

5th Polish-Portuguese PhD Students' Conference on Competition Law. Białystok (Poland), 14 October 2016

The 5th Polish-Portuguese PhD Students' Conference took place on 14 October 2016 in Białystok, Poland. The conference focused on private enforcement of competition law and combating unfair competition in Portugal and Poland. It was organized by the Department of Public Economic Law at the Law Faculty of the University of Białystok. The conference was the result of on-going fruitful cooperation between the latter and the Católica Porto Law School, Catholic University of Portugal. The international character of the conference provided an excellent opportunity for Portuguese and Polish PhD students to exchange opinions on issues related to competition law in particular.

Prof. Anna Piszcz (University of Białystok) opened the conference and welcomed a number of guests including: Prof. Miguel Sousa Ferro (Law School, University of Lisbon), Prof. Agata Jurkowska-Gomułka (Chair of Administrative Law, University of Information Technology and Management, Rzeszów) and Prof. Dusan V. Popovic (Faculty of Law, University of Belgrade). Prof. Piszcz presented subsequently the assumptions and scope of the conference.

The first session was chaired by Prof. Piszcz. Prof. Miguel Sousa Ferro took the floor first with a presentation entitled "Directive 2014/104/EU: Portuguese precedents and transposition". He started his speech by describing the concept of private enforcement in Portugal. The speaker also presented statistics, history, examples of success, examples of failures and leading pending cases referring to the antitrust private enforcement in his country. The second part of the presentation was devoted to the transposition of Directive 2014/104/EU in Portugal. Prof. Sousa Ferro presented the legislative procedure of the transposition the Directive into Portuguese legal system. Furthermore, he discussed the most relevant options relating to this issue. He also highlighted problems with binding effect (non-rebuttable presumption) of *res judicata* national decisions and binding effect of *res judicata* decisions of other Member States.

Prof. Anna Piszcz spoke next presenting a paper entitled "Polish transposition of Directive 2014/104/EU: The state of play". In the first part of her presentation, the speaker analysed Polish legal background for the private antitrust enforcement (hereafter, PAE). She also indicated difficulties for research on PAE in Poland. The second part of the presentation was devoted to Polish calendar of implementation works. In the last part of the speech, Prof. Piszcz presented the most probable content of the Polish legal provisions implementing Directive 2014/104/EU.

Prof. Agata Jurkowska-Gomułka gave the third paper entitled “Too much privatization: Does the Polish competition authority still protect competition in public interest?”. Her speech centred on determining reasonable and objective justification of competition authorities’ interventions in single cases. The speaker also deliberated over the practical applicability of Article 31a of the Act of 16 February 2007 on Competition and Consumer Protection. In the second part of the presentation, Prof. Jurkowska-Gomułka discussed the fact that in some cases President of the Office of Competition and Consumer Protection has to find balance between protecting conflicting interests.

Prof. Dusan V. Popovic presented the last paper of the first session entitled “The importance of unfair competition rules for owners IP rights”. He started his speech by comparing unfair competition rules to IP rules. The speaker also described types of unfair competition protection. Moreover, Prof. Popovic indicated the most important unfair competition rules for owners of IP rights. Afterwards, the author presented formal recognition of the importance of unfair competition rules for owners of IP rights and discussed their practical importance.

The first session ended with a panel discussion where the participants of the conference discussed legislative proposals and the role of national competition authorities. The discussion was followed by PhD students’ session. Second part of the conference was moderated by Prof. Miguel Sousa Ferro.

Nuno Sousa e Silva (Católica Porto Law School, Catholic University of Portugal) gave first presentation entitled “The interplay of unfair competition and antitrust”. He discussed the problem stemming from interdependent aims and overlapping areas of application of the rules on combating unfair practices in competition and the rules against practices that restrict competition in a given market. The speaker raised the issue of legislators struggle to draw a line between unfair competition and antitrust and what qualifies conduct as anticompetitive or unfair.

Magdalena Knapp (University of Białystok) discussed the status of entrepreneur who’s seeking legal protection against unfair practices of his competitor in presentation “Polish model of legal protection against unfair competition in B2B relations”. She focused on legal instruments that entrepreneurs are equipped with to protect their interests. Speaker described types of sanctions that Polish law provide for: civil, criminal and administrative. She pointed out that administrative sanctions are limited to situations in which collective consumer interests are threatened. The current model of protection is based on private enforcement scheme therefore the success of unfair competition law depends largely on how courts rule in individual cases.

Next speaker, Paulina Korycińska-Rządca (University of Białystok) presented the paper entitled “Disclosure of evidence in Damages Directive: A chance to reduce information asymmetry between victim and infringer?”. She discussed the issue of burden of proof in private enforcement proceedings and whether Directive 2014/104/EU provide for efficient tools enabling victims to obtain evidence vital to facilitate private enforcement. Speaker outlined and analysed the main concerns related to new measures introduced by the Directive such as absolute protection of self-incriminating statements and temporary limitations on the disclosure of evidence.

Next presentation entitled “Practical implications of introducing a binding effect of competition authorities’ final decisions: Polish perspective” was delivered jointly by Teresa Kaczyńska (University of Białystok) and Joanna Lenart (Allen & Overy in Warsaw). Speakers presented rationale behind Art. 9 of Directive 2014/104/EU and proposals for the implementation of the Directive. Presentation focused on effects the transposition of the Directive would have on final decisions issued by Polish Competition Authority.

Second session of conference concluded with debate and comments regarding presentations delivered by PhD students. The conference allowed for the exchange and analysis of international experiences on private enforcement of competition law and unfair practices issues. The conference is one of the many to come in series of international conferences organised by Department of Public Economic Law at the Law Faculty of the University of Białystok. The next meeting is announced to take place in spring 2017.

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