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EXPERT:
Dr. Antoni Bolecki writes about how economic principles are evolving for the sake of consumer and market protection.

EVER SINCE ITS INCEPTION 30 YEARS AGO, ONE OF THE MOST FUNDAMENTAL FUNCTIONS OF AMCHAM HAS BEEN TO MAINTAIN PLATFORMS FOR SHARING PROFESSIONAL KNOWLEDGE AND EXPERIENCE BETWEEN ITS MEMBERS. THERE ARE SEVERAL SUCH PLATFORMS, INCLUDING AMCHAM MONTHLY MEETINGS, THE AMCHAM COMMITTEES, AND THE EXPERT SECTION OF THE CHAMBER'S MAGAZINE. IN THIS DISPATCH, **DR ANTONI BOLECKI, ATTORNEY-AT-LAW, COMPETITION PRACTICE AT WARDYŃSKI & PARTNERS**, DISCUSSES THE EVOLUTION OF ECONOMIC PRINCIPLES AND STATE PROTECTIONISM.

EXPERT Competition law

GOING IN CIRCLES

Competition, protection, and different standards

By dr **Antoni Bolecki**, *Attorney-at-Law, Competition practice, Wardyński & Partners.*

Contemporary competition law is built on two pillars: faith in the liberal market economy and faith in economic analysis. But in many countries in the EU, including Poland, this faith is clearly dying. How will competition law look in the third decade of the 21st century, and will the current situation inevitably lead to changes in the principles governing competition law enforcement?

There are many indications that competition law will be aimed at protecting the weakest players, regardless of whether an economic analysis justifies such protection. Economic considerations will increasingly give way to social and political considerations.

NOT SO LONG AGO

The dominant economic narrative in the 1990s in Poland, which still undergirds our antitrust law, was based on assumptions that are now being challenged. For example, it was claimed at the time that state debt should be as low as possible and interest rates should be high enough to hold inflation in check. In turn, printing empty money was regarded as suicidal for the economy. Deregulation was seen as essential and privatization as a priority. Long-term investments in equity markets were considered the best security for the money of future retirees. Finally, somewhat later, Poland's rapid accession to the eurozone before 2015 came to be regarded as something crucial that needed to happen.

THE PRESENT DAY

The events of recent years have painfully tested these declarations. Some experts looking at them from today's perspective claim that they were all erroneous. For over five years, the stimulation of a large segment of Western economies has been conducted with the help of debt drastically exceeding any levels deemed acceptable 20 years ago. It is the same with the printing of fiat currency, with quantities in circulation beating all records. We live in a world of negative interest rates that, combined with empty money massively pumped into Western economies, do not cause any significant increase in inflation (contrary to earlier canons in economics). The 2008 financial crisis sparked by the extremely deregulated American banking sector, among other reasons, demonstrated that central regulation is nonetheless required. Companies controlled by the Polish government are now holding their own against Western competitors. The Warsaw Stock Exchange today is about 20 percent below its peak 13 years ago, and hardly anyone mentions the need to adopt the euro as soon as possible.

WHOM TO PROTECT?

Contemporary competition law is focused on a purely economic perception of reality. Sensitivity to social issues has been rejected almost by definition, as an economic analysis suggests that the most efficient undertakings should be prioritized over their weaker rivals. But the preferences of voters in many countries are forcing a change in this direction. It may be said that history has come full circle, as competition law was historically a tool to help combat inequalities—weakening the strong to strengthen the weak. After all, the protection of small and medium-sized enterprises is one of the oldest aims of antitrust law.

It may thus be expected that changes occurring in many Western countries manifest, for example, in the need for greater social sensitivity. These changes will make the protection of smaller and weaker economic entities against stronger rivals one of the main aims of competition law. The economic indicators commonly promoted until recently to justify antitrust interventions will probably decline in favor of social and political indicators.

LEGISLATIVE CHANGES

Faith in the liberal economy is weakening, and has already practically collapsed in some countries. Poland is no exception in this regard. We see that a social perspective is gradually replacing an economic perspective in the field of the Polish law of competition and consumer protection. For example, the Contractual Advantage Act was adopted with the particular aim of protecting small agricultural producers against retail chains, even though such retailers do not have market power from an economic point of view. In turn, the amended Act on Delays in Commercial Transactions gives the president of the Office of Competition and Consumer Protection (UOKiK) the administrative means to prosecute the late payment of trade debts—something having nothing to do with competition, but nonetheless needed socially. Another important change is the amendment to the Civil Code, which became law in June and extends to sole traders the type of protection previously reserved for consumers. Other changes beyond the purview of the UOKiK but impacting the competitive position of undertakings include the Sunday Trade Ban Act, and plans to restore the tax on retail chains. These are solutions supporting small shops at the expense of large competitors.

ANOTHER WAY?

One approach to resolving this problem is to refresh the concept of national champions that was launched in the West and particularly prevalent in the 1960s and 1970s. These "champions" are companies individual governments favor so the companies can compete more effectively with global rivals, or for other social or political reasons. But this would require competition law to be applied with two standards.

The first (baseline) standard would assume that antitrust authorities can protect weaker firms at the cost of stronger ones by following an economic analysis and being guided by social and political considerations.

The second standard would limit how the first standard is applied to national champions. For example, a merger of two state-owned giants would be accepted even if it could injure weaker national competitors and consumers, as long as the merger furthered the national champion's chances in global rivalry.

It is hard to resist the impression that the next decade, no doubt revolutionary for humanity in fields like artificial intelligence, biotechnology, and the Internet of Things, will bring a combination of decades-old ideas and concepts back the regulatory and legal world.