977] ECR 1875, no. 10 in the book.

<sup>20</sup> 161/84 *Pronuptia de Paris GmbH v Pronuptia de Paris Irmegard Schillgallis*, [1986] ECR 353, no. 20 in the book.

<sup>21</sup> 193/83 *Windsurfing International Inc. v Commission of European Communities*, [1986] ECR 611, no. 21 in the book.

<sup>22</sup> T-19/91 *Société d'Hygiène Dermatologique de Vichy v Commission of European Commission*, [1992] ECR II-415, no. 30 in the book.

<sup>23</sup> C-234/89 *Stergios Delimitis v Henninger Bräu AG*, [1991] ECR I-935.

<sup>24</sup> C-376/92 *Metro Grossmärkte v Cartier*, [1994] ECR I-15, no. 57 in the book.

<sup>25</sup> T-17/93 *Matra Hachette SA v Commission of European Communities*, [1994] ECR II-595, no. 33 in the book.

<sup>26</sup> T-34/92 *Fiatagri UK Ltd & New Holland Ford Ltd v Commission of European Communities*, [1994] ECR II-905, no. 34 in the book.

<sup>27</sup> 48/69 *Imperial Chemical Industries Ltd. v Commission of European Communities*, [1972] ECR 619, no. 6 in the book.

<sup>28</sup> 40-48, 50, 54-56, 111, 113, 114/73 *Coöperatieve Vereniging „Suiker Unie” UE and others v Commission of European Communities*, [1975] ECR 1633, no. 9 in the book.

<sup>29</sup> 172/80 *Gerhard Züchner AG v Bayerische Vereinsbank AG*, [1981] ECR 2021, no. 15 in the book.

<sup>30</sup> 29, 30/83 *Compagnie Royale Asturienne des Mines SA & Société Rheinzink GmbH (Zink Producers) v Commission of European Communities*, [1984] ECR 1679, no. 17 in the book.

important issues are clarified: first, that the change in the name and legal form of an undertaking does not preclude its liability for its previous actions; second, that parallel behavior does not by itself constitute proof of a concerted practice, in particular, if parallel behavior can be explained by factors other than cooperation or coordination between parties. In *Wood Pulp II*<sup>31</sup> (covered by Dawid Miąsik) the definition of parallel behavior is confirmed, even though, in this case, no concerted practice was actually established as parallel behavior was not accompanied by the elimination of uncertainty about future behavior of competitors. The *FEDETAB*<sup>32</sup> judgment (presented by Agata Jurkowska) concerns a recommendation issued by an association of undertakings that was deemed to constitute a “decision of an association of undertakings” covered by Article 81(1) TEC. As the last judgment concerning Article 81 TEC, Agata Jurkowska presents *Courage*<sup>33</sup> - the first judgment confirming the possibility of claiming damages for an infringement of Article 81 TEC by any individual (including the party to the agreement).

The scope of the application of Article 82 TEC and the meaning of its provisions are explained in several judgments. First, in *Europemballage & Continental Can*<sup>34</sup> (covered by Marek Sachajko) Article 82 is said to be inappropriate to assess mergers. The same author presents the *Instituto Chemiterapico Italiano & Commercial Solvents*<sup>35</sup> judgment, which gives the definition of an “abuse” of a dominant position (it is the first judgment to analyse the market behavior known as a “refusal to deal” and the first example of the Commission’s decision where a positive action was imposed on an undertaking abusing its dominant position). *United Brands*<sup>36</sup> (discussed by Agata Jurkowska) is important as it delivers a precise definition of a “dominant position” as well as different examples of its abuse (mainly refusal to supply or price discrimination). It also clarifies issues such as the definition of a “relevant market” in its product and geographic dimension. *Hoffman-La Roche*<sup>37</sup>, commented on by Małgorzata Surdek, extends and deepens the findings of *United Brands*. It mainly gives guidance on the methods of establishing dominance on a relevant market and identifies objective criteria for finding abuse (its objective effect most of all).

---

<sup>31</sup> 89/85, 104/85, 114/85, 116/85, 117/85, 125-129/85 *Ahlström Osakeyhtiö v Commission of European Communities*, [1993] ECR I-1307 of 31 March 1993, no. 55 in the book.

<sup>32</sup> 209–215, 218/78 *Heinz van Landewyck S.a.r.l., Federation Belgo-Luxembourgoise des Industries du Tabac A.c.b.l. (FEDETAB) v Commission of European Communities*, [1980] ECR 3125, no. 14 in the book.

<sup>33</sup> C-453/99 *Courage Ltd v Crehan*, [2001] ECR I-6297, no. 67 in the book.

<sup>34</sup> 6/72 *Europemballage Corporation and Continental Can Company Inc. v Commission of European Communities*, [1973] ECR 215, no. 7 in the book.

<sup>35</sup> 6/73, 7/73 *Instituto Chemioterapico Italiano S.p.A. and Commercial Solvents Corporation v Commission of European Communities*, [1974] ECR 223, no. 8 in the book.

<sup>36</sup> 27/76 *United Brands Company & United Brands Continental BV v Commission of European Communities*, [1978] ECR 207, no 11 in the book.

<sup>37</sup> 85/76 *Hoffman-La Roche & Co. AG v Commission of European Communities*, [1979] ECR 461, no. 12 in the book.

The judgment opening chapter 2 of this book – *Hilti AG*<sup>38</sup> (presented by Justyna Majcher) explains when the market practice of “tying” agreements constitutes an abuse (p. 294). In the CFI’s judgments: *Italian Flat Glass*<sup>39</sup> and *BPB Industries*<sup>40</sup>, presented by Renata Wójtuk-Janusz, additional issues concerning Article 82 TEC are clarified. *Flat Glass* gives the first definition of “collective dominance”, *BPB* explains that the issue of intentional fault is irrelevant for committing an abuse of a dominant position, seeing as establishing an abuse should be based solely on objective factors (p. 323). The *Irish Sugar*<sup>41</sup> judgment (discussed by Justyna Majcher) concerns the question of “collective dominance” and the possibility of its abuse, both individually and collectively, by participating undertakings. The *CMB*<sup>42</sup> judgment (commented on by Małgorzata A. Nesterowicz) further clarifies the definition of collective dominance and indicates the independence (understood as lack of relationship) of Articles 81 and 82 TEC. *Michelin I*<sup>43</sup> (presented by Eliza Misiejuk) deals with relevant markets on which subsidiaries act, rather than those of the main company; it also considers loyalty discounts to be a form of “abuse”. The same Author analyses *BAT*<sup>44</sup> where it is clarified that the acquisition of shares in a competing undertaking might only then constitute an abuse of a dominant position if an effective control or, at least, an influence on its commercial conduct, is exercised afterwards. This judgment accelerated the work on the preparation of Regulation 4064/89. Marek Szydło presents *Ahmed Saeed Flugreisen*<sup>45</sup> as the final judgment included in the section of this book dedicated to the activities of the ECJ until the creation of the CFI. The ECJ explains there three important issues: the relationship between Articles 81 and 82 TEC as provisions that can be applied simultaneously, the definition of a relevant “product market” and the scope of the application of European competition rules in relation to Member States (p. 278). In *Metropole Télévision*<sup>46</sup>

<sup>38</sup> T-30/89 *Hilti AG v Commission of European Communities*, [1991] ECR II-1439, no. 29 in the book.

<sup>39</sup> T-68/89, T-77/89, T-78/89 *Società Italiana Vetro SpA, Fabbrica Pisana SpA, PPG Vernante Pennitalia SpA v Commission of European Communities*, [1992] ECR II-1403, no. 31 in the book.

<sup>40</sup> T-65/89 *BPB Industries Plc, British Gypsum Ltd v Commission of European Communities*, [1992] ECR II-389, no. 32 in the book.

<sup>41</sup> T-228/97 *Irish Sugar plc v Commission of European Communities*, [1999] ECR II-2969, no. 40 in the book.

<sup>42</sup> C-286/95 P, C-396/95 P *Compagnie Maritime Belge Transports SA, Compagnie Maritime Belge SA & Dafra-Lines A/S v Commission of European Communities*, [2000] ECR I-1365, no. 66 in the book.

<sup>43</sup> 322/81 *N.V. Nederlandsche Banden-Industrie Michelin v Commission of European Communities*, [1983] ECR 3461, no. 16 in the book.

<sup>44</sup> 142 and 156/84 *British American Tobacco Company Limited, Reynolds Industries Inc v Commission of European Communities*, [1987] ECR 4487, no. 25 in the book.

<sup>45</sup> 66/86 *Ahmed Saeed Flugreisen, Silver Line Reisebüro GmbH v Centrale zur Bekämpfung unlauteren Wettbewerbs e.V.*, [1989] ECR 803, no. 28 in the book.

<sup>46</sup> T-528/93, T-542/93, T-543/93, T-546/93 *Metropole Télévision SA & Reti Televisive Italiane SpA, Gestevisión Telecinco SA, Antena de Televisión v Commission of European Communities*, [1996] ECR II-649, no. 37 in the book.

(presented by Ewelina D. Sage) discriminatory membership criteria in an association of broadcasters are considered to be anticompetitive. *Michelin II*<sup>47</sup> (presented by Eryk Kosiński) concerns the abuse of a dominant position in the form of price rebates (loyalty rebates and fidelity rebates) that have no objective economic justification and exclude competitors from the market. The same problem is analysed in *British Airways*<sup>48</sup>, commented on by Justyna Majcher, where loyalty rebates are found to infringe Article 82 TEC when they increase loyalty towards the firm offering them, exclude competition by other providers or discriminate among clients. The *Tetra Pak*<sup>49</sup> judgment (presented by Barbara Pęczalska) concerns the existence of associative links between markets whereby their existence can be proof of dominance within the meaning of Article 82.

Among the judgments concerning Article 82 TEC, a series of cases is presented that proves important for the development of the “essential facilities” doctrine in European jurisprudence. The first *ENS* judgment<sup>50</sup>, presented by Agata Jurkowska, does not mention this doctrine directly. *Magill*<sup>51</sup> (discussed by Ewelina D. Sage) clarifies that the essential facilities doctrine can be applied to intellectual property rights (here: copyright). It also clarifies two other issues: it confirms that the European Commission can impose positive obligations on an undertaking abusing its dominant position and it states that, in certain circumstances, competition law can limit intellectual property rights where it leads to the imposition of an obligatory licence. The first direct reference to the essential facilities doctrine appears in the ECJ’s *Oscar Bronner*<sup>52</sup> judgment (presented by Małgorzata Surdek) applied, at least in this case, not to intellectual property rights. In the *IMS*<sup>53</sup> judgment, commented on by Justyna Majcher, the ECJ states that a dominant company might be obliged to grant access to its intellectual property rights to competitors, who wish to enter the same market. It also clarifies that a “refusal of access” constitutes an abuse of a dominant position, which is seen as a confirmation of the existence of the essential facilities doctrine in Community law.

Justyna Majcher comments on 3 judgments concerning the relationship between Article 82 and Article 86 of the TEC. The *Italy v Commission*<sup>54</sup> judgment is the first

---

<sup>47</sup> T-203/01 *Manufacture Française des Pneumatiques Michelin v Commission of European Communities*, [2003] ECR II-4071, no. 49 in the book.

<sup>48</sup> T-219/99 *British Airways v Commission of European Communities*, [2003] ECR II-5917, no. 50 in the book.

<sup>49</sup> C-333/94 P *Tetra Pak International SA v Commission of European Communities*, [1996] ECR I-5951, no. 61 in the book.

<sup>50</sup> T-374/94, T-375/94, T-384/94, T-388/94 *European Night Services & others v Commission of European Communities*, [1998] ECR II-3141, no. 38 in the book.

<sup>51</sup> C-24/91 P, C-242/91 P *Radio Telefis Eireann (RTE) and Independent Television Publications Ltd (ITP) v Commission of European Communities*, [1995] ECR I-743, no. 60 in the book.

<sup>52</sup> C-7/97 *Oscar Bronner GmbH v Mediaprint & others*, [1998] ECR I-7791, no. 64 in the book.

<sup>53</sup> C-418/01 *IMS Health GmbH & Co.OHG v NDC Health GmbH&Co. KG*, [2004] ECR I-5039, no. 72 in the book.

<sup>54</sup> 41/83 *Italy v Commission of European Communities*, [1985] ECR 873, no. 18 in the book.

example of infringing Article 86 TEC by the Commission in its decision against British Telecom for abusing its dominant position. This judgment illustrates that an undertaking that was granted a legal monopoly can also infringe Article 82 TEC. Similarly, in *Bodson*<sup>55</sup> the scope of a state's responsibility under Article 86(1) TEC for infringement of Article 82 is set out. It is further clarified in *Télémarketing*<sup>56</sup> that Article 82 TEC is applicable to undertakings that are dominant on the market because they were granted a legal monopoly. Such companies can abuse their dominant position if they refuse access to a service necessary for other undertakings to act on a neighbouring market. The relationship between Article 82 and Article 86 TEC is further discussed in other judgments including: *Porto di Genova*<sup>57</sup> (discussed by Małgorzata A. Nesterowicz) and *Corbeau*<sup>58</sup> (commented on by Marek Szydło). In *Commission v Holland*<sup>59</sup> (covered by Małgorzata Sz waj and Piotr Skurzyński), the ECJ states that Article 86(2) TEC can justify an infringement of Article 28 and Article 31 TEC. The *Arduino*<sup>60</sup> judgment, presented by Marek Szydło, clarifies the meaning of the "state action" doctrine applied to anticompetitive behaviors of Member States.

Several judgments are of particular importance to mergers. Anna Jurkiewicz presents *Gencor*<sup>61</sup>, which has a 3 fold impact on European competition-related jurisprudence: explaining the territorial scope of the application of the Merger Regulation (previously 4064/89, at present 139/2004), elaborating on the definition of "collective dominance", and dealing with the obligations of the parties to modify the terms of their merger in order to ensure a competitive structure of the market. The same author describes *Kali & Salz*<sup>62</sup>, where it was stated that the "failing firm defense" can be applied under conditions of Regulation 4064/89. This Regulation was also said to be applicable in cases of collective dominance, even though in this very case, the European Commission did not prove its existence.

The scope of the judicial control of merger decisions of the European Commission is fully analysed in the "concentration cases" saga that occurred at the beginning

---

<sup>55</sup> 30/87 *Corinne Bodson v SA Pompes Funèbres des Régions Libérées*, [1988] ECR 2479, no. 26 in the book.

<sup>56</sup> 311/84 *Centre Belge d'Etudes de Marché – Télémarketing (CBEM) v SA Compagnie Luxembourgeoise de Télédiffusion (CLT) & Information Publicité Benelux (IPB)*, [1985] ECR 3261, no. 19 in the book.

<sup>57</sup> C-179/90 *Merci Convenzionali Porto di Genova SpA v Siderurgica Gabrielli SpA*, [1991] ECR I-5889.

<sup>58</sup> C-320/91 *Paul Corbeau*, [1993] ECR I-2533, no. 56 in the book.

<sup>59</sup> C-157/94 *Commission of European Communities v Holland*, [1997] ECR I-5699, no. 62 in the book.

<sup>60</sup> C-35/99 *Criminal proceedings against Manuele Arduino*, [2002] ECR I-1529, no. 68 in the book.

<sup>61</sup> T-102/96 *Gencor Ltd v Commission of European Communities*, [1999] ECR II-753, no. 39 in the book.

<sup>62</sup> C-68/94, C-30/95 *France & Société commerciale des potasses et de l'azote (SCPA), Entreprise minière et chimique (EMC) v Commission of European Communities*, [1998] ECR I-1375, no. 63 in the book.



of the XXI Century. First, Tadeusz Skoczny comments on the *Airtours*<sup>63</sup> judgment, which, for the first time, annulled a decision taken by the European Commission to prohibit a merger. The most important finding of this judgment is the abolition of the presumption that the creation of collective dominance would automatically lead to anticompetitive effects on the relevant market. Further, Marcin Wnukowski comments on the T-77/02 *Schneider Electric*<sup>64</sup> judgment, complementary to the T-310/01 *Schneider*<sup>65</sup> judgment, presented by Małgorzata Grzelak. As the last in the concentration saga, the two *Tetra Laval*<sup>66</sup> judgments are commented on by Barbara Pęczalska. In all these judgments, the European Commission's decisions were annulled by the CFI due to insufficient economic analysis.

The support for the creation of the common market is not emphasised in the commented judgments. Only *Volkswagen*<sup>67</sup> (commented by Rafał Poździk) is concerned with the question of hindering parallel import as an infringement of Article 81(1) TEC.

The setting of procedural rules to be applied in competition-related proceedings appears in most of the presented judgments. The only case which sets out procedural rules as a whole is the *Camera Care*<sup>68</sup> order (commented on by Marek Sachajko). In this case there are important indications given as to the conditions of taking interim measures by the Commission. The procedural guarantees in proceedings before the European Commission are considered in several judgments of the CFI. Robert Gago comments on the monumental *Cimenteries CB*<sup>69</sup> judgment (consisting of 5134 points) exploring its importance for the definition of "concerted practices" and the method of proving them. Also clarified in this judgment is the scope of procedural guarantees available to the parties of administrative proceedings taking place before the Commission. More specifically, Karolina Gacka presents *Schöller*<sup>70</sup> - a judgment

---

<sup>63</sup> T-342/99 *Airtours plc v Commission of European Communities*, [2002] ECR II-2585, no. 43 in the book.

<sup>64</sup> T-77/02 *Schneider Electric S.A. v Commission of European Communities*, [2002] ECR II-4201, no. 44 in the book.

<sup>65</sup> T-310/01 *Schneider Electric S.A. v Commission of European Communities*, [2002] ECR II-4071, no. 45 in the book.

<sup>66</sup> T-5/02 *Tetra Laval BV v Commission of European Communities*, [2002] ECR II-4381, no. 46 in the book, and T-80/02 *Tetra Laval BV v Commission of European Communities*, [2002] ECR II-4071 *v Commission of European Communities*, [2002] ECR II-4519, no. 47 in the book.

<sup>67</sup> T-62/98 *Volkswagen AG v Commission of European Communities*, [2000] ECR II-3453, no. 42 in the book.

<sup>68</sup> 792/79 R *Camera Care Ltd v Commission of European Communities*, [1980] ECR 119, no. 13 in the book.

<sup>69</sup> T-25-26/95, 30-32/95, 34-39/95, 42-46/95, 48/95, 50-65/95, 68-71/95, 87-88/95, 103-104/95 *Cimenteries CB & others v Commission of European Communities*, [2000] ECR II-491, no. 47 in the book.

<sup>70</sup> T-9/93 *Schöller Lebensmittel GmbH & Co v Commission of European Communities*, [1995] ECR II-1611, no. 35 in the book.

explaining the character of “comfort letters” (it also touches upon the question of defining the market and an “influence on competition”).

*Rendo*<sup>71</sup>, presented by Marek Kolasiński, explains the scope of the European Commission’s competence as far as the opening and continuation of its proceedings is concerned. The Commission is never obliged to issue a decision but it is obliged to justify the choice it made. This case also explains the possibility of applying Article 86(2) TEC in cases concerning electricity markets. Further, Małgorzata A. Nesterowicz comments on the *Atlantic Container Line*<sup>72</sup> judgment where the standard of legal protection of undertakings (right to be heard, rights of the defense) in competition law proceedings is set. *PCV I*<sup>73</sup> (commented on by Robert Gago) is also an important judgment of the ECJ on procedural guarantees concerning the European Commission’s activities, first and foremost, as far as the question of defining a “non-existent” Community act is concerned.

In their selection and presentation of European jurisprudence on EC competition law, the editors have certainly covered the most important and well known milestones of European jurisprudence on competition law. The scope of the work is monumental, and yet, considering the chosen form of the presentation, it manages to deliver a comprehensive analysis of most of the key issues relating to the application of European competition law. One critical, even though marginal, remark can be made as far as the title of the book and its further content are concerned. Namely the title of the book relates to the year 1964, the editors in the introduction and in the title of the first part indicate the year 1962 (with the very first judgment of the ECJ in competition-related matters) and the factual date of the first judgment is 1966. However this inconsequence does not in any way influence the merits of the presentation.

The book edited by Tadeusz Skoczny and Agata Jurkowska is the first study of existing jurisprudence of the EC Courts in the field of European competition law on the Polish market that has such an extensive scope. It will prove very useful to both academics and practitioners for several reasons: granting a reliable translation of the most important judgments in competition-related matters, emphasizing the key findings of those judgments for European competition law, and giving a coherent and comprehensive review of the main views presented on those judgments by West European authors.

**Dr. Krystyna Kowalik-Bańczyk**

Competition Law Chair, Institute of Legal Studies  
Polish Academy of Sciences

---

<sup>71</sup> T-16/91 *Rendo NV, Centraal Overijsselse Nutsbedrijven NV & Regional Energiebedrijf Salland NV v Commission of European Communities*, [1996] ECR II-1827, no. 36 in the book.

<sup>72</sup> T-191/98, T-212-214/98 *Atlantic Container Line AB & others v Commission of European Communities*, [2003] ECR II-3275, no. 48 in the book.

<sup>73</sup> C-137/92 *Commission of European Communities v BASF AG & others*, [1994] ECR I-2555, no. 59 in the book.