

2ND POLISH LAW & ECONOMICS CONFERENCE





■ UNIVERSITY OF WARSAW
MAY 6-7, 2011 BALL HALL

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■ WELCOME

It is our pleasure to welcome you to the 2nd Polish Law & Economics Conference.

Held under patronage of the Deans of Faculty of Law and Administration and Faculty of Economics of the University of Warsaw, *2nd Polish Law & Economics Conference* is the subsequent major academic event in the field of Law & Economics in Poland after the success of *1st Polish Law & Economics Conference* organized in May 2010. The main aims of the Conference are to present the up-to-date academic achievements of Polish and European Law & Economics and provide an impulse for further development in this respect. Additionally, the Conference is a unique opportunity to present Polish Law & Economics to an international audience. By bringing together researchers from various countries *2nd Polish Law & Economics Conference* also provides a platform for cooperation between Law & Economics researchers in Poland, Central and Eastern Europe, and the rest of the world.

Law & Economics (Economic Analysis of Law) is a relatively young interdisciplinary research program applying economic concepts to explain and clarify legal issues, not only with respect to antitrust and economic law, but also to a wide range of non-market activities, from liability rules to family matters and crime. Law & Economics has influenced legislation and case law, particularly in the United States and European Union, and has become an integral part of legal and economic education at the most prestigious universities in the world.

In Poland, where the quality of legislation is often regarded as a serious obstacle to the functioning of the society and development of the economy, the Law & Economics movement has a particularly important role to play. Studies in this field have been developing in Poland for the last few years, with the University of Warsaw being a forerunner and one of the leading institutions in this respect. Since 2005 the development of Economic Analysis of Law in Poland has been supported by the Polish Association of Law & Economics (*Polskie Stowarzyszenie Ekonomicznej Analizy Prawa – PSEAP*).

Welcome to Warsaw!

On behalf of the Organizing Committee

DR. KATARZYNA METELSKA-SZANIAWSKA



■ DAY 1: FRIDAY, MAY 6, 2011

9:30 - 10:00	REGISTRATION
10:00 - 10:15	CONFERENCE OPENING <i>Mr. Maciej Bobrowicz (National Council of Legal Advisors – President)</i> <i>Prof. Tomasz Żylicz (Faculty of Economic Sciences, University of Warsaw - Dean)</i> <i>Prof. Tomasz Giaro (Faculty of Law and Administration, University of Warsaw - Deputy Dean)</i>
10:20 - 12:00	KEYNOTE LECTURE: PROF. DR. ELI SALZBERGER <i>Law and Economics - Limits of Analysis: The Case of Intellectual Property</i>
12:00 - 12:20	COFFEE BREAK
12:20 - 14:15	SESSION 1: POLISH LAW IN AN ECONOMIC PERSPECTIVE Chairman: RAFAŁ STROIŃSKI (University of Warsaw & PSEAP) ■ OSKAR LUTY (Leon Koźmiński Academy), <i>Economic Consideration Behind the Civil Due Care Standard: Dogmatic Heresy or a Rational Imperative?</i> <i>Discussant: Mariusz Golecki (University of Łódź)</i> ■ PATRYK GAŁUSZKA (University of Łódź), <i>Economic Analysis of the Language Quotas for Polish Songs on the Radio</i> <i>Discussant: Stanisław Cichocki (University of Warsaw & PSEAP)</i> ■ GRZEGORZ KULA (University of Warsaw) and ANNA RUZIK-SIERDZIŃSKA (Warsaw School of Economics & CASE), <i>Institutional Uncertainty and Retirement Decisions in Poland</i> <i>Discussant: to be announced</i>
14:15 - 15:00	LUNCH
15:00 - 17:00	STUDENT PANEL (IN POLISH) Chairman: TOMASZ MIELNICZUK (Students' Association of Institutional Economics) <i>Presentations delivered by winners of the Best Student Paper Prize</i> ■ ANNA LASZCZYK (University of Warsaw), <i>Imagine there is no countries - wspólny rynek cyfrowy dla zasobów kreatywnych. Przypadek utworów muzycznych</i> ■ MŁOSZ JÓŹWIAK (University of Warsaw), <i>Granice ograniczonej odpowiedzialności - analiza ekonomiczna ograniczonej odpowiedzialności oraz odpowiedzialności przebijającej</i> ■ PIOTR CHAREWICZ (Warsaw School of Economics), <i>Wyścig gospodarczy, czyli jak reguły gry wpływają na efektywność</i>
17:00 - 17:15	COFFEE BREAK
17:15 - 19:00	GENERAL ASSEMBLY OF THE POLISH ASSOCIATION OF LAW AND ECONOMICS (PSEAP)

■ DAY 2: SATURDAY, MAY 7, 2011

10:30 - 12:30	SESSION 2: MARKET REGULATION AND COMPETITION Chairman: JAROSŁAW BELDOWSKI (Warsaw School of Economics & PSEAP) ■ MARIUSZ GOLECKI (University of Łódź), <i>Is the OTC Market a Market Failure? Derivatives from the Perspective of Transaction Cost Economics</i> <i>Discussant: Jarosław Beldowski (Warsaw School of Economics & PSEAP)</i> ■ MAŁGORZATA SADOWSKA (University of Bologna), <i>Energy Liberalization in Antitrust Straitjacket: A Plant Too Far?</i> <i>Discussant: to be announced</i> ■ WERONIKA WIŚNIEWSKA (University of Łódź) and MATEUSZ IZBICKI (University of Łódź), <i>Specificity of Determining the Relevant Market for the Use of UE Competition Rules on the Example of Electricity and Pharmaceutical Sectors</i> <i>Discussant: to be announced</i>
12:30 - 12:45	COFFEE BREAK
12:45 - 14:45	SESSION 3: TOPICS IN LAW & ECONOMICS Chairman: KATARZYNA METELSKA-SZANIAWSKA (University of Warsaw & PSEAP) ■ BARTOSZ MAKOWICZ (Europe-University Viadrina Frankfurt, Oder), <i>Compliance in Enterprises - Legal Structures for Economic Security</i> <i>Discussant: Agnieszka Słomka-Gołębiowska (Warsaw School of Economics)</i> ■ FLORIAN KIESOW CORTEZ (University of Hamburg), <i>Domestic Institutions and the Political Economy of International Agreements</i> <i>Discussant: Katarzyna Metelska-Szaniawska (University of Warsaw & PSEAP)</i> ■ MAGDALENA MAŁECKA (Polish Academy of Sciences), <i>Disappointment and Promise of Neuroeconomics Applied to Law</i> <i>Discussant: Mariusz Golecki (University of Łódź)</i>
14:45 - 15:00	CONFERENCE CLOSING
15:00 - 15:45	LUNCH



■ SCIENTIFIC COMMITTEE



PROF. WIESŁAW CZYŻOWICZ
Warsaw School of Economics
& PSEAP



PROF. TOMASZ GIARO
Faculty of Law and Administration,
University of Warsaw



PROF. JANUSZ KUDŁA
Faculty of Economic Sciences,
University of Warsaw



PROF. ARTUR NOWAK-FAR
Warsaw School of Economics



PROF. TADEUSZ SKOCZNY
Centre of Antitrust and
Regulatory Studies, Faculty of
Management, University of Warsaw



PROF. JERZY WILKIN
Faculty of Economic Sciences,
University of Warsaw



PROF. WOJCIECH ZAŁUSKI
Faculty of Law and Administration,
Jagiellonian University



DR. STANISŁAW CICHOCKI
Faculty of Economic Sciences,
University of Warsaw & PSEAP



DR. JACEK CZABAŃSKI
The Institute of Justice & PSEAP



DR. KATARZYNA METELSKA-SZANIAWSKA
Faculty of Economic Sciences,
University of Warsaw & PSEAP



JAROSŁAW BELDOWSKI
Warsaw School of Economics
& PSEAP



ŁUKASZ GORYWODA
Université Libre de Bruxelles
& PSEAP



AGNIESZKA JAŃCZUK-GORYWODA
European University Institute
& PSEAP



FILIP WEJMAN
INPRIS – Institute for Law and Society

■ ORGANIZING COMMITTEE



DR. KATARZYNA METELSKA-SZANIAWSKA
President (Faculty of Economic Sciences, University
of Warsaw & PSEAP)



JAROSŁAW BELDOWSKI
Warsaw School of Economics
& PSEAP



MAGDALENA GUTOWSKA



ŁUKASZ HNATKOWSKI
Students' Association of Law
and Economics, University of Warsaw



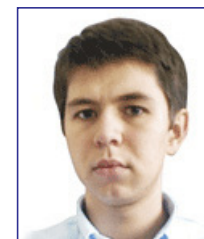
PAWEŁ JABŁOŃSKI
Students' Association of Law
and Economics, University of Warsaw



ANNA KOSSAKOWSKA
Students' Association of Institutional
Economics, University of Warsaw



JACEK LEWKOWICZ
Students' Association of Institutional
Economics, University of Warsaw



TOMASZ MIELNICZUK
Students' Association of Institutional
Economics, University of Warsaw
& PSEAP



ADAM PAWLUCZYK
Students' Association of Institutional
Economics, University of Warsaw



MAREK TATAŁA



■ KEYNOTE LECTURE



PROF. DR. ELI SALZBERGER

President of the European Association of Law and Economics

“Law and Economics – Limits of Analysis: The Case of Intellectual Property”

Prof. Eli M. Salzberger is President of the European Association of Law & Economics and former Dean of the Faculty of Law at the University of Haifa. He is a graduate of the Hebrew University Faculty of Law (first in class). He wrote his doctorate at Oxford University on the economic analysis of the doctrine of separation of powers. In 2009-2010 he was a Microsoft/LAPA Fellow at Princeton University.

Prof. Salzberger's research and teaching areas are Legal Theory and Philosophy, Law & Economics, Legal Ethics, Cyberspace and the Israeli Supreme Court. His latest book (co-authored with Niva Elkin-Koren) is *Law, Economics and Cyberspace* (Edward Elgar 2004) and another book with the same co-author on the *Law and Economics of Intellectual Property in the Digital Age* is forthcoming (Routledge 2011).

Prof. Salzberger was a member of the board of directors of the Association for Civil Rights in Israel, a member of the public council of the Israeli Democracy Institute and of a commission for reform in performers' rights in Israel. He was awarded various grants and fellowships, among them Rothschild, Minerva, GIF, ISF, Fulbright, ORS and British Council.

■ INSTITUTIONAL ORGANIZERS



PSEAP

Polskie Stowarzyszenie Ekonomicznej Analizy Prawa

POLISH ASSOCIATION OF LAW & ECONOMICS

President - **Dr. Katarzyna Metelska-Szaniawska**

Board Members - **Jarosław Beldowski, Dr. Stanisław Cichocki, Dr. Jacek Czabański, Dr. Rafał Stroiński**

Polish Association of Law and Economics (*Polskie Stowarzyszenie Ekonomicznej Analizy Prawa - PSEAP*), founded in 2005, gathers Polish academics involved in Economic Analysis of Law and aims, in particular, at promoting the scientific movement of Law & Economics in Poland by introducing initiatives developing this field, organizing seminars and conferences, as well as collecting and spreading knowledge.

PSEAP has, in particular, organized the following events:

- guest lectures and visits to Poland of subsequent Presidents of the European Association of Law and Economics - Prof. Dr. Hans-Bernd Schaefer (in 2006), Prof. Dr. Roger Bowles (in 2008), and Prof. Dr. Eli Salzberger (in 2011, as keynote lecturer at *2nd Polish Law & Economics Conference*),
- four editions of Seminar Series (2007/2008, 2008/2009, 2009/2010, and 2010/2011 - altogether more than 30 seminar meetings),
- *1st Polish Law & Economics Conference* at the University of Warsaw (in 2010) - the first major scientific event in Poland devoted entirely to Law & Economics. The keynote lecture at the conference was delivered by Prof. Dr. Stefan Voigt (Director of the Institute of Law & Economics at the University of Hamburg),
- Best Student Paper Prize competition (two editions) accompanying *1st and 2nd Polish Law & Economics Conferences*.

The Association issues peer-reviewed *PSEAP Working Papers* available online at PSEAP website.

Active involvement of PSEAP Board Members resulted in publishing the Polish-language edition of Robert Cooter and Thomas Ulen's *Law and Economics* (1st edition in 2009, 2nd edition forthcoming in 2011).

PSEAP has also successfully supported bringing the European Master of Law and Economics (EMLE) international study program to Warsaw. Studies within this program in Warsaw began in Spring 2011. PSEAP was granted the status of Associate Partner of EMLE.

Past initiatives of PSEAP were supported by, inter alia, the National Bank of Poland, Ministry of Justice of the Republic of Poland, BRE Bank Foundation, CMS Cameron McKenna, and University of Warsaw.

Website: <http://www.pseap.org>

Contact: info@pseap.org



■ INSTITUTIONAL ORGANIZERS



CENTRE FOR ECONOMIC ANALYSES OF PUBLIC SECTOR

Director - **Dr. Jan Fałkowski**

Centre for Economic Analyses of Public Sector (CEAPS), founded in 2009, is a research institute at Faculty of Economic Sciences, University of Warsaw. Its main objective is to produce high quality research in Public Economics. CEAPS is also involved in preparing expert opinions on outside research contracts. Currently the Centre is engaged in a number of research projects concerning a plethora of different aspects of public sphere, from higher education, and good governance, to labour and land markets in rural areas.

CEAPS has been well integrated in the international research community which manifests itself in lively research cooperation and access to the newest research findings. Thanks to this, CEAPS participates actively in economic policy debate concerning the public sector, both in Poland as well as abroad. In addition to their research efforts, CEAPS researchers are involved in teaching activities at the University.

Contact: ceaps@wne.uw.edu.pl



STUDENTS' ASSOCIATION OF INSTITUTIONAL ECONOMICS AT FACULTY OF ECONOMIC SCIENCES, UNIVERSITY OF WARSAW

President - **Tomasz Mielniczuk**

Scientific Tutor - **Dr. Katarzyna Metelska-Szaniawska**

Students' Association of Institutional Economics (*Koło Naukowe Ekonomii Instytucjonalnej – KNEI*), registered in 2009, is a non-profit organization of students of economics and other social sciences (law, in particular) who are dedicated to the development of interdisciplinary connections between economics and those other disciplines. The main fields of research include: New Institutional Economics, Public Sector Economics, Public Choice and Law & Economics.

In 2010 the Association cooperated with the Centre for Economic Analyses of Public Sector (Faculty of Economic Sciences, University of Warsaw) in preparing a study concerning new strategies of financing higher education in Poland. Members of KNEI assessed different methods of increasing accessibility to higher education, examined possibilities to foster the system of student loans and conducted a broad public opinion study about financing higher education in Poland. KNEI also participated in organizing the *1st Polish Law & Economics Conference* in 2010. In the next academic year the Association plans to start issuing Working Papers and organize a debate for students of economics about job perspectives in the public sector.

Currently the most important project is co-organizing the *2nd Polish Law & Economics Conference*. In particular, members of KNEI were involved in organizing the Best Student Paper Prize competition, which resulted in selecting best students' papers regarding Law & Economics that will be presented during the conference.

Contact: <http://www.facebook.com/KNEIUW>

■ ABSTRACTS

ECONOMIC ANALYSIS OF THE LANGUAGE QUOTAS FOR POLISH SONGS ON THE RADIO

Patryk Gałuszka, University of Łódź
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Article 15 of Polish media law sets a minimum quota of 33% of music time which radio stations should reserve for Polish-language music. Industry experience shows that radio stations try to comply with these rules by airing Polish-language music during the small hours (2 a.m.-5 a.m.). Economic interpretation of these practices suggests that Polish-language music in most of the cases reduces radio audience and would not be aired if not for the legal obligation made by the article 15 of the Polish media law. Recently the Ministry of Culture and National Heritage proposed the parliament amendments to the media law which oblige music radio stations in Poland to air Polish-language music during daytime. Although implementation of these new rules (currently discussed in the parliament) require only small changes in the law, it would have significant economic consequences and therefore should be carefully analyzed from the economic perspectives.

The paper employs economic analysis to the language quotas law. The first part of the paper briefly characterizes economic properties of the radio. The second section presents complex relationship between the radio and the recording industry. The third part of the paper concentrates on presenting language quotas laws which exist in other countries. The fourth part of the paper deals with the economic analysis of the proposed amendments. It contains simple cost benefit analysis of the language quotas regulations and shows why it may not be efficient from the economic point of view to have such a legislation in place. The fifth section of the paper presents policy recommendation which should be considered only if one admits that the economic efficiency is not the sole criterion taken into account when decisions about the media law are made. It argues that if the legislators want to enhance market diversity (development of radio stations with diversified repertoire).

IS THE OTC MARKET A MARKET FAILURE? DERIVATIVES FROM THE PERSPECTIVE OF TRANSACTION COSTS ECONOMICS

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The neoclassical economics regards derivatives as the necessary instrument providing not only liquidity or risk spreading, but enabling the existence of the perfectly competitive market, since without derivatives there is no possibility to meet one of the core requirements of the General Equilibrium Theorem - the complete or contingent contract claim, according to which there should be the market for any possible state of affairs. A drive toward dualism might be observed: regulated futures, stock and commodity exchange (with almost no litigation, due to technical regulations; deposits, clearing house, licenses, etc.) or sophisticated contracts (OTC market) are present on this market rather than typical contracts. The paradox lies however in a fact, that derivatives work efficiently within a perfect competitive market structure, whose existence is conditioned upon the effective work of derivatives. The normative Coase theorem suggests that the regulation and judicial decision should pursue efficiency and diminish transactional costs (Coase 1988). Additionally Coase suggests that the regulatory framework diminishes the level of transaction costs. If it is so, what is the function of the OTC derivatives' market? Why the regulated market did not supersede the OTC market, even if statutory and judge made law in many jurisdictions aimed at eliminating the OTC market? The paper will concentrate on the comparison of two market regimes: the stock exchange and the OTC market in respect of the level of respective administrative and transaction costs. The applied methodology will thus include the comparative institutional analysis broaden with the assessment of the transaction and administrative costs. The purpose of this research is to address the question whether the Coasean theory of regulation is correct and eventually how to explain the existence and growth of the OTC market for derivatives from the perspective of the transaction cost economics.



■ ABSTRACTS

DOMESTIC INSTITUTIONS AND THE POLITICAL ECONOMY OF INTERNATIONAL AGREEMENTS

Florian Kiesow Cortez, Institute of Law and Economics, University of Hamburg
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Constitutional rules according to which political power is acquired and exercised have a systematic influence on the nature of the political game and thus on policy outcomes. The present paper explores whether systematic differences in foreign policy outcomes follow from the workings of democratic accountability and from alternative constitutional arrangements. The following hypotheses linking domestic institutions to foreign policy choices are proposed. First, the number of institutional and partisan veto players is likely to affect the incentives of governments to use international agreements as a signaling device to lend credibility to reforms and/or as a tool to lock in reforms. Second, electoral systems were found to influence political decision to provide either public goods or benefits targeted to narrow groups. Politicians might find it useful to tie their hands through international agreements to thwart electoral pressures to please narrow groups. In brief, the focus lies on domestic political economy factors motivating governments to make use of international agreements.

INSTITUTIONAL UNCERTAINTY AND RETIREMENT DECISIONS IN POLAND

Grzegorz Kula* University of Warsaw and Anna Ruzik-Sierdzińska**, Warsaw School of Economics & CASE
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The paper analyzes the factors influencing situation and retirement decisions of different cohorts in Poland in years 1995-2007. In this period the institutional framework in which people work and retire was subject to almost constant reform process, which has undermined the stability of the system and created high level of institutional uncertainty. We check if changes in economic activity at the later stage of professional life can be observed via changes in the social security legislation and their consequences for different cohorts.

Separate pseudo-panel models were estimated for men and women based on the annual Household Budget Survey datasets. The results show that apart from variables usually identified in the literature that have a significant impact on retirement decisions, like age, disability and having a spouse, institutional changes are also significant in case of Poland. Especially regulations concerning the access to pre-retirement allowances and benefits, as well as changes in the possibility to combine work and receiving pension turned out to have significant influence on the changes of the share of retired and working individuals within cohorts.

ECONOMIC CONSIDERATION BEHIND THE CIVIL DUE CARE STANDARD: DOGMATIC HERESY OR A RATIONAL IMPERATIVE?

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In most civil liability cases, the assessment whether a defendant acted negligently or not is the key issue. Negligence takes place only if the proper (due) level of care is not met by the defendant. The main problem is that in most social interactions there exists no applicable due care legal standard. In such cases, the patterns of due care are derived from various sources, such as custom, expert's decision, common view, previous court rulings, tradition etc. This leads to inefficiencies, as rational agents might be afraid to engage into risky situations, even though they are socially beneficial. The social costs redistribution formula is thus left opened and non-transparent.

The author presents the view that the Polish law lacks coherent and convincing idea on how to solve the due care standard situation. Practically no judicial decisions show economic rationale behind a care standard that was applied in casu and which constituted the normative grounds for the judgment. To the contrary, many rulings set unexpected and unpredictable standards, leading (as factual precedents) to inefficient economic decisions of all market agents.

Law & Economics provides for several interesting methods of dealing with the problem. The issue was the main theme in works of i.a. R. Cooter, T. Ulen, H.B. Schaefer, A. Schonenberger, J. Grady and S. Shavell. Their propositions include using reductionist models in which individual care cost for potential injurer are calculated along with potential costs of the victim, being a product of magnitude of loss and probability of accident. The calculation allows to work out the optimal care level where "social costs of accidents" are the lowest. The model itself is too theoretical to be used by court judges directly (generally due to scarcity of quantitative information and multiple potentially harmful outcomes of modern complex social interactions). The essential question is, however, the possibility of conceptual acceptance of proposed model of reasoning which seems to constitute an antidote for dogmatic deficiencies in the discussed area. The author presents the view that this conceptual figure is admissible and the applied dogmatic formulae of civil liability are not contradictory with the L&E rules and may be supplemented thereby.

COMPLIANCE IN ENTERPRISES – LEGAL STRUCTURES FOR ECONOMIC SECURITY

Bartosz Makowicz, Europe-University Viadrina Frankfurt, Oder
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In recent years, compliance has become increasingly important. In this speech it is to be outlined how compliance system works and what are the core elements of the compliance structure. Since compliance system – on the one side – bases on the legal rules and – on the other side – it must produce positive economic effects, a certain economic analysis of the appropriate law is to be undertaken. In very general terms, compliance is the conformity of the company's activities with binding legal regulations, voluntarily adopted internal rules and the principles of business ethics. To ensure these requirements the company needs an effective compliance system, which is managed by a so-called Chief Compliance Officer (CCO). When creating compliance structures firstly the character of the company and the risk potential are to be taken into consideration. Such aspects like size, the structure and location of the company as well as the risk potential of the capital market concerned has to be taken into account when creating a compliance system. Secondly very important is the legal risk management as well as legal measures, allowing reaching the controlling goals. The compliance system focuses on monitoring and investigations in order to prevent potential abuse. A basic meaning in this field has the labor law. In the light of practice, it has a double meaning: on the one hand it is an effective tool for the implementation of a compliance system (for example it may be agreed on in the contract that the employee is obliged to inform the employer about any irregularities she or he has remarked in the company). On the other hand, the introduction of the compliance system is itself subject to the rules, which serve the protection of employees. The focus of the speech will be put on all aspects of compliance in a systematic and according to the structure of general compliance rules and their specific provisions applying to certain kind of companies, in order to point out, how the legal structures of an enterprise are to be drawn when aiming the highest security level using compliance methods. Finally it will be proven that good compliance is not only important in the micro but also in the macro view of the matters.



■ ABSTRACTS

DISAPPOINTMENT AND PROMISE OF NEUROECONOMICS APPLIED TO LAW

Magdalena Małecka, Graduate School for Social Research, Polish Academy of Sciences
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Neuroeconomics is an interdisciplinary research program whose goal is to build biological (neural) model of decision making in economic environments. Its emergence might be viewed as a consequence of the former development of behavioral and experimental economics. Application of behavioral and experimental economics to law has resulted in development of behavioral and experimental law & economics. Attempts of making use of neuroeconomic findings in legal scholarship are by analogy called “the neuroeconomics and law”. However, the neuroeconomics and law is still in its early stages. My aim is a critical review of current research done in the area of neuroeconomic approach to law. I review and comment application of neuroeconomics to selected areas of law, as well as its use in research concerning development and evolution of law. I make critical comments on unspecified and vague character of the application and the threat of misinterpretation of experimental results, as well as on a notion of heterogeneity used by proponents of the neuroeconomics and law approach. I agree with critics of the approach, who claim that applications of neuroeconomics to law, which have been proposed so far, are not convincing. Nevertheless, I still see theoretical potential in the neuroeconomics and law. I claim that the potential lies in possible contribution to the rethinking the (causal) relation between legal norms and behavior.

ENERGY LIBERALIZATION IN ANTITRUST STRAITJACKET: A PLANT TOO FAR?

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The European Commission has launched a number of antitrust investigations against the major energy incumbents in the aftermath of the energy sector inquiry. Most of them have already been settled under Article 9 of the EC Regulation 1/2003 and the undertakings offered far-reaching, sometimes structural, commitments. This article studies the 2008 investigation into price manipulation in the German electricity wholesale market. In spite of no convincing evidence and flaws in the assessment, the Commission was able to negotiate from E.ON substantial capacity divestments.

The Commission is straightforward about using antitrust rules to open up energy markets. Sector inquiries, commitment procedure and structural remedies allow for a quick intervention, flexible problem-solving and bring about decisive changes in the energy market setting. However, harnessing antitrust for the purpose of energy liberalization policy has an adverse impact on competition enforcement itself. First, it leads to a number of ‘weak’ cases, based on far-fetched arguments. Second, it results in remedies which are not tailored to the abuse at issue, but are in line with a wider objective of energy market liberalization, and as an outcome of negotiations, further swayed by the firm’s own interest in the ultimate shape of the commitment package.

SPECIFICITY OF DETERMINING THE RELEVANT MARKET FOR THE USE OF UE COMPETITION RULES ON THE EXAMPLE OF ELECTRICITY AND PHARMACEUTICAL SECTORS

Weronika Wiśniewska*, University of Łódź and **Mateusz Izbicki****, University of Łódź
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The aim of this paper is to describe the issue of determining the relevant market for the use of European competition rules with special regard to the electricity and pharmaceutical sectors. Competition rules are one of the most important regulations established to guarantee proper functioning of the market economy in EU. The main aim of competition law addressed to companies is to prevent any one of them from gaining such market power that would enable them to distort the proper functioning of competition on the relevant market. Still violations of competition rules never take place in a vacuum and thus analyzing them necessitates referring to the concept of the relevant, which is not just any market, but the one in which strictly defined entities act and compete against one another. Defining the relevant market properly demands an economic analysis of a particular economic sector and the enterprises operating within it on a defined territory, in a defined period of time. From this follows that we can distinguish a relevant market in the terms of product, territory and in some cases even time. Determining the relevant market is always the key stage of the competition violation control procedure, because its correct identification is necessary to decide what the specific market power and contingent liability of the enterprises is.

Both electricity and pharmaceutical sector described in this paper are characterized by very atypical structures, which facilitate the infringements of the EU competition rules. The complexity of those economic sectors is also a perfect illustration of how complicated and multifaceted the process of relevant market determination can be.



■ KONKURS DLA STUDENTÓW (BEST STUDENT PAPER PRIZE)

W ramach **2nd Polish Law & Economics Conference** odbyła się II edycja **Konkursu na najlepszą pracę studencką z zakresu ekonomicznej analizy prawa**.

Po zapoznaniu się z nadesłanymi pracami Komitet Naukowy konferencji zdecydował o następującym podziale nagród w konkursie:

I NAGRODA:

Anna Laszczyk

Uniwersytet Warszawski

„Imagine There Is No Countries – Digital Single Market for Creative Contents. The Case of Music”

II NAGRODA:

Miłosz Józwiak

Uniwersytet Warszawski

„The Limits of Limited Liability – An Economic Analysis of Limited Liability and Piercing of the Corporate Veil”

III NAGRODA:

Piotr Charewicz

Szkoła Główna Handlowa

„Wyścig gospodarczy, czyli jak reguły gry wpływają na efektywność”

Ze względu na bardzo wysoki poziom wielu nadesłanych prac, członkowie Komitetu zdecydowali dodatkowo o przyznaniu **wyróżnień** następującym uczestnikom konkursu:

Kamil Joński (Szkoła Główna Handlowa)

Jarosław Kantorowicz (Szkoła Główna Handlowa, Uniwersytet w Hamburgu)

Krystian Kopka (Uniwersytet Gdański)

Elżbieta Krajewska (Uniwersytet Warszawski)

Szymon Okoń (Uniwersytet im. Adama Mickiewicza w Poznaniu)

Izabela Prager (Uniwersytet Warszawski)

Magdalena Zmysłowska (Uniwersytet Warszawski)

Dziękujemy wszystkim uczestnikom konkursu, a autorom nagrodzonych i wyróżnionych prac gratulujemy!

■ I NAGRODA

Anna Laszczyk

Uniwersytet Warszawski

IMAGINE THERE IS NO COUNTRIES – WSPÓLNY RYNEK CYFROWY DLA ZASOBÓW KREATYWNYCH. PRZYPADK UTWORÓW MUZYCZNYCH

(Imagine There Is No Countries – Digital Single Market for Creative Contents. The Case of Music)

Jednym z celów Agendy Cyfrowej - planu działań Komisji Europejskiej zainicjowanego w maju 2010 roku, jest stworzenie wspólnego rynku cyfrowego. Obecnie w Europie działają niejednolite rynki on-line, co utrudnia użytkownikom równy dostęp do zasobów sieci. Szczególnie widoczne jest to na rynku plików muzycznych - np. serwisy Apple iTunes nie są dostępne na równych zasadach we wszystkich państwach członkowskich.

Praca dotyczy możliwości stworzenia jednolitego rynku on-line dla plików muzycznych. Podejmuje krytyczną analizę propozycji Komisji Europejskiej, która sugeruje wprowadzenie konkurencji pomiędzy organizacjami zbiorowego zarządzania prawami autorskimi (OZZ). Przy użyciu narzędzi analizy ekonomicznej autorka charakteryzuje OZZ oraz muzykę, kwalifikując ją jako dobro informacji, starając się udowodnić, że monopolistyczna forma zbiorowego zarządzania prawami jest niezbędna dla zachowania celów prawa autorskiego. Autorka popiera idee kreatywnej konkurencji (J. Drexler), której funkcjonowanie w przeciwieństwie do tradycyjnego modelu statycznej konkurencji, ma zapewnić artystom motywację do tworzenia, a odbiorcom szeroki wybór różnorodnej muzyki. W artykule zaprezentowany jest zarys rozwiązania problemu, urzeczywistniający założenia teorii kreatywnej konkurencji. Ponadto autorka podejmuje również problem piractwa internetowego, którego eliminacja jest kluczowym warunkiem dla stworzenia jednolitego rynku cyfrowego.

■ II NAGRODA

Miłosz Józwiak

Uniwersytet Warszawski

GRANICE OGRANICZONEJ ODPOWIEDZIALNOŚCI – ANALIZA EKONOMICZNA OGRANICZONEJ ODPOWIEDZIALNOŚCI ORAZ ODPOWIEDZIALNOŚCI PRZEBIJAJĄCEJ

(The Limits of Limited Liability – An Economic Analysis of Limited Liability and Piercing of the Corporate Veil)

W ostatnich latach zainteresowanie polskiej doktryny wzbudziła tematyka ewentualnych zmian polskiego prawa holdingowego. W kilku następujących po sobie projektach zmian ustawodawstwa korporacyjnego zaproponowane zostały rozwiązania skutkujące bardziej szczegółowym uregulowaniem materii grup spółek, w tym zasad odpowiedzialności wewnątrzgrupowej oraz zdefiniowania interesu grup spółek. Projekty te nie ustosunkowały się jednakże do zaobserwowanych w praktyce zagranicznej zagrożeń dla efektywności ekonomicznej, jakie niesie ze sobą ograniczona odpowiedzialność członków spółek kapitałowych. Zasada ograniczonej odpowiedzialności, będąc fundamentem współczesnego prawa spółek, została wyniesiona do statusu niemalże absolutnej reguły. Jakkolwiek twierdzenie to jest tylko do pewnego stopnia prawdziwe w świetle wielu systemów obcych, na polskim gruncie wspomniana zasada osiągnęła poziom aksjomatu prawnego. Ze wszystkimi korzyściami dla rynku – a szerzej – dobrobytu społecznego, jakie przynosi ograniczona odpowiedzialność, nie jest to instytucja idealna. Brak odpowiedzialności osobistej może – w pewnych okolicznościach – być źródłem silnych bodźców do eksternalizacji ryzyka działalności spółek, jak również jest źródłem problemów typowych dla ekonomicznej teorii ubezpieczeń, mianowicie dylematów negatywnej selekcji oraz pokus nadużycia. W tym kontekście, celowym jest bliższe przyjrzenie się ekonomicznym skutkom ograniczonej odpowiedzialności, jak również rozważenie potrzeb ewentualnej regulacji.

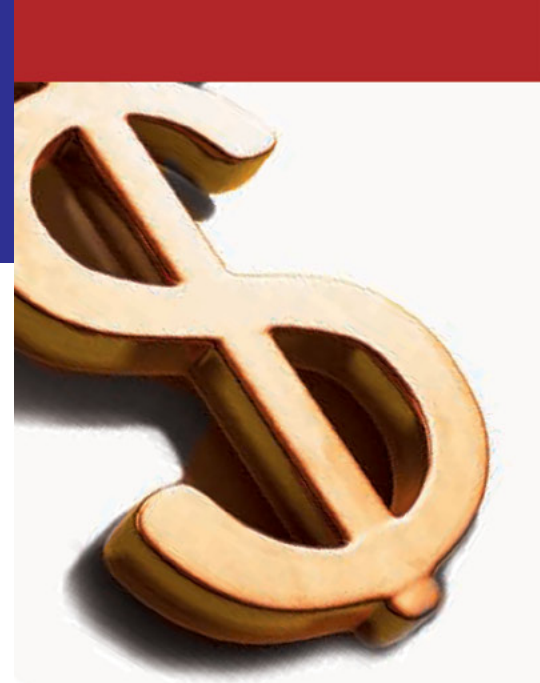
■ III NAGRODA

Piotr Charewicz

Szkoła Główna Handlowa

WYŚCIG GOSPODARCZY, CZYLI JAK REGUŁY GRY WPŁYWAJĄ NA EFEKTYWNOŚĆ

Artykuł stara się wykazać silny związek pomiędzy systemem prawa a rozwojem gospodarczym. Wskazuje obszary szczególnie narażone na działanie nieefektywności w wyniku źle konstruowanych i zbyt licznych przepisów. Autor podaje przykłady potencjalnych mierników, które mogą być użyteczne przy projektowaniu modeli rozwoju z uwzględnieniem aspektów prawnych. Zwraca również uwagę na problemy związane z nieodpowiednio zaprojektowanymi przepisami i zjawiska im towarzyszące. Wynikiem przedstawionych rozważań jest określenie zależności pomiędzy miernikami rozwoju a użytecznością z perspektywy prawa w długim okresie oraz definicja pojęcia jałowego i dostawnego wzrostu gospodarczego.



Robert Cooter & Thomas Ulen

Ekonomiczna analiza prawa



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Autorzy: Robert Cooter, Thomas Ulen

Podręcznik polecany przez Polskie Stowarzyszenie Ekonomicznej Analizy Prawa

- Co powinno stanowić własność prywatną, a co publiczną?
- Jakie środki ochrony prawnej powinny przysługiwać w przypadku naruszenia umowy?
- Jak należy zorganizować system odszkodowań dla ofiar zaniedbań lekarskich?
- Które czyny powinny być karalne i w jakim stopniu?

System prawny każdego państwa musi udzielić odpowiedzi na każde z tych pytań oraz na wiele innych. Law & Economics proponuje spojrzenie na te zagadnienia z perspektywy analizy ekonomicznej. Niniejsza publikacja to jeden z najpopularniejszych podręczników z zakresu ekonomicznej analizy prawa na świecie. Pierwsze trzy rozdziały książki zawierają przegląd niezbędnej wiedzy z zakresu podstaw ekonomii oraz prawa. Następnie autorzy przedstawiają w dziewięciu rozdziałach podejście z perspektywy ekonomicznej do prawa rzeczowego, prawa umów, prawa deliktów, procedury sądowej oraz prawa karnego.

Podręcznik jest uznawany za **najbardziej wszechstronne wprowadzenie do ekonomicznej analizy prawa** adresowane do szerokiego grona odbiorców – studentów prawa, ekonomii i innych nauk społecznych, przedstawicieli świata nauki, praktyków zaangażowanych w tworzenie i egzekwowanie prawa oraz innych osób zainteresowanych tym nowatorskim interdyscyplinarnym ruchem naukowym.



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