



First National Consumer Conference Katowice (Poland), 9–10 May 2016

The National Consumer Conference took place on 9-10 May 2016 in Katowice. It was organized by the Department of Law of the University of Economics in Katowice in collaboration with CARS (Faculty of Management, University of Warsaw) and TAURON Sprzedaż. It was the first nation-wide meeting in Katowice which gathered a large group speakers and a large audience from the world of academia, practicing lawyers, economists, employees of the Polish Competition Authority (UOKiK) as well as representatives of the business world. The subject of the conference's deliberations, panel discussions as well as foyer conversations concerned latest legal developments related to consumer protection with particular emphasis on the electricity sector.

The opening ceremony included speeches by Professor Leszek Żabiński (Rector Economic University in Katowice), Professor Robert Tomanek (Rector-Elect Economic University in Katowice), Mr Adam Jasser (President of UOKiK), Grzegorz Lot (Vice-President of Tauron Sprzedaż) and, on behalf of Professor Tadeusz Skoczny, Dr. Jan Walulik. The fact was emphasized from the start that the Conference was a perfect way to exchange both knowledge and experience between the representatives of different worlds, which should allow them to discuss the current state of research from many different perspectives.

According to the organizers, presenting the questions in both economic and legal terms makes it possible to analyze them in an interdisciplinary fashion which would further the development of this legal area.

The programme of the first day of the Conference was extensive and included five panels dedicated to basic competition and consumer protection issues including: standard contracts, abusive clauses, the prohibition of violations of collective consumer interests and, latest solutions in the field of counteracting practices infringing collective consumer interests.

The Conference was divided into thematic sessions. The first session – *Abusive clauses* – moderated by Dr. Jan Walulik (CARS UW) concerned the problem of abusive clauses in consumer contracts. Anna Mloston-Olszewska (UOKiK, Łódź) spoke first of the advantages and disadvantages of the possibility of declaring as prohibited of clauses of standard contracts contrary to bidding legal provisions in the context of recent legislative changes. Marcin Kolasiński (Law Firm Kieszkowska Rutkowska Kolasiński) gave the next speech entitled 'The choice of foreign law in online contract templates and consumer protection'. He discussed therein the question of assessing

provisions permitting the choice of foreign law contained in the rules of UEFA EURO 2012 online ticket sales. Recalling the statements contained in the judgment of the Supreme Court of 17 April 2014 (Ref. No. I CSK 555/13), he pointed out that in an era of dynamic growth such as online sales, legal solutions should meet the expectations of the services market and cannot constitute a barrier to international trade. Jacek Krzemiński (Faculty of Law and Administration, Mikołaj Kopernik University) spoke of 'The future of consumer arbitration – a record for the Polish court of arbitration as an illegal provision in contracts with consumers'. He noted that unlike the European trend, arbitrations are still uncommon in Poland. Nevertheless, defects in judicial proceedings make arbitration attractive for settling consumer disputes. Still, in some cases, an arbitration agreement may be considered to be an illegal contract provision, in particular where a trader enforces the consumer certain conditions for conducting arbitration, which reduces its viability or desirability.[unclear, pls revise or delete]

The second panel concerned control models of standard contracts; it was moderated by Dr. Aneta Wiewiórowska-Domagalska (University of Osnabrück). Christopher Lehmann (UOKiK, Bydgoszcz) spoke of eliminating prohibited provisions from executed continuous contracts in consumer trade. In his view, consumers' growing awareness of the institution of 'illegal contractual provisions' forced entrepreneurs to verify the use of standard contracts. Control of illegal resolutions relates to the need of facing the consequences of placing the prohibited provisions in currently binding contracts, among others, in mortgage agreements indexed to the Swiss franc, as well as life insurance contracts with an insurance capital fund. Dr. Antoni Bolecki (Law Firm Greenberg Traurig, affiliated with CARS) spoke next on the differences between incidental and abstract control, referring also to animatedly discussed issues related to the evaluation of the provisions contained in bank loan agreements in Swiss francs.

The second session of the conference was devoted to the issue of the ban on infringing collective consumer interests. The third panel, 'The essence of violations of collective consumer interests', was moderated by Dorota Karczewska (Vice-President of UOKiK). Michał Strzelecki delivered the first speech entitled 'Practices infringing collective consumer interests in the light of the complete harmonization of business practices resulting from Directive 2005/29/EC on Unfair Commercial Practices'. He presented therein some of the problems related to the implementation of Directive 2005/29/EC on the basis of the case law of the UOKiK President. During the next presentation entitled 'Violation of good practices and activities infringing the collective consumer interests', Aleksandra Kunkiel-Kryńska (Law Firm Wierzbowski Eversheds) presented the role of general clauses in the process of applying the law. She pointed out that the objection of business practices contradiction with good manners appears increasingly in the decisions made by the UOKiK President and asked about their scope in the context of Article 24(2) of the Polish Act on Competition and Consumer Protection (hereafter, Competition Act).

Professor Monika Namysłowska (University of Łódź) moderated the fourth panel entitled 'New solutions in preventing practices infringing collective consumer interests'. Małgorzata Ganczar (Faculty of Law and Administration, Catholic University of Lublin) stressed first the interpretative doubts related to the newly regulated practices

infringing collective consumer interests in Article 24(2(4)) of the Polish Competition Act (so-called 'Misselling'). Marta Burnecka-Szczepańska (UOKiK, Bydgoszcz) spoke next of the new powers conferred on the UOKiK President in cases of practices infringing collective consumer interests in the context of the institution of the 'mystery shopper'. She stressed the assumptions, rationale and objectives of its introduction in Poland. Jan Szczygiel (PhD candidate, University of Silesia) presented another new instrument available to the UOKiK President namely the possibility to present to the court (in matters of competition and consumer protection) an opinion, essential for a case, if presenting this opinion can be important from a point of view of public interest. The speaker stressed the legal nature, form and presentation of evidence pointing out that comprehensive assessment of this institution will be possible only after a considerable time.

The last panel, entitled 'Substantive and procedural consequences of the application of the prohibition of practices infringing collective consumer interests', was moderated by Professor Anna Piszcz (University of Białystok). Łukasz Wroński (UOKiK) analyzed the effects of violations of the prohibition of practices infringing collective consumer interests and measures to remove them in the decisions of the UOKiK President. The subsequent presentation was entitled 'Modification of the terms of contracts concluded by energy and communication companies with consumers in light of the case law of the UOKiK President' and given by Piotr Suski (PhD candidate, Faculty of Law and Administration, Jagiellonian University, Law Firm Markiewicz Sroczyński). He gave therein a comprehensive presentation on the types of modifications to consumer contracts referring to the provisions of the Act - Energy Law, Telecommunications Law and the Civil Code. In the following presentation, Jan Ułański (PhD candidate, Faculty of Law and Administration, University of Lodz; Law Department UOKiK) and Agnieszka Szafran (Key Specialist, UOKiK, Bydgoszcz) spoke of the prejudicial nature of the decisions issued by the UOKiK President in disputes between individual consumers and traders.

The first session of the second day of the Conference dealt with economic aspects of consumer protection; it was moderated by Dr. Marzena Czarnecka. Professor Monika Namysłowska (University of Lodz, Faculty of Law and Administration) analyzed the role of economics in the forming of consumer law. In the summary of her discussion, she posed the question of how much a lawyer should know about economics, thus giving rise to a following discussion. Jarosław Sroczyński (Law Firm Markiewicz, Sroczyński, affiliated with CARS) gave the next speech entitled 'UOKiK – what do we have from it? An attempt of a research methodology of the so-called consumer increment'. First, the speaker stressed the growing interest in the issue of consumer increment, which is the value that the consumer 'saves' or 'receives' as a result of a decision of the UOKiK President. He then presented his own definition of consumer increment, paying attention to economic issues related to the method of calculating the economic benefit to the consumer, including analyzing the occurrence of similar cases abroad. In conclusion, he stressed that consumer increment is a new, interesting and unexplored research area suggesting that it would be worth organizing a conference dedicated to this issue alone. Jacek Marczak (UOKiK, Bydgoszcz) also

spoke of consumer increment. His speech, entitled ‘Voluntary consumer increment on the example of commitments decisions’, analyzed the issue of compensation for the public referring to the commitments decisions issued not only on the basis of Polish law by the UOKiK President, but also to certain decisions by US, German and Hungarian competition authorities. Maciej Trąbski (Law Firm Gessel, Koziorowski) spoke last on ‘Commitments decisions of the UOKiK President in the case of advertising practices – the character of regulation and judicial practice’. The speaker commenced his presentation by discussing Article 28 of the Polish Competition Act. Then, based on the cited decisions of the UOKiK President, he discussed the question of the specificity of advertising practices, noting the inability to determine the effect of the practice. In conclusion, considering issues related to examining the merits of the entrepreneurs’ commitments, he asked the rhetorical question if it pays for the UOKiK President to impose commitments on entrepreneurs.

The second session dealt with consumer rights’ protection in the energy sector. The Vice-President of TAURON Sprzedaż, Grzegorz Lot, acted as the moderator. In anticipation of the speakers’ presentations, he connected with the audience by initiating a discussion on end users’ expectations towards energy companies. Justyna Matysiewicz (University of Economics in Katowice) delivered a speech entitled ‘The model of consumers’ expected value on the electricity market’. She signaled a range of changes on the Polish market, in particular these related to the liberalization processes and the integration of individual markets within the EU. She focused on consumers’ perception of value offered to them by energy suppliers and its evaluation. The model of customers’ value on the electricity market is based on three values: conditional, functional and cognitive. This knowledge can be used by energy companies to better adjust their actions and offers to the needs of consumers. Ryszard Stefański (STRATEG financial and marketing consulting) delivered the next speech entitled ‘The economic conditions for connecting new customers to power grids and the economic interests of consumers’. Therein he highlighted that the effectiveness of investment projects in the expansion of the gas and electricity network is dependent on many factors. The main factors influencing the evaluation of the profitability of investments in the distribution network are: the amount of capital expenditures, the planned number of customers and volume of sales of services by individual tariff groups, the cost of network operations and service prices in the forecast period. He presented also a methodology for assessing network investment projects. Agnes Marie and Agnieszka Put (PhD candidates, University of Economics in Katowice) gave the next presentation entitled ‘Virtualization of the behavior of the consumers of energy services’. They first spoke of the changes in consumer behavior in the market for energy services, paying attention to the progressive phenomenon of consumption virtualization (fulfilling needs through electronic means such as the Internet or TV). They then presented the results of their research carried out with the use of profiles in social media sites such as Facebook and Youtube of the following power companies: Tauron, PGE, Enea, Energa and RWE. Based on the analysis of the content published by consumers on such sites and their comments, the speakers made some classifications of consumers.

The last panel of the conference, entitled 'New Deal' in consumer protection in the energy sector', was moderated by Leszek Juchniewicz (affiliated with CARS). Iłona Szwedziak-Bork (PhD candidate, Faculty of Management, University of Warsaw) considered the question 'How much of a consumer is in the prosumer in the light of the law on renewable energy sources?' The speaker presented the relations between the concepts of the customer, the consumer and the prosumer in the power sector, noting that the provisions conferring powers to the prosumer are scattered in various acts including the Civil Code, the Act - Energy Law, the Law on Competition and Consumer Protection, the Act on Counteracting Unfair Market Practices, and the Law on Renewable Energy Sources. Andrzej Wlazły (Faculty of Law and Administration, Adam Mickiewicz University in Poznań) delivered a speech entitled 'Prosumer energy. Consumer behavior in the energy sector'. The presentation helped the audience to get closer to the sociological aspect of the prosumer movement. The speaker drew attention to the need to provide emerging media with information on subsequent amendments of the Law on Renewable Energy Sources on a stable regulatory framework for the development of prosumer energy in Poland. Marta Kajda (UOKiK specialist) gave the next speech entitled 'The right to change supplier and protection of consumer rights'. She discussed the procedure for changing the supplier with reference to statistical data showing that the number of customers switching electricity suppliers is steadily increasing on a yearly basis. She also highlighted however the negative phenomena that occur in the market due to supplier changes.

After the last speech, Marzena Czarnecka, *spiritus movens* of this conference, summed up the National Consumer Conference, thanked all of the speakers, sponsors and the audience. She stressed that the conference helped to analyze and explain the emerging concerns related to the recent legal changes in the area of competition and consumer protection. In conclusion, Marzena Czarnecka assured the audience that the organizers have decided to arrange the next edition of the Conference in Katowice for next year.

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