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"Wspólne reguły konkurencji Unii Europejskiej", Agata Jurkowska-Gomułka, Tadeusz Skoczny, Warszawa 2010 : [recenzja]

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Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

Agata Jurkowska-Gomułka, Tadeusz Skoczny,
Wspólne reguły konkurencji Unii Europejskiej
[*Common European Union Competition Rules*],
1st ed., Instytut Wydawniczy EuroPrawo, Warszawa 2010, 431 p.

The work under review entitled: *Common European Union competition rules* is part of the textbook series: *The system of European Union Law*. As its Volume XXIV, it successfully carries out the intentions of its Authors and publisher of this series, Publishing Institute EuroPrawo, to ‘present in a professional and modern way – and yet approachable and transparent – the key institutional and systemic issues of the European Union’¹. Common competition rules are undoubtedly one of their fundamental principles, essential to the achievement of a single internal market. As such, they relate both to private and public entities, and to almost all sectors of the economy in the internal market. The knowledge of EU competition rules is becoming increasingly necessary to the wider public. Benefiting from their rich scientific and teaching experience, the Authors present a comprehensive, highly reliable and informative textbook tailored to the needs of law and administration students of Polish universities, which can also be useful to students of economics and management, European studies and political science. The book can also be a valuable aid for practitioners: lawyers, officials, entrepreneurs and politicians, who want to learn about this area of EU law.

The textbook is quite extensive – it counts 431 + 26 pages (425 pages of the text itself). It contains six chapters divided into more detail-oriented points and sections (up to fourth degree division). They are preceded by an Introduction, and supplemented by a list of acronyms, abbreviations and a subject index. Each chapter is concluded by a list of supplementary literature, basic legal acts and documents as well as a set of revision questions. The latter not only summarize the key information contained in each chapter but also allow readers to independently verify the degree of understanding of the material. The most important legal rules and quotes from key EU court rulings are presented in a distinctive text format enclosed by a frame. This layout further increases the transparency of the content.

The scope and arrangement of the textbook corresponds to the main directions, which European competition policy focuses on. The first chapter, *Basis and scope of common European Union competition rules*, introduces the readers to the foundations of EU competition law and organises its basic terminology. It presents the axiological

¹ See: http://www.iweuroprawo.pl/fol_spue_struktura.html.

basis and types of common competition rules, as well as their sources, nature and development. The next chapter, *Prohibition of competition – restricting practices*, deals with the EU ban on restrictive agreements, and the applicable exemptions, as well as with the prohibition of the abuse of a dominant position. This chapter covers also the rules on the enforcement of Articles 101 and 102 of the Treaty on the Functioning of the European Union. The third chapter, *Preventive control of concentrations of undertakings*, presents the EU merger control system. It defines its subject matter, jurisdictional issues and scope, the criteria used in the assessment of concentrations and finally, the proceedings before the European Commission. The fourth chapter, *Member States and national trade monopolies and public undertakings*, covers EU Member States' obligations to ensure free competition in the area of national monopolies and public entities. The last two chapters, *Common rules of competition in relation to state aid* and *Sectoral competition rules*, touch upon the issue of state aid covering its form and acceptability at the EU level, jurisdictional issues and proceedings, and the issue of competition protection in particular industry sectors such as: energy, media and transport.

The textbook is largely a new development, both in relation to its Authors' previous work and to other textbooks available on the Polish publishing market, while it takes into account both current legislation as well as recent case law developments and doctrine. In the Introduction, the Authors themselves stress the inclusion of a new Chapter VI (*Sectoral competition rules*), emphasizing its relevance to a separate textbook entitled: *European Union policies. Policies of Infrastructure Sectors. Legal aspects*, edited by the same Authors which was published as Volume XXVIII of the same series (*The system of the European Union Law*). In fact, sectoral competition rules are part of the common competition policy and particular EU sectoral policies, and as such, they are the most frequently used in practice.

Another instance of the 'added value' of this textbook is attributable to the inclusion of a presentation of the solutions contained in EU acts and documents which are not sources of law as referred to in Article 288 of the Treaty on the Functioning of the European Union, generally characterized as soft law. This approach fits well with current trends in the development of EU law, in accordance with the adopted strategy of better regulation.

The textbook presents the legal status as of 30 September 2010. It thus takes into account the reforms introduced on 1 December 2009 by the Lisbon Treaty, which set up a unified European Union and established its legal basis in two separate documents: the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFUE). The value of this timeline is especially important because the Lisbon Treaty changed the titles of the Treaties and the numbering of their Articles, as well as some of their basic terms. The fact that this textbook takes account of these developments is of particular importance for the teaching process. One must admit that the Authors have successfully found a way out from the terminological confusion characterizing recent literature resulting from both the reforms themselves and the varying quality of EU law translations across the continent. What deserves special emphasis here is the clear and easily comprehensible explanation style of the

often quite complex issues, a factor essential to any textbook, which makes it possible to broaden the circle of its readers also to those who do not have a legal background.

Let me make a suggestion from the perspective of an economist about the potential further development (new textbook) of this constantly evolving topic by the Authors.

In the Introduction (xxx p.) the Authors conclude: 'This textbook is primarily the representation of the course on common European Union competition rules, designed mostly for law and administration students of Polish universities. If it will also prove useful to students of European studies, political science or economics and management, the greater will be our satisfaction'. In light of the intentions of the Authors, the content of the course presented in this textbook is of a strictly legal nature.

It seems to me however that students would understand better the inseparability of economic and legal aspects of competition protection if they book was enriched with an introductory chapter on the economic theory of competition, which would present the major schools of economic thought, and if each chapter included a short descriptions of relevant economic problems. It would also help lawyers to better diagnose the economic problems connected with competition law. Actually, such elements are present in western textbooks in the field of competition law, particularly in American ones (albeit not in all). The addition of economic considerations into the existing legal text would align this book with contemporary antitrust analysis, which increasingly uses the tools of economic examination. It is the increasing use of these very economic tools that make the line of case-law evolve as antitrust authorities (like the entrepreneurs themselves) reach for new, more precise assessment tools. The Authors note this issue, highlighting the explicit economization of competition policy (for instance, in Clause 1.1. *Axiological basis of common rules of competition of the European Union*, XXIV-3 p.). It would be worth developing this idea further.

The obligation of a reviewer should also be to make critical remarks and to point out any shortcomings of the reviewed work (the Authors ask for it) and it is here that I have to admit defeat. Even if we consider that the extensive size of the textbook (425 pages of text) can be subjectively perceived by some students as a great hurdle (the pace of life!), this objection is successfully countered by its transparent and detailed structure which helps the readers to select the correct parts of reference as well as revisit a specific topic. I am confident that the vast majority of readers will be drawn into reading this textbook and become absorbed in the study 'from cover to cover'.

On my part, I would wholeheartedly recommend *Common European Union competition rules* by Agata Jurkowska-Gomułka, Ph.D. and Professor Tadeusz Skoczny to all those interested in current competition law issues – a work unique in the Polish publishing market, original due to its substantial value and very good form of communication.

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