

CONFERENCES AND REPORTS

EU ANTITRUST: HOT TOPICS & NEXT STEPS January 24–25, 2022

In January 2022, the Department of European Law of the Charles University Faculty of Law, in cooperation with the Department of Commercial Law and the Department of Administrative Law, organized an international conference with star participation. The conference's theme was the transformation of competition law and related phenomena in the light of globalization and digitalization trends. More than forty speakers attended the conference, including academics, practitioners, regulatory representatives, and Ph.D. candidates. The entire programme was divided into five regular thematic panels on competition law in digital markets, implementation of competition law by national regulators, competition law enforcement, the transformation of competition law principles, and finally, the economic component of competition law. The lite theme of the whole conference was the impact of ecology on competition, the digitalization of the market environment and the reflection of the COVID-19 pandemic in the economy.

The conference opened with keynote speakers. Prof. **Michal Tomášek**, Vice-Dean for Research and Head of the Department of European Law, first welcomed the guests. The keynote speaker was dr. **Margrethe Vestager**, Executive Vice-President of the European Commission, who in her speech spoke about the importance of competition for the functioning of the internal market, but also mentioned the greening trend manifesting itself in competition law: *“Our antitrust rules also have a crucial role to play in helping to make our economy greener. After all, more competition means more pressure on companies to use resources carefully, and to meet the growing demand for greener products. But at the same time, it's important that those rules don't discourage companies from cooperating, when that can help to produce more sustainable products.”* A concrete outcome of this initiative will be new rules for assessing horizontal agreements. Similarly, assoc. prof. **Petr Mlsna**, head of the Czech antitrust body, Office for the Protection of Competition, stressed the need to consider the environmental impacts of business activity *“...it is important to reflect on the potential risks of over-emphasizing environmental values over free competition and how changing of enforcement of competition rules could contribute to sustainability - and whether the potential benefits truly outweigh them. Competition authorities are undoubtedly obliged to react to all trends and changes related to climate change as well as technological developments. The Office for the Protection of Competition must continuously adapt to such changes, modernize and cooperate both domestically and abroad.”* Of course, these abovementioned trends are also reflected in the decision-making practice of the Court and the Tribunal, as pointed out by judges dr. **Jan M. Passer** and dr. **David Petrlik** in their hybrid presentations. Another important aspect of competition law – consumer protection – was stressed by BEUC Brussels legal director **Agustín Reyna**.

The first panel was dedicated to the digital transformation of the competition law and new challenges. Assoc. prof. Ana Pošćić and Dr. **Adrijana Martinović** spoke about the difficulties regulators face dealing with Big data in a data-driven economy, bringing significant competitive advantage and market power to companies who are able to harness and exploit its potential. They even claimed that Big data are becoming a new form of currency. This trend was also analyzed by dr. **Beata Mäihäniemi** from the consumer protection perspective. According to her paper, consumer protection regulation should focus not only on the pricing, product quality and quantity but more and more on enhancing the self-determination of consumers' data. It should be up to consumers to choose whether they would prefer to receive more personalized service and consequently give more of their data away as a payment for this personalized service or whether they prefer to give fewer data away and receive a less personalized service. **Jaroslav Denemark** focused on the Google Shopping case where the dominant abused its position as a major search engine gatekeeper to stream customers

to its own products. Dr. Denmark critically assessed the length of the proceeding – which took ten years – and proposed an alternative solution. Similarly, dr. **Kathryn McMahon** examined litigation against Apple, which was gatekeeping its competition from its app platform. Tools to prevent such anticompetitive behaviour might be provided by the new regulatory framework, such as the Digital Market Act, which was a topic of **Linda Holková Lubyová's** paper, but it is up to local enforcers how they will utilize them – which was shown on examples of Czechia, the Netherlands and Italy in dr. **Kristýna Menzelová's** study in the context of P2B Regulation. Striking fair rules between big and small is one of the goals of competition law and a topic of dr. **Monika Woźniak-Cichuta's** speech analyzed a phenomenon of “killer acquisitions”, acquisitions of small start-ups by undertakings with significant market power.

The second panel focused on the national experience with the competition law enforcement. Discussants presented experience with its national reform – particularly the Austrian reform assessed by the dr. **Peter Thyri** including, for example, a new sustainability exemption for competitive agreement. Other speakers focused on their national particularities, such as the regulation of Polish national owned companies by **Alexandr Avetlicinii** or Czech PVZP monopoly to provide commercial health insurance services to foreigners in the Czech Republic, summarised by **Pysareva Mayna**. Extra-EU inspirations were brought to the panel by **Barbara Dufková**, presenting experiences with Chinese Anti-Monopoly Guidelines for the Platform Economy Industries or competition enforcement assessment of the Bosnian authorities by **Kanita Imamović Čiumić**. One of the most pressing issues of today was examined by prof. **Magdalena Sitek** and prof. **Bronislaw Sitek** examined a previously unknown level of flexibility in the public procurements caused by the anti-COVID-19 measures. They stated that the temporary restrictions and limitations in the application of public procurement regulations have not led to significant changes in the public procurement system of the European Union. On the other hand, adopted measures had a negative impact on the principles of free competition in the European market.

The final conference day was divided into three panels. Building on the national enforcement experiences, experts from the academia as well as from the practices discussed general topics of competition law enforceability. Both **Jan Měkota** and **Michal Petr** focused on *ne bis in idem* principle in the competition law, followed by **Tereza Vaňkátová**, who focused on Czech sanctioning policies regarding cartel participants. Another fundamental legal principle – legal certainty and proportionality – was examined by **Hynek Brom** in the context of inspections, dawn raids, conducted by the national enforcement authorities. On the other hand, **Jan Metelka's** case study focused on merges authorization by the Commission. The ECJ case law was also critically reflected in **Filip Novotný** and **Kateřina Novotná's** paper on the consistency of the Czech antitrust limitation periods in the context of *Kilpailu- ja kuluttajavirasto* case. The second case law reflection was **Lukasz Stepkowski's** paper dealing with Judicial Review standards of Commission Decisions in Antitrust and State Aid Cases. Finally, the paper presented by dr. **Marek Martyniszyn** focused on extraterritorial application of the EU competition law as a precondition to effectively deal with anticompetitive behaviour.

The fourth panel was dedicated to the values and broader context of the competition law. **Isaure d'Estaintot** and **Iwona Florek**, in their papers, argued for more robust incorporation of workers' protection into competition law standards. **Aleš Musil** similarly discussed the context of consumer protection in the digital market. More economical insight was provided by **Jan Kupčák**, who spoke about price elasticity in the context of digitalization. Prof. **Josef Bejček** dealt with the core question of antitrust law policy formulation. He argued to shield competition regulations from current trends and complementary demands and keep its goals simple - to protect a self-correcting competitive environment. Such alteration is also touched on in the paper “Bypassing Competition Law, Bypassing through Competition Law”, which was presented by **Ondřej Blažo**. At first sight, another philosophical topic with serious legal impacts was presented by the dr. **Robert Pelikán** who focused on issues of the concept of the undertaking in the context of a modern economy and of sanctioning parent companies.

The sectoral regulation and sharing economy challenges were the topics of the last panel. **Rastislav Funta** opened the discussion with its contribution focusing on new challenges for the competition regulation connected with the sharing economy. Dr. **Jiří Kindl** followed with a case law analysis of the use of antitrust tools on Uber. Both Daniela Gschwindt and Wojciech Lewandowski's papers focused on sporting associations' autonomy in the light of growing pressure from the EU competition regulations, followed by dr. **Jiří Rajchl** who presented his paper on gambling regulation in the context of self-governing territories. Particular problems of the air industry harmed by the COVID-19 restriction were analyzed by dr. **Tomáš Kočár**'s paper and dr. **Zdeněk Petrášek** presented the application of competition rules in the Nord Stream 2 case.

The organization committee would thank its head, assoc. prof. **Václav Šmejkal**, for the organization of such an extraordinary event. We are very grateful to the Charles University Faculty of Law for its support and our partners from practice – law firms Rowan Legal, Skils and Wolf Theiss – for their kind support. Finally, we would like to thank members of our Scientific Committee for all their work. We do believe that Antitrust Conference will be taking place soon again.

Michal Říha*

* JUDr. Michal Říha, Assistant-Professor and Ph.D. Candidate, Faculty of Law, Charles University, European Law Department, Prague, Czech Republic. ORCID: 0000-0001-9227-2158. This report was written within the research programme COOPERATIO – LAW.