

CARS Activity Report 2011

1. General information

In the fifth year of its activities CARS focused on the pursuit of a number of goals set in its founding documents. It was a particularly busy year for its Publishing Programme which saw the issue of 6 separate titles: two monographs, an English-language textbook, a collective works and two volumes of the ‘Yearbook of Antitrust and Regulatory Studies’ [a special edition vol. 4(4) and the yearly vol. 4(5)]. 2011 was also a very active period for the CARS Open PhD Seminar series with four meetings taking place throughout the year. Several CARS members engaged also in the second edition of a research project dedicated to regulatory and antitrust aspects of airport activities (first phase of the project completed in 2010).

2. Open PhD Seminar

2.1. Procedural fairness in proceedings before the competition authority – identified problems

The tenth meeting of the CARS Open PhD Seminar took place on 24 January 2011 and focused on the question if procedural fairness is respected to a satisfactory degree in the proceedings held before Polish and EU competition authorities. Maciej Bernatt, a PhD candidate at the Jean Monnet Chair on European Economic Law, gave an introductory speech based on the results of his individual research concerning this field. The speaker focused on guarantees of procedural fairness including the right to be heard, right to equal participation, right of defense, right to protect business secrets and other confidential information, right to a court review and judicial control of the proceedings before the competition authority.

2.2. Patent pools and competition law

The eleventh seminar concerned antitrust assessment of patent pools and was held on 9 May 2011. An introductory speech was delivered by Dr Rafał Sikorski from the Chair of European Law at the Faculty of Law and Administration, Adam Mickiewicz University in Poznan. His presentation was commented on by Dr Dawid Miasik (researcher at the Institute of Law Studies of the Polish Academy of Sciences).

Following contributions focused on the relation between competition law and competition authorities and the costs and gains (for competition) resulting from the activities of patent pools. The discussion was accompanied by the presentation of a number of European and US case studies.

2.3. Evaluation of the competitiveness of telecoms markets for regulatory purposes

The twelfth meeting of the CARS Open PhD Seminar was held on 3 November 2011 and concerned the process of evaluating the competitiveness of telecoms markets. The speaker, Ewa Kwiatkowska, presented the key thesis of her PhD dissertation concerning this research field. In her view, despite many disparities in antitrust protection and sector-specific regulation, it is possible to identify a set of common rules in their decision making process as well as in the preceding market evaluation process. Although the instruments used for antitrust and regulatory evaluation are different, both types of proceedings consider a similar stage of evaluating competitiveness.

2.4. Exchange of information between competitors from the point of view of regulators: between pro-competitive cooperation and anti-competitive coordination

The last seminar of 2011 was held on 7 December. Antoni Bolecki, a PhD candidate from the Faculty of Management, University of Warsaw, presented here the key arguments of his PhD dissertation dedicated to antitrust aspects of horizontal information exchange. One of the problems discussed during the seminar was how elements such as: form, features or set up of information exchanged and market structure, determine the anti- or pro-competitive nature of information exchange. The speaker emphasized the interdependencies between information exchange in vertical relations and a potential impact on competition of horizontal information exchange.

3. Publications

3.1. 'Yearbook of Antitrust and Regulatory Studies' (YARS)

A special edition of YARS [vol. 4(4)] was published in May 2011 dedicated to antitrust problems and sector specific regulation in the energy market. The next regular volume of YARS [vol. 4(5)] was published in December 2011. YARS vol. 4(4) contains, among others: a preface by Prof. Jerzy Buzek, the President of the European Parliament, two guest articles and nine 'ordinary' scientific papers, two case comments to judgments of the Polish Supreme Court, a book review on national energy monopolies and a list of legislation, sectorial regulation and competition protection cases concerning energy markets between 2007-2010.

The 2011 regular volume of YARS [vol.4(5)] contains: seven scientific papers on legal and economic aspects of antitrust protection and sector specific regulation in Poland, legislation reviews concerning competition protection and sector specific

regulation in regulated sectors (telecoms, energy, rail transport, air transport, postal services), case comments to a number of important court judgments and a key decision of the UOKiK President, book reviews, conference reports and a bibliography (Polish publications of 2010 dedicated to competition and sector specific regulation).

**3.2. *'Airports services in the European Union and in Poland II – selected problems'*
(ISBN: 978-83-61276-78-4)**

The sixth title of the CARS Publishing Programme is a collective work edited by Prof. Tadeusz Skoczny and Filip Czernicki concerning airport services. The publication was created on the basis of a number of reports prepared by researchers from the Faculty of Management, University of Warsaw, and professionals from the 'Polish Airports' State Enterprise, within the second edition of a research project concerning this issue completed in 2011 (first edition completed in 2010). The resulting book consists of six chapters focusing on: assumptions and results of the project (chapter 1); current jurisprudential and case-law problems relating to the functioning of airports in the EU and Poland (chapter 2); regulatory requirements for airport services provision in the EU and Poland concerning airport infrastructure access and airports fees (chapter 3); regulatory requirements for security of airport operations (chapter 4); regulatory requirements for airport safety (chapter 5) and; comparative analysis of efficiencies of selected airports in the EU (chapter 6).

This publication is addressed to those involved in airport management, enterprises providing airport and air transport services, employees of public administration related to airport travel as well as researchers and students interested in competition protection and sector specific regulation.

3.3. *'Broadband networks in telecommunication policy'* (ISBN: 978-83-61276-67-8)

The seventh title of the CARS Publishing Programme is a monograph by Prof. Stanisław Piątek dedicated to problems associated with access to broadband networks from the perspective of formulating and implementing telecoms policy. The book focuses on the influence exercised by public institutions on the development of broadband communications. The author analysis two aspects of telecoms policy within broadband networks: institutional aspect and regulatory aspect whereby the latter concern the decision-making process of public institutions as far as defining the conditions of conducting telecoms activities in cases of market failure.

**3.4. *'Procedural fairness in the proceedings before the competition authority'*
(ISBN: 978-83-61276-76-0)**

The eight title of the CARS Publishing Programme is a monograph by Dr Maciej Bernatt dedicated to problems surrounding the need to respect procedural fairness in proceeding before the Polish and the EU competition authority. The book tackles

the question whether existing procedural institutions are capable of guaranteeing an appropriate level of protection of key values of procedural fairness. The author examines if the identified values correspond with appropriate guarantees, that is, procedural rights of participants of antitrust proceedings and the duties of the competition authority conducting the proceedings as well as the duties of the courts reviewing the activities of that authority. Competition procedure is analyzed from the perspective of distinguished guarantees of procedural fairness covering: the right to be heard, the right to equal participation in proceedings; the right of defense; the right to protect business secrets and other confidential information and; the right to judicial review and judicial control over administrative proceedings.

3.5. *‘European Audiovisual Sector: Where business meets society’s needs’*
(ISBN: 978-83-61276-77-7)

The ninth title published by the CARS Publishing Programme is also its first English-language book directed at both Polish as well as foreign readers. The textbook by Ewelina D. Sage, D.Phil., offers a comprehensive overview of the various efforts undertaken by the EU in order to facilitate an inclusive, safe, and efficient European Audiovisual Sector. The textbook is primarily addressed to international business and journalism students in line with the cross-border nature of the topic. The book covers: diverse socio-economic goals pursued by the EU in the audiovisual sector; EU actions meant to strengthen the overall economic basis of the internal market and; EU efforts undertaken in order to ensure the continuing competitiveness of its audiovisual sphere. Discussed in particular are the Audiovisual Media Services Directive and its relationship to the legislation of individual Member States as well as EU support schemes (such as the MEDIA programme) made available in this field. Also covered is the impact on the internal development of the sector and the formulation of business practices exercised by the European Commission through the individual application of state aid provisions and competition law rules.

4. Research

A group of researchers associated with CARS completed in 2011, in close co-operation with the ‘Polish Airports’ State Enterprise, a major research project entitled ‘Airports services in the European Union and Poland II – selected problems’. The project was designed as a continuation of an extensive research effort undertaken in 2009 and summed up in a collective work published in 2010 under the title ‘Airports services in the European Union and Poland – competition law and airports regulations’ (fifth title of the CARS Publishing Programme). The research team engaged in the second edition consisted once again of researchers from the Faculty of Management, University of Warsaw, and a number of professionals from the ‘Polish Airports’ State Enterprise. Representatives of the Polish Air Navigation Services Agency were also involved.

Two topics considered in the 2011 project build on the research efforts of 2009: application of EU and national competition rules to airports and regulatory conditions for providing airports services. Completely new issues covered by the 2011 research project covered: regulatory requirements for providing security of airport operations; regulatory requirements for ensuring airport safety and; a comparative analysis of efficiencies of selected European airports (Warsaw, Budapest, Prague, Copenhagen, Vienna and Zurich). The results of the project were published in a book form entitled 'Airports services in the European Union and Poland II – selected problems' edited by Prof. Tadeusz Skoczny and Filip Czernicki (see point 3.2. above).

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