

**Anna Fornalczyk, *Biznes a ochrona konkurencji*
[*Business and the protection of competition*],
Oficyna a Wolters Kluwer business, Kraków 2007, 220 p.**

One of the most interesting experiences a researcher can have is reading a book that deals with his or her academic discipline but from a completely different perspective. I had such an experience while reading the book of Prof. Anna Fornalczyk entitled “Business and the protection of competition”.

The book examines the issue of a company’s strategy from the perspective of the economic and legal protection of competition rather than purely from the classic perspective of management. For a specialist in the area of strategic management, as well as for a company’s manager, thinking about strategy starts with thinking about building a temporal monopoly – such is the meaning of the concept of competitive advantage – that allows the capture of additional (Ricardian) rent on a market. For a specialist in the field of economics, temporal monopoly means a *de facto* social loss and a reduction of the economic efficiency of the allocation of resources. In addition, for a specialist in the field of antitrust law (known today, with a touch of political correctness, as the law on competition and consumer protection) the construction of a temporal monopoly is exactly what should be forbidden, or at least strictly supervised, in the interest of social progress and justice.

It should be stressed that this strong conflict of interests exists but was in recent years frequently disregarded due to the belief in the beneficial effects of self-regulation of the market. Recently, because of the economic crisis it is clearly understood that the mechanism of the market is inefficient and morally indifferent. Managers striving to achieve the objectives set out by their shareholders (maximisation of economic value and profits in a relatively short period of time) often take actions that are very risky and could have traumatic economic, social and political consequences. Confidence in corporate social responsibility and rational behavior of managers (in the case of the current crisis mostly, but not exclusively, of managers in the financial sector) has proven to be a very naïve, if not irresponsible, belief. That is why both the marketplace and the behaviors of managers must be subjected to control and regulation. This extremely topical issue is the subject matter of Prof. Fornalczyk’s book. For me, as a researcher in the field of strategic management, the biggest advantage of this book is an analysis that shows in subsequent chapters how carefully the decisions and actions of large (dominant in their markets) companies must be shaped, as part of the process

of strategy development and implementation via pricing policies, strategic alliances, mergers and acquisitions, in order to avoid infringing antitrust laws.

The starting point for the author's analysis is the problem of strategy development seen from the legal and economic perspectives of competition protection. From the perspective of strategic management, a key element of formulating a strategy is to gain a competitive advantage. The author shows however, that from the perspective of competition and consumers the key issue lies in the correct definition of the firm's relevant market, because only proper market definition allows the company to legally assess its strategic position as well as the far-reaching legal consequences of that position.

The discussion of various Polish and European cases shows that this is not a trivial problem. All the required elements which are relevant to the competitive relationship must be analysed – from the utilitarian features of products and their use by buyers, the geographic and temporal dimension of the market, through demand and product substitutability, methods of sale, and the value chains of specific companies. On the one hand, each of these elements is an instrument of strategic management and can be used to gain a competitive advantage. On the other hand, the author shows that each of these elements can create barriers to entry and exit for current and potential competitors in the relevant market. As a result, it can be a key subject-matter of legal proceedings for the assessment of the degree of oligopolisation or monopolisation of the market.

The second chapter deals with the problem of abuse of market dominance by companies. It provides an overview and an analysis of the economic and legal criteria for dominance illustrated by examples of anti-monopolistic proceedings against Microsoft, United Brands Company, Telekomunikacja Polska (Polish Telecom), Tetra Pak, and examples from the pharmaceutical and chemical industries. The most interesting part of this chapter is a discussion of pricing practices of dominant firms used as an instrument for building high barriers to entry or creating high switching costs for customers. The author discusses different pricing policies from excessive prices, to predatory (abnormally low) and discriminatory prices. The strength of this chapter lies in the analysis of the diversity of possible price tactics of dominant companies, but I missed an analysis of the complex context of pricing decisions, which the author mentions only in passing, stating that “in practice, there may be a conflict between the business premises and the laws of competition” (p. 79). In practice, however, large companies always face a conflict because they must, and should, carry out their obligations towards their shareholders, suppliers and loyal customers on the one hand, which are often at odds with the expectations of market regulators, on the other hand.

The third chapter describes and analyses the issue of open and tacit agreements among enterprises – cartels (horizontal agreements between competitors) as well as distribution, price and wider-ranging strategic alliances. This chapter is also richly illustrated with examples of anti-trust proceedings and the rationale behind their final resolutions. An almost comical element of this chapter is the example of four Polish companies dealing with outdoor advertising services which intended to create

a cartel, and restrict the supply and demand governing prices for their services, but have stated their collusive intentions in a public press conference! This example shows how minimal is the actual state of knowledge among many managers (and consultants) concerning the complex rules of competition protection.

The fourth chapter examines the transactions of mergers and acquisitions, which are the daily bread of strategic management and represent the fastest, but also the most risky path of growth. The strategic management and finance field looks at the risks associated with such transactions primarily from the perspective of the potential increase of transaction costs of management, lack of synergies and poor implementation that can reduce the value of the company. The risks, which the author of the book examines, concern mainly conflicts with antitrust law, but – to my surprise – they are relatively rare in the European Union. While thousands of takeovers and mergers took place in the EC in the period from 1990 to 2006, the European Commission has issued only 19 decisions blocking a scrutinised transaction and 77 conditional approvals (p. 154). To me, this fact indicates two things. First, it shows the limited impact of those transactions on the real concentration of the European markets. Second, it shows that the European Commission takes a very balanced stance in relation to blocking mergers and acquisitions. Prof. Fornalczyk stresses this second aspect and shows the evolution of the legal treatment of mergers and acquisitions – a transition from thinking in terms of dominance, measured by market share – towards thinking in terms of real and potential benefits and losses of other market players, resulting primarily from the restrictions of competition by creating additional barriers to entry or stifling innovation.

The final chapter discusses the protection of competition in Poland, the evolution of legislation after 1989 and the functioning of the Anti-Monopoly Office renamed in 1996 as the Office of Competition and Consumer Protection (UOKiK). This is in my opinion the weakest chapter of the book since it provides only an overview of the powers of UOKiK and its president, and a specific list of activities during this period. However, taking into account that the author was the President of this Office during the period from 1990 to 1995, a thorough diagnosis of the entire process of creating a pragmatic competition law, the analysis of the successes as well as failures of this process and the application of the law could be expected. We also expected a thorough analysis of the Polish case law that would be very informative and useful considering that the publicly available information published by UOKiK are so general that they are of limited usefulness for practitioners of management in Poland. However, while in the earlier chapters the author often analyses particular cases (including Polish), this chapter lacks such an analysis which makes it more descriptive and less interesting.

To sum up, the review of Prof. Fornalczyk's book is very positive. The author directs her book to managers, consultants and specialists in the field of the theory of organisation and management. This book will be very interesting and instructive for them seeing as it contains an analysis of a variety of restrictions placed on the process of strategy building resulting from the law on the protection of competition. The analysis is richly illustrated with case studies. However, I do not agree with the author's statement in the introduction that the strategy of Polish companies "is

developed and implemented on the basis of the general knowledge and the intuition of managers, without analysis of opportunity and transaction costs, and optimisation of the scope and scale of operations” (p. 10). My experience suggests that Polish managers generally show a high degree of professionalism and a wide use of analytical methods in strategy development, especially in the case of large companies. Clearly however, even experienced managers relatively rarely take into account the legal aspects of the process of strategy development and the possible counter-productive consequences of a successful implementation of a strategy aiming at market domination.

This issue constitutes a real problem for a relatively limited number of Polish companies so far (classic examples include the Polish Telecom Group and Orlen SA) due to the relatively small scale of operations of Polish companies that are very far away from a dominant position on their respective relevant markets. The legal considerations of strategy development and implementation that Prof. Fornalczyk addresses in her book will become increasingly important with the inevitable process of concentration of Polish markets.

Prof. Dr. Krzysztof Oblój

Chair of Strategic Management

Faculty of Management, University of Warsaw