

CARS Activity Report 2012

1. General information

In the sixth year of its activities, CARS focused once again on the pursuit of key scientific goals specified in its founding documents. The first CARS Award for an outstanding books on legal and economic aspects of competition protection was granted in 2012 to Professor Marek Szydło, University of Wrocław (sponsored by PKO BP).

2012 was especially active in the publishing field. CARS started to issue a new journal: ‘internet Quarterly on Antitrust and Regulation’ (*‘internetowy Kwartalnik Antymonopolowo-Regulacyjny’* – iKAR). It published at the same time two separate volumes of the ‘Yearbook of Antitrust and Regulatory Studies’: a special edition, vol. 5(6) and a regular volume, vol. 5(7). The CARS Publishing Series, Antitrust and Regulatory Monographs and Textbooks, was expanded by another publication also.

Two CARS Open PhD Seminar meetings took place in 2012 as well as two scientific seminars. CARS co-organized also a conference in conjunction with the Institute of Law Studies of the Polish Academy of Sciences.

Importantly also, CARS participated in 2012 in public consultations announced by the Polish Competition Authority on a draft amendment to the current Competition Act as well as in public consultations announced by the European Commission concerning General Block Exemption Regulation on State Aid Measures.

2. Open PhD Seminar

2.1. *Judicial review of decisions issued by the President of the Polish Office of Electronic Communications*

The fourteenth meeting of the CARS Open PhD Seminar was held on 18 September 2012. The opening speech was delivered by Mateusz Chołodecki, PhD candidate (Faculty of Law, Adam Mickiewicz University in Poznań) and commented on by Professor Stanisław Piątek (Faculty of Management, University of Warsaw). The focus of the seminar was on the dual character of the juridical review model applicable to regulatory decisions of the Polish Telecoms regulator (President of the Office of Electronic Communications) – depending on the type of decision issued, judicial control is exercised by administrative courts or by the Court of Competition and Consumer Protection. The key speaker outlined the legal basis of both forms of

juridical review, their similarities and differences as well as the varied consequences resulting from the two models. Different types of regulatory decisions were analyzed in light of the judicial control model applicable.

2.2. Leniency as an instrument for combatting anti-competitive agreements in the Polish system of competition protection

The fifteenth meeting of the Open PhD Seminar, held on 10 October 2012, was dedicated to practical problems associated with the use of leniency in the Polish competition protection system. Dr. Bartosz Turno (law firm WKB, Wierciński, Kwieciński, Baehr) presented the results of his extensive research in this field outlining, most importantly, the foundations of an 'optimal' leniency programme that he formulated for application in Poland. Particular elements of the model were defined within the legislative sphere, application practice and antitrust policy. A key part of the analysis of the proposed model was devoted to a critical appraisal of past experiences with the use of leniency for competition protection in Poland.

3. Publications

3.1. Yearbook of Antitrust and Regulatory Studies (YARS)

A special volume of YARS [vol. 5(6)] was published in April 2012 followed by a regular volume [vol. 5(7)] in December 2012.

The special volume focused on the protection of entrepreneurs' rights in antitrust proceeding before Polish and EU antitrust authorities. The periodical contains twelve articles based on papers delivered during a conference co-organized in April 2012 by CARS and the Institute of Law Studies of the Polish Academy of Science. The volume contained also two case comments (one of them referring to a merger prohibition issued by the Polish Competition Authority), a book review and Polish bibliography on antitrust procedure.

The 2012 regular volume of YARS was the first to contain articles submitted not only by Polish authors, but also by specialists from other Central European countries (Croatia and Slovakia). YARS 2012, vol. 5(7) contains six articles, seven legislative and jurisprudential reviews on antitrust and sector-specific regulation (among them an exhaustive review of ECJ judgments in competition cases), three case comments and three book reviews, CARS annual activity report 2011 and a bibliography of Polish publications on antitrust and sector-specific regulation.

3.2. internetowy Kwartalnik Antymonopolowy i Regulacyjny (iKAR) [internet Quarterly on Antitrust and Regulation]

CARS started publishing a completely new e-periodical in 2012 – iKAR – which is available at <http://www.ikar.wz.uw.edu.pl>. The basic (reference) version of the journal is electronic in nature, paper copies play a marketing role only. iKAR (acronym

for *internetowy Kwartalnik Antymonopolowy i Regulacyjny*) is open to both legal and economic publications as well as papers bordering on either/both of these areas as well as on management or even technical disciplines. iKAR's two basic fields of interest are: (1) antitrust (including restrictive practices and merger control) and (2) sector-specific regulation. The second area was initially limited to infrastructure sectors only, but with the development of the periodical it now also covers other sectors (such as audiovisual and financial services) or related areas (e.g. state aid, consumer protection, relationships between competition and IPRs etc.). iKAR contains both full articles and smaller texts such as case comments or book reviews, related to Polish, European and global problems.

Six volumes of iKAR were published in 2012, two of them [vol. 5(1) and 6(1)] are dedicated to telecommunications.

3.3. 'Special clearances in the law on merger control' (ISBN: 978-83-61276-99-9)

The tenth monograph published in the CARS 'Textbooks and Monograph' series written by Professor Tadeusz Skoczny is devoted to the key element of pre-emptive merger control – the material and formal legal basis for the issue of special clearances. The analysis is centered on the theoretical concept of 'special' clearances for the issue of which it is not sufficient to establish that a notified merger is not likely to lead to a significant impediment of competition (as is the case for ordinary clearances) or to clearances that must be issued despite the fact that the notified operation will in fact lead to a significant impediment of competition and thus should be prohibited. The analysis covers 3 types of special clearances: exceptional clearances issued when a prohibitive decision is inappropriate due to the fact that the expected significant impediment of competition will occur even if the merger is prohibited; extraordinary clearances for anti-competitive mergers that must be permitted for public policy reasons other than competition protection; and finally conditional clearances issued in order to avoid a prohibitive decision in situations when the parties modify their operations so as to eliminate the expected impediment of competition. The Author proves that special clearances, and in particular conditional clearances, should be seen as a preferred option before prohibitive decisions.

4. Conferences and seminars

4.1. *Entrepreneurs' rights in antitrust proceeding*

A conference held on 23 June 2012 was co-organized by CARS and the Institute of Law Studies of the Polish Academy of Sciences and financed from the Foundation for Polish Science programme Pomost/Powroty/2010-1/1/NQC.

The conference focused on the discussion of entrepreneurs' rights in national and European antitrust proceedings. Participants debated over such problems as: legal character of antitrust proceedings; applying the European Convention on Human Rights in antitrust cases; particular rights and guarantees for entrepreneurs that are a

'party' to antitrust proceedings (access to the file, right to fair hearing, etc.); juridical control of decisions issued by competition authorities as a tool for the formulation of standards for the activities of the competition bodies concerned etc.

A set of articles based on the specific papers presented during the conference were published in YARS 2012, vol. 5(6) [see point 3.1. above].

4.2. Safety/security and effectiveness of airports

A seminar co-organized by CARS and the State Enterprise 'Polish Airports' (PPL) was held on 24 May 2012. It was a platform for the presentation of the results of a major research project entitled 'Airport services in the European Union and Poland – selected problems'. These results were published in a book (under the same title) included in the CARS Publishing Series, Antitrust and Regulatory Monographs and Textbooks.

Papers were delivered by researchers from the Faculty of Management, University of Warsaw as well as by Professor Anna Fornalczyk (Technical University of Lodz), Krzysztof Banaszek (President of Polish Air Navigation Services Agency) and Filip Czernicki (PPL). Speakers focused on safety of air traffic, personal control at airports as well as building a business strategy for airports. The benchmarking of selected airports located in the EU was also presented.

4.3. Juridical control model applicable to antitrust and regulatory cases

A conference organized by CARS on 4 July 2012 gathered academics and practitioners interested in the problems surrounding juridical control of decisions issued by the Polish Competition Authority (President of the Office of Competition and Consumer Protection) and other regulatory authorities. Panelists participating in the debate included: Professor Zbigniew Kmiecik (judge of the Supreme Administrative Court), Professor Stanisław Piątek (Chair of Legal Problems of Administration and Management, Faculty of Management, University of Warsaw), Professor Tadeusz Skoczny (CARS), Professor Karol Weitz (member of the civil law codification commission) and Professor Andrzej Wróbel (judge of the Constitutional Tribunal).

Participants discussed problems such as: constitutional and European Convention-based requirements for juridical control of administrative proceedings; full and specialized jurisdiction of courts in cases related to the control of administrative proceedings in competition and regulatory cases in the current model; juridical control of proceeding before the European Commission; juridical control of proceedings in antitrust and regulatory cases from the perspective of administrative courts and legislation.

5. Consulting

In May 2012, CARS presented its expert opinion on the draft amendment to the current Polish Competition Act prepared by the Polish Competition Authority (President of the Office of Competition and Consumer Protection). The opinion was

jointly written by a Working Group, founded by CARS, consisting of academics and practitioners active in this field. The opinion extended beyond merely commenting on the amendments proposed by the Competition Authority. Contained therein were also alternative ideas for potentially more desirable legislative solutions. The full paper is available on the CARS website (http://www.cars.wz.uw.edu.pl/tresc/doradztwo/06/Opinia_GR_CARS-fin.pdf) and became the starting point for a wider discussion on the proposed draft that continued in iKAR (internet Quarterly on Antitrust and Regulation).

In September 2012, CARS submitted also to the European Commission a Questionnaire providing its comments on the application of a General Block Exemption Regulation ('GBER') exempting state aid programmers/projects from the mandatory notification duty set in Article 108(3) TFEU. The submitted comments were part of the 2013 GBER review. The opinion prepared by the CARS Working Group chaired by Dr. Łukasz Grzejdziak (Faculty of Law and Administration, University of Lodz) is available on the CARS website (http://www.cars.wz.uw.edu.pl/tresc/doradztwo/07/gber_questionnaire_pl_CARS_final.pdf).

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