

APPENDIX

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ABSTRACTS (2013, 2014)

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CONTENTS IN ENGLISH
OF THE COMPETITION AND REGULATION SERIES
2007–2014

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ABSTRACTS OF THE COMPETITION AND REGULATION SERIES

2013–2014

COMPETITION AND REGULATION • 2013

I. OVERVIEW

***Gergely Csorba* • What Kinds of Standards are Applicable
to Economic Analysis and its Judicial Review? A Competition Economist's
Interpretation**

The paper demonstrates the role of economic analysis in competition policy case, and discusses the best practices that could be expected from the parties building on such economic arguments. Based on the summary of European case law, it discusses the evaluation criteria applied by the European Courts when they reviewed the most important cases involving economic reasoning (which are mostly mergers). Finally, it discusses two recently decided cases by the European Courts (the Ryanair/Air Lingus merger and the abuse of dominance case against Tomra) to demonstrate whether these more settled evaluation criteria did indeed increase the quality of economic reasoning applied, but it finds mixed results.

***László Lőrincz* • The Role of Competition and Competition Policy
in Promoting Economic Growth**

Competition policy in addition to a number of other policy areas impacts the intensity of market competition. This literature review first identifies these areas. Afterwards, it discusses the theoretical relationships between innovation, productivity and growth, and also touches the necessary fundamentals of macroeconomic growth models. Next, the results of econometric analyses on the relationship between competition and innovation and between competition and productivity are presented, which is an area that has shown significant progress the recent years. When discussing the econometric results, it also presents the policy measures, which were used for identification. Based on the presented studies, liberalization essentially can be associated with improvements in productivity, but between innovation and competition an inverted U-shaped relationship can be assumed. Considering the

direct relationship between competition policy and growth, suspending competition policy measures in the United States in the thirties was shown to cause substantial negative impact on the GDP. In the final sections, the study briefly discusses the results considering the effect of trade liberalization on economic growth, the consequences of bankruptcy regulations, and the effects of reallocation policies on productivity and growth.

Judit Szabó • **State Aid and Public Service Obligations
on the European Market: The European Regulation of Services
of General Economic Interest**

The paper reviews the recent European regulation of services of general economic interest (SGEI) from an economic point of view. The emphasis is on the significant changes put forth by the European Union rules on state aid to services of general economic interest („State aid SGEI package”) during the years 2005-2006 and 2011–2012. The paper outlines also important previous changes in some relevant European rules and that of some relevant judgements of the European Court of Justice (ECJ) and the Court of First Instance (CFI). The paper puts the emphasis on the birth of the compensation approach of state aid and gives an economic interpretation of this approach and its application. The paper doesn't evaluate the performance of the compensation approach in practice, but gives a detailed survey of its forming since the 1970's until being part of the European rules in the 2000's. This review might make some grounding for the future empirical analyses.

II. THE TRANSFORMATION OF PRICE REGULATION

Csongor István Nagy • **The EU Law Framework of National Price Regulation,
with Special Emphasis on Liberalized Markets**

The paper, in the first step, examines the applicability of EU competition rules (antitrust and state aid) to national price regulation. Afterwards, it analyses the requirements against regulated prices erected by free movement (internal market) law. The paper also examines how market-opening and liberalization rules (and the judgments of the European Court of Justice in Federutility and ENEL) affect the Member States' playing field as to price regulation. It demonstrates the differences between electricity and natural gas sectoral regulation entailed by the fact that the former qualifies as an EU universal gas service, while the latter does not. Finally, it synthesizes the EU law requirements against national price regulation and assesses the jurisprudence of the European Court of Justice from a critical perspective.

Balázs Felsmann • The Impacts of the Price Regulation on the Level of Retail Electricity Prices in Europe

There is a strengthening debate within the European Union in recent years about the impact of the affordable industrial and household electricity prices on the general competitiveness of European economies. While the European Institutions argues for the further liberalization of the energy retail sector, there are others who believe in centralization and price control to achieve lower energy prices. Current paper reviews the regulatory models of the European countries and examines the connection between the regulatory regime and consumer price trends. Although the current regulatory practice is heterogeneous within the EU member states, there is a clear trend to decrease the role of regulated tariffs in the end-user prices. The study did not find a general causal relationship between the regulatory regime and the level of consumer electricity prices in a country concerned. However, the quantitative analysis of the industrial and household energy prices by various segments detected significant differences between the regulated and free-market countries. The first group of member states tends to decrease the prices in the low-consuming household segments through cross-financing technics, including increased network tariffs and/or taxes for the high-consuming segments and for industrial consumers.

Pál Belényesi • Pricing of Water Services: The Hungarian Market

Pricing of water supply and related services has been, and continue to be, a principal concern in Hungary – and not purely as part of the conundrum around the government's price minimizing propaganda of utility payments. The exclusion of the water services from European-wide liberalization, their restriction for concession-related activities in the directive designed to open up markets in the EU are only some of the worrying elements. Renationalization of network elements and forced appropriation of the service provision are attempts to consolidate water service provision in Hungary. The paper examines the influential European trends of water supply provision in the light of the 2011 market reform in Hungary. It is examined whether benchmarking, competition for the market, regulatory competition, regulated monopolist, free market competition would qualify as good examples for the Hungarian market. The importance of environmental externalities in water pricing is introduced in detail.

Károly Miklós Kiss and Zsolt Stenger • Price Regulation in Postal Markets

The first part of the study summarizes the purpose and causes of price regulation and its relations with other regulatory targets. Not only pure efficiency considerations show up in prices, since they are limited by some welfare objectives, such as the universal service obligation. Then it presents the development of the EU regulatory

framework of postal services as well as the implementation of main requirements (cost-based, transparent, non-discriminatory and affordable pricing) defined in the guidelines at Member State level. In the next section the specifications of cost-accounting are reviewed as the basis for price regulation. Then it discusses the features, advantages and disadvantages of the applied pricing principles and methods (ex-ante, price cap or ex-post). In a separate section it analysed the characteristics of the Hungarian postal regulation. Closing the study some critical remarks were drawn up about the price regulation of postal services in the EU.

III. MARKETS AND REGULATIONS IN NETWORK INDUSTRIES

Gábor Koós • Market Opening in Rail Transport: The Fourth Railway Package

The aim of this study is to shortly present the fourth railway package announced by the European Commission as the newest stage of the European rail market opening process focusing on its differences to the earlier stages. Although the objective of the Commission's proposal was quite clear and progressive already the amendments adopted by the European Parliament in the end of February 2014 has shown that it will be very difficult to get through them especially in the so-called market pillar. To bring the gradual market opening process to the end is highly questionable therefore it is worth to detect from time to time the problems of this sector and to discuss the attempts made by the Commission to fulfil its mission to make this sector much more effective. The study contributes to this task through systematically presenting the main content of the fourth railway package, the main results of the recast and the main consequences of the judgements of the ECJ in this sector.

Pál Valentiny • Institutional Changes at Regulatory Authorities

The paper assesses the development of institutional settings at regulatory and competition authorities. It follows their path from municipal concession contracts to state and federal level regulation. Technological change, competitive pressures and convergence between services are emphasized among the prime movers. The study discusses the experiences in the US and in the EU in the context of changing relations between regulation and competition policy.

András Mezősi and László Szabó • Cost-Benefit Evaluation of Electricity Network Investments in Central Eastern Europe

The paper analyses the complex welfare impacts of proposed transmission investments in the Central Eastern Europe (CEE) region with the application of the EEMM

electricity model. The applied model is bottom-up model, having 36 European countries, 85 aggregated transmission connections and detailed technological breakdown of the European power systems (over 5000 generation units are modelled). The assessment is made at regional level, as new transmission lines have significant spill-over effects over third countries. The cost-benefit assessment (CBA) focused on the CEE region identifies those transmission lines that increase the regional welfare the most. In addition, the paper also identifies those methodological and policy issues, that have significant impact on the results. The results indicate, that many projects are interlinked, so an individual project assessment would only bring partial results.

COMPETITION AND REGULATION 2014

I. OVERVIEW

***Gergely Csorba* • Competition Policy Assessment of Parallel Events in Merger Control**

This article discusses the questions concerning the competition policy assessment of parallel events. First, it reviews the statements of economic theory on sequential mergers and optimal merger policy. Then it presents the implications derived from the European Commission's general methodology on merger assessment, and the arguments for and against the priority principle used in practice. Finally, it presents three groups of mergers to discuss the various problems that can arise and how the scarce case practice dealt with them.

***Pál Belényesi* • How Do I Get My Money? The Economics behind the Design and Application of Contingency Fee Arrangements in Antitrust Private Damages Actions**

The present study examines the more significant country examples of contingency fee arrangements in Europe, in particular for competition law related private damage claims. Furthermore, it analyses the economics behind such agreements, the reasons why such agreements are on the borderline of competition economics and law. The final section concludes on what lies behind efficiency claims of both parties. Second part of the study observes the financial and the economic arrangements that urge or discourage potential private claimants from initiating such actions. Finally, this section details the specific arrangements, which may have direct impact on the right to access to justice. In its conclusions, the paper argues for a parallel application of private and public tools in order to draw the right balance between frivolous suits

of private parties and the under-deterrence of administrative fines when it comes to mandating contingency fee arrangements in EU Member States. The paper argues that the current framework – in spite of the recent changes in EU legislation – is still imperfect and significant improvements are needed. A well-designed, promoted and efficiency-based contingency fee coupled with class action arrangements could substantially expand the possibilities for the parties involved.

***Csongor István Nagy* • The Right to Fair Trial and Judicial Review
in Competition Proceedings**

The paper examines the right to fair trial as to the judicial review of competition authority decisions. It presents the general administrative law models of judicial review and analyses the recent judgments of the European Court of Human Rights, the European Court of Justice and the Hungarian Supreme Court (Kúria); it also addresses the structural questions of Hungarian competition procedure.

II. ECONOMICS IN ANTITRUST AND REGULATION

***Pál Valentiny* • Does Forensic Economics Really Exist?**

In the last couple of years forensic economics obtained a JEL code, as a tribute to its scientific performance. This paper is about the emergence of this sub-discipline and the different interpretations of its notion. First the study provides a brief insight into the development of the discipline of industrial organization and its use in legal enforcement. Then mapping the procedures in antitrust and regulation it examines the changing relationship between law and economics and lawyers and economists. Finally it delivers an answer for the question in the title.

***Balázs Muraközy* • Application of Quantitative Methods in Selected
Competition Law Cases, 2009–2013**

This study discusses the role of quantitative methods in some important cases of four competition authorities between 2009 and 2013. The most complex quantitative methods, like merger simulation, can only be applied in ‘textbook’ cases in reality. When data are less suitable, market structure or the competitive concern is less standard, often less sophisticated empirical methods are applied. The cases we focus on suggest that recently the role of measuring the positive effects of mergers, non-horizontal fusions and specialized models for some markets has increased and these issues also present important empirical challenges.

***Krisztina Antal-Pomázi* • On the Choice of Court-Appointed Experts**

This paper examines the use of court-appointed experts under Federal Rule of Evidence 706. The use of economic expert witnesses is common in civil litigation. In an adversarial system, expert opinions are expected to be contradicting, or even slanted according to the interests of the parties. The more disputed the field of science concerned, the harder a judge or jury may find it to decide on the expert testimonies' credibility. It often happens that all expert opinions are excluded, and the case is decided on the basis of the non-expert evidence. To avoid the welfare loss caused by the waste of resources spent on this way of proof, several authors recommend the more extensive use of court-appointed experts. Taking in concern that it might be hard for a judge to pick a 'neutral' on his own, the paper first examines the proposal that the parties should agree upon a 'neutral' expert to be appointed by the court. The more informed the parties are, the less likely are they to reach an agreement. Second, an alternative mechanism is proposed for the uninformed judge to choose a 'neutral' expert on the basis of information acquired from the well-informed parties. The mechanism implements in Nash-equilibrium the social choice rule that the plaintiff should win the lawsuit if and only if she is right.

***László Paizs* • Market Power in the Electricity Generation Market:
A Survey of Game-Theoretic Electricity Market Models**

A large volume of research on strategic behaviour on deregulated electricity markets has accumulated over the last 25 years. Among the different approaches, the study surveys the game-theoretic models of power generator behaviour. It provides a review of both theoretical and empirical findings in the oligopoly and auction literature.

***Balázs Muraközy and Pál Valentiny* • On the Measurement of Welfare Effect
of Competition Policy**

In parallel with the increasing role of competition policy and data availability, assessing the decisions of Competition Authorities becomes more and more important. After discussing the possible assessment frameworks, it focuses on one specific method, the ex ante impact assessment of consumer welfare conducted by the Competition Authorities, and shows how it is applied in different countries, what are its main challenges and their possible solutions.

III. MARKETS AND REGULATIONS IN NETWORK INDUSTRIES

***Zoltán Pápai and Bertalan Papp* • Competition Issues on the Liberalized Postal Markets and the Evaluation of the Hungarian Experience**

The study examines the competition problems that emerged in the postal markets throughout the multi-step liberalization process of the European Union. Following a review of the prevailing barriers to entry, the paper investigates 1) the deterrence arising from incumbent strategies, 2) the legal and administrative hindrances from state regulation, and 3) the regulatory discrimination of the incumbent. Finally, the Hungarian liberalization act of postal markets is scrutinized, including the assessment of the 2012 Postal Law's effect on regulatory barriers. The study comes to the conclusion that, instead of allowing for a meaningful competition on the postal letter market, the Hungarian state policy and regulation is still protective of the incumbent postal operator.

***Adrienn Selei and Borbála Takácsné Tóth* • Short-term Effects of the Ukrainian Crisis on the Security of Gas Supply in Central-Eastern Europe and Hungary**

In this paper the vulnerability and the short term resilience of the European gas market to supply side shocks are modelled. The paper analyses the effect of regulatory interventions on the wholesale gas price and welfare of the most vulnerable Central and Eastern European gas markets. A short term security of supply situation is modelled through a one month disruption of Russian gas supplies through the Ukraine in January, and a longer term crisis is modelled through a six month disruption on the same route. Three short term measures were analysed that aim to increase the resilience of gas markets to supply disruptions in the short run through the better use of existing infrastructure: by allowing spot trade on all interconnection points; allowing virtual trade against the physical flow; allowing bidirectional flows on all EU-EU borders. It was found that the first two measures have rather local effect on the markets, but bidirectional physical flows increase the security of supply of the whole region - mostly because of better connecting Central and Eastern Europe to the Western gas markets. It concludes that Hungarian consumers realize significant part of the monetized benefits that are measured; hence Hungary has a profound interest in supporting the European gas market integration. It was also found that the Hungarian strategic storage is a useful tool to mitigate the damages of a potential crisis not only within the Hungarian borders but also on a regional basis.

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