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Center for Antitrust and Regulatory Studies

2011

YEARBOOK of ANTITRUST and REGULATORY STUDIES
www.yars.wz.uw.edu.pl

Peer-reviewed scientific periodical, focusing on legal and economic issues of antitrust and regulation.

Centre for Antitrust and Regulatory Studies, University of Warsaw, Faculty of Management
www.cars.wz.uw.edu.pl

Competition Protection and Philip Kotler's Strategic Recommendations

by

Anna Fornalczyk*

CONTENTS

Abstract

P. Kotler's recommendations of modern marketing tell managers how to achieve and maintain a dominant market position. Some of the recommended activities may, however, infringe European and Polish competition law. Objections are not raised by market success achieved as a result of high product quality, good customer care, high market shares, continuous product improvements, new product release, entry onto fast growing markets, and exceeding customer expectations. Competition law problems may appear when a given company, having reached a dominant position, starts abusing it by subjugating the market and dictating business conditions to other market players (suppliers, customers, consumers). This article focuses on predatory pricing, strategic alliances, mergers and acquisitions and State aid issues that may arise from the implementation of Kotler's recommendations. For market success not to transform into a competition law problem, it is worth remembering the limitations imposed by competition law on the actions of dominant companies. The paper outlines these limitations.

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Résumé

Les recommandations de Philip Kotler concernant le marketing moderne conseillent aux managers comment atteindre et maintenir une position dominante. Certaines des activités recommandées peuvent, pourtant, être en contravention avec la loi polonaise et européenne. Les problèmes du droit de la concurrence peuvent apparaître quand une entreprise donnée, après avoir atteint une position dominante, commence à en abuser par subjuguer le marché et dicter ses conditions aux autres participants du marché (fournisseurs, clients, consommateurs). Cet article se concentre sur les prix prédateurs, alliances stratégiques, fusions-acquisitions et sur les questions de l'aide publique resultant de l'implantation des recommandations de Kotler. Pour que le succès du marché ne se transforme pas en échec, il faut prendre en considération les limitation imposées par le droit de la concurrence sur les actions des entreprises dominantes. Cet article décrit ces limitations.

Classifications and key words: competition; dominant market position; predatory pricing; strategic alliances; preventive control of mergers and acquisitions; exploitive or anti-competitive practices; State aid; leniency procedure; Kotler's theory of modern marketing.

I. Competition and dominance in Kotler's theory

Philip Kotler, a renowned authority of marketing theories, famous lecturer and advisor to global companies, assumed that market dominance is indicative of effective marketing that can guarantee success in business relations[1]. Other commentators recommend striving to attain market dominance also within the framework of effective strategic management and marketing concepts[2].

Another eminent theoretician of management sciences, P. F. Druker, uses the expression 'to go the whole hog' in order to reflect the essence of a business strategy aimed at dominating the market. He explains it using the example of two companies: Hoffman-LaRoche and Du Pont which, having conquered their own competitors, dominated the market of vitamins and plastics respectively. Practice showed, however, that by implementing a strategy of market dominance, they violated the rules of European competition law and American antitrust law and thus became subject to infringement proceedings in Europe as well as in the U.S.[3].

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1 P. Kotler, *Kotler o marketingu. Jak tworzyć, zdobywać i dominować na rynkach,* Katowice 2006.

2 K. Obłój, *Tworzywo skutecznych strategii,* Warszawa 2002, p. 81, 117; P. F. Drucker, *Myśli przewodnie Druckera,* Warszawa 2002, p. 263.

3 Decision EC 76/642/EEC; IV/29.020 *Vitamins*. H.Hovencamp, *Federal Antitrust Policy,* West Publishing Co., 1994, p. 341 and the following.

The definition of marketing stating that 'Marketing is the art and science of winning and keeping customers and taking care of relations with them'[4] is of key importance for P. Kotler's concept. The last part thereof has found particular confirmation in practical terms. A survey conducted within the framework of the Technical Assistant Research Program (1986) referred to by P. Kotler illustrated that the cost of winning a new client is five times higher than that of keeping an existing one[5]. Experience shows that this is, for instance, why telecoms operators offer promotions to new clients only despite the fact that such offers may be perceived as a form of discrimination of clients already loyal to the company.

P. Kotler's recommendations on effective marketing aimed at the acquisition of market power may also lead to a situation known in the economic practice (Microsoft, Intel, Tetra Pak) as business success combined with a competition law problem. Although the mere fact of enjoying a dominant position does not violate competition law in itself, the abuse thereof is considered an infringement. The methods of arriving at a dominant position by internal (profit accumulation) or external growth (concentration of companies) may also be subject to the provisions of competition law. Indeed, its application constantly raises questions about the efficiency criteria when assessing a given company's marketing behavior. Born in mind must be the fact, however, that consumer interests, understood as the fulfillment of their right to choose the place, price and quality of the goods purchased, is the ultimate criterion for the evaluation of the consequences of the behavior in question.

P. Kotler is right in saying that to be successful in business one needs to use modern marketing techniques and its fundamental elements, such as: networking with other market players (especially when it comes to the reduction of distribution costs by creating common distribution networks); focusing marketing activities on the market with a view to find new customers and win their loyalty; and selecting suppliers based on the criteria of price, quality and delivery terms[6]. However, paths leading to market dominance, if continued after it has already been attained, may be considered to constitute a prohibited monopolistic practice exercised by a dominant company. Warnings of that type are absent from P. Kotler's theory even though they may complicate the operations of a dominant company when it finds itself facing a conflict with competition law.

Although it would be a too far-reaching simplification to assume that P. Kotler's theory of modern marketing recommends the monopolization of the economy, it is worth highlighting the potential negative external effects of its

[4] P. Kotler, *Kotler o marketingu…*, p. 199.
[5] Ibidem, p. 200.
[6] P. Kotler, *Kotler o marketingu…*, p. 24.

implementation[7]. Despite the fact that P. Kotler's very sizable textbook contains some brief notes on American antitrust rules, these comments are not reflected in his marketing recommendations[8]. The author expects thus his readers to singlehandedly answer the question: how to run a business without infringing antitrust provisions? P. Kotler pays somewhat more attention to pricing policy making it possible for his readers to skillfully surf between the antitrust reefs[9].

This paper illustrates what competition law threats arise from the application of P. Kotler's concept of modern marketing. Examples are given of competition law enforcement practice in both Poland and European Union to anti-competitive and exploitive practices[10] resulting from the abuse of a dominant position (taking advantage of existing market power) and to restrictive agreements. The paper covers also preventive control of concentrations and competition-distorting State aid.

A number of specific considerations are important to the concept of modern marketing formulated by P. Kotler including: pricing policy as a tool of an effective competitive struggle[11]; winning and keeping client loyalty[12]; strategic alliances as an effective future of marketing[13]; and mergers by acquiring other companies or brands[14]. When advising company managers to engage in the above activities, it is worth drawing their attention to issues where they potentially collide with competition law[15].

II. Pricing policy as a tool of effective competitive struggle

Pricing independence is the inherent right of companies in the market economy. Nevertheless, having attained market power, a dominant company makes pricing decisions indicative of the existence of exploitive or anti-competitive practices. Competition law is designed to prevent such situations. When it comes to pricing practices, competition law enforcement focuses on

[7] S. Bishop, J.M. Walker, *The Economics of EC Competition Law: Concepts, Application and Measurement,* 2nd edition, Sweet&Maxwell, London 2002.

[8] P. Kotler, *Marketing. Analiza, planowanie, wdrażanie i kontrola*, Warszawa 1994, p. 71, pp. 150–151.

[9] Ibidem, p. 465.

[10] T. Skoczny, 'Ochrona konkurencji a prokonkurencyjna regulacja sektorowa' ['Competition Protection and Procompetitive Sectoral Regulation'] (2004) 3 *Problemy Zarządzania* 7–34.

[11] P. Kotler, *Kotler o marketingu…,* p. 26.

[12] Ibidem, p. 37.

[13] Ibidem, p. 38.

[14] Ibidem, p. 82.

[15] More on the subject in: A. Fornalczyk, *Biznes a ochrona konkurencji,* Kraków 2007.

the analysis of data and information which makes it possible to distinguish normal business activities from monopolistic practices.

P. Kotler recommends conquering competitors by way of lower prices in order to arrive at a high market share. The strategy of offering prices lower than those of the competition is justified in business terms and does not infringe competition law provided it results from cost advantages enjoyed by the dominant company. Predatory pricing strategies, which aim to eliminate competition, are not allowed however[16].

S. Bishop and M. Walker define predatory pricing as '…the deliberate sacrifice of profits in the short run in the expectation of earning more profits in the long run after the rival has exited the market.'[17] Accordingly, when assessing a predatory pricing policy of a dominant company it is essential to identify the ultimate objective of that strategy. Once competitors are driven out of the market, dominant companies tend to increase their prices to a level that excessively compensates ('monopoly rent') their losses born as a result of the earlier offering of glaringly low prices.

The Areeda – Turner test (TAT) can be used in order to assess whether a policy of low prices used in the competitive struggle bears the signs of predatory pricing. The test considers a price below short-term marginal costs to be predatory (glaringly low)[18]. However, since short-term marginal costs are difficult to calculate in practice, its authors allow for the possibility to apply average variable costs instead. The TAT method has been open to criticism as it is difficult to apply in competition law proceedings[19]. Although the test is applied in both explanatory and full antitrust proceedings, it is used as an auxiliary tool only. It is assumed in competition law enforcement practices that a price below average variable costs should be considered to be predatory and, as such, illegal. However, the intention to apply predatory prices must be proven, that is, the dominant company's aim to drive its competitors out of the market must be clear. In Europe, the Tetra Pak case[20] is an unprecedented example of counteracting predatory pricing. The President of the Polish Office of Competition and Consumer Protection (in Polish: Urząd Ochrony

[16] In the Polish Act on Competition and Consumer Protection [Art. 9(2)(1)] predatory prices are referred to as glaringly low prices.

[17] S. Bishop, M. Walker, *The Economics of EC Competition Law…*, p. 219.

[18] P.E. Areeda, D.F.Turner, 'Predatory Pricing and Related Practices under Section 2 of the Sherman Act' (1975) 88 *Harvard Law Review* 697-733.

[19] S. Bishop, M. Walker, *The Economics of EC Competition Law…*, pp. 231–238.

[20] EC decision *Tetra Pak II* (IV/31043 – *Tetra Pak II*). ECJ ruling: C-333/94 P *Tetra Pak v European Commission*, ECR [1996] I-595l. Other decisions by the European Commission on predatory prices see: *ECS/AKZO*, OJ [1985] L 374/1; *Eurofix-Bauco/Hilti*, OJ [1988] L 65/19; *Napier Bron/British Sugar*, OJ [1988] L 284/41.

Konkurencji i Konsumenta; hereafter, UOKiK) takes actions to counteract predatory pricing also[21].

While recommending the application of a low prices strategy, P. Kotler discusses also the possibility of a company being subsidized by the government and, as a result, offering prices lower than its competitors[22]. In the European Union, State aid is subject to the provisions of Article 107–109 of the Treaty on the Functioning of the European Union (TFEU), to Regulations issued by the European Parliament and Commission, and to a number of soft-law documents that help prevent lasting infringements of market competition by the beneficiaries of State aid.

State aid may take a variety of forms in practice (subsidies, tax\allowances, preferential loans, capital injections) all of which are monitored by the European Commission. Aid granted by the governments of individual Member States must be notified to the Commission according to a set of notification requirements specific in appropriate legislation. Aid granted in breach of EU rules is illegal and should be recovered. A low prices policy pursued as a result of State aid infringes EU competition law and is incompatible with the internal market.

In parallel to the activities of the European Union, the World Trade Organization also counteracts the attainment of a competitive advantage by entities subsidized by the governments of one of its members on the basis of its own antidumping provisions. The difference between the EU and WTO set of State aid rules lies in the fact that the former provisions are applied ex ante while the later procedures are implemented on an ex post basis. When developing a low prices strategy with a view to conquer competition and dominate a market, it is thus worth keeping in mind such strategy's potential conflicts with competition law and State aid provisions.

A low prices policy may also consist of granting rebates to customers which, according to P. Kotler, may be helpful in winning and keeping client loyalty[23]. P. Kotler rightly stresses the consequences of rebates for the profit levels of the company granting them. Excessive rebates may indeed increase sales and help win loyal customers, but they may reduce the profitability of the dominant company also. Nonetheless, attention should be paid to restrictions placed by

[21] Decisions of the UOKiK President: WR-9/2001; RKT-24/2001; RLU-13/2001; RGD-2/2002; RKR-22/2002; RŁO-41/2005; RKT-03/2006. Orders by the Anti-Monopoly Court: XVII Amr 59/93; XVII Amr 28/95; XVII Amr 24/96. Orders of the Court of Competition and Consumer Protection: XVII Amr 11/95; XVII Ama 51/97; XVII Ama 49/00; XVII Ama 28/01; XVII Ama 49/02; XVII Ama 70/03; XVII Ama 83/03.

[22] P. Kotler, *Kotler o konkurencji…*, p. 230.

[23] Ibidem, p. 37, p. 167.

competition law on the formulation and implementation of a rebates policy by dominant companies.

Loyalty rebates are recommended by P. Kotler as a method of maintaining a given company's dominant market position. However, such practices are considered restrictive vis-a-vis competition by both the European as well as Polish competition law jurisprudence as they eliminate competitors with a weaker market position than the dominant company and close the market to potential competitors[24]. The essence of rebates may lie in the imposition of a given scale of purchase that excludes suppliers other than the dominant company. It may also lie in retroactive rebates or making the size of the rebate dependent upon the length of the commercial agreement between the dominant company and its customers. Rebates policy, if justified from a business standpoint, should be conducted in accordance with binding competition law provisions if the company wishes to be successful in business without having to face competition law problems.

III. Strategic alliances and anti-competitive agreements

P. Kotler considers strategic alliances the 'effective future of marketing'[25]. This statement is true albeit it is worth adding that strategic alliances may also include R&D, production cooperation, staff training, investment and the building of common marketing channels. The theory of management, especially strategic management, describes and studies the premises and positive effects of agreements between undertakings[26]. 'Strategic alliance is a cooperation between present or potential competitors which impacts the position of other competitors, suppliers or customers within the same or related sectors'[27]. Most generally, the reasons for strategic alliances can be defined as: '(...) the reduction of risk and re-grouping of resources by creating new structural

[24] EC decisions: 76/642/EEC; IV/29.020 *Vitamins*, *BPB Industries plc* IV/31.900, COMP/3.133-B; COMP/3.133-C; COMP/3.133-D. Ruling of the Court of First Instance in the case 65/89 *BPB Industries plc and British Gypsum Ltd v European Commission*, ECR [1993] II-389; decision of the UOKiK President: DDI-110/2002.

[25] P. Kotler, *Kotler o marketingu…*, p. 38.

[26] M. Romanowska, *Alianse strategiczne przedsiębiorstw*, Warszawa 1997; G. Stonehouse, J. Hamill, D. Campbell, T. Purdi, *Globalizacja. Strategia i zarządzanie,* Warszawa 2001, pp. 128-132, 275-281; G. Gierszewska, B. Wawrzyniak, *Globalizacja. Wyzwania dla zarządzania strategicznego,* Warszawa 2001, pp. 129–138; M. Romanowska, *Planowanie strategiczne w przedsiębiorstwie,* Warszawa 2004, pp. 236–261.

[27] M. Romanowska, *Planowanie…,* p. 15.

configurations, “hybrid organizations” which enable the implementation of assumed goals with simultaneous protection of partners’ interests’[28].

While taking advantage of the benefits of strategic alliances, it is worth remembering that horizontal agreements between competitors are not allowed to lead to the restriction of market competition. Restrictive agreements strengthen the market position of their parties and may result in practices identical to the abuse of dominance[29]. Both European and Polish competition law counteract such agreements.

Cartels are especially dangerous to competition as agreements between competitors that fix prices, output and sales quotas or share the markets. To establish that an infringement of competition law took place by a cartel, it is irrelevant whether the pricing policy, as well as any other coordinated activity, was agreed upon directly by the companies participating in the agreement or via their sectorial associations. From the point of view of competition law, it is not the form of the agreement that is important (e.g. gentelmen agreement, in writing) but its objective and market outcome. Indeed, competition law applies to companies participating in non-operational collusions[30] also and even to situations when the participants did not stick to the cartel decision but merely remained party to it[31].

H. Hovenkamp states on the basis of economic practice studies that cartels are more damaging to the economy than a company’s dominant position because they are formed more quickly and do not require outlays as high as those needed to attain dominance[32]. Taking account of P. Kotler’s recommendation to use strategic alliances in marketing, it should be noted that the latter constitute the most sensitive type of activity in terms of competition law. Hence, both the European Commission and the UOKiK President enforce competition law to fight cartels[33].

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[28] Y. Allaire, M.E. Firsirotu, *Myślenie strategiczne*, Warszawa 2000, p. 361.

[29] Bellamy & Child, *Common Market Law of Competition.* Fourth edition, Sweet & Maxwell, London 1993, chapter 9; S. Gronowski, *Ustawa antymonopolowa. Komentarz*, Warszawa 1999, p. 99 and the following R. Whish, *Competition Law, Third edition*, Butterworths, London, Edinburgh, 1993, pp. 270–278.

[30] Exemplified by the case *Ferry Operators*, OJ [1997] L 26/23.

[31] Exemplified by the case *BELASCO*, OJ [1986] L 232/15.

[32] H. Hovenkamp, *Federal Antitrust Policy*, pp. 140–184.

[33] EC decisions: COMP/E-1/37.512 – *Vitamins*, COMP IV/33.126 and 33.322, COMP/C.38.279/F3-*French beef*, COMP/E-1/37.152 – *Plasterboard*, COMP/E-1/37.370-*Sorbates*, COMP 94/599/EC *(PCV II*) [OJ] 1994 L 239/14, COMP 89/191/EEC (*PCV I*) [OJ] 1989 L 74/21, COMP 86/398/EEC (*Polypropylene*) [OJ] 1986 L 230/1) and 69/243/EEC (*Dyestuffs*) [OJ] 1969 L 195/11). Decisions of the UOKiK President: RPZ-21/2002; RPZ-36/2005; DO-II-500-8-93/1285/SS; DAR-15/2006; DOK-99/2007; DOK-7/2009. Order of the Court of Competition and Consumer Protection XVII Amr 8/94.

As cartels are particularly detrimental to market competition, the European Commission imposes especially high fines on their participants. Between 1990–2011, the total amount of cartel fines imposed in the EU exceeded EUR 17 bn. In the case of the car-glass cartel, the fine imposed on its participants in 2008 amounted to EUR 1.400 m; in the case of the elevators and escalators cartel, the fine totaled EUR 1.100 m[34]. Having said that, pecuniary penalties imposed by the authorities are not the only problem for the participants of a cartel. They might also need to face the consequences of private enforcement of competition law whereby company which suffered losses as a result of the operation of a cartel may file for damages and be compensated for profits lots.

Cartel participants that wish to avoid painful fines may take advantage of the leniency procedure. It consists of a reduction or non-imposition of a pecuniary penalty on the company that was first to inform the competent authority about the existence of a cartel and submits data on its duration, operation and market consequences. The leniency procedure helps competition law enforcement bodies to uncover cartels. The scale of cartel fines may thus be dependent upon the tendency among cartel participants to cooperate with the competent authorities in the course of the proceedings.

In order to reduce transaction costs, strategic alliances in marketing may also take the form of vertical agreements between producers and distributors[35]. Transaction costs are of key importance when deciding on how to build marketing channels: as an organizational part of a given company or long-term distribution agreements with independent distributors[36]. Long-term selective or exclusive agreements are very often applied together with distribution franchising agreements. They are anti-competitive if they excessively restrict the independence of the participating distributors, especially by interfering with their pricing and purchase policies. Both European and Polish competition law prevents such agreements – an important realization for managers responsible for the development of distribution networks[37] In numerical terms, the decisional practice of the UOKiK President on anti-competitive agreements

[34] http://ec.europa.eu/competition/cartels/statistics/statistics.pdf (23 September 2011).

[35] O.E. Williamson, *Markets and Hierarchies. Analysis and Antitrust Implications,* New York, London 1983.

[36] A. Fornalczyk, 'Strategia dominacji rynkowej a ochrona konkurencji na wspólnym rynku Unii Europejskiej (na przykładzie organizowania dystrybucji)' [in:] J. W. Wiktor (ed.), *Euromarketing. Koncepcje, strategie, metody*, Kraków 1999, pp. 60–81.

[37] EC decisions: COMP/IV/31.428–31.432 – *Yves Rocher*; COMP. IV/35.733 – *VW*; COMP/F-2/36.693, COMP/36.264-*Mercedes-Benz*, COMP/E2/36623 36820 – *SEP and others/ Automobiles Peugeot SA*, COMP IV-A/00004-03344 *Grundig-Consten*. COMP.F.1/35.918, COMP/ IV/26825 – *Prym-Beka*; COMP/IV/30570 – *Whisky and Gin*; COMP/E-2/36.041/PO – *Michelin*. CFI judgement T-203/01 *Michelin*, ECR [2003] II-4071; ECJ judgement 56 and 58/64 *Consten-Grundig* [1966] ECR 299. Decision of the UOKiK President: WR-32/98.

is clearly dominated by decisions concerning re-sell price fixing in distribution networks[38].

IV. Preventive control of concentrations

Mergers and acquisitions (M&A) offer an alternative to strategic alliances in order to strengthen market position. Mergers result in higher concentration of assets in the hands of a single company, the outcome of acquisitions is the creation and expansion of capital groups. Competition law treats a capital group as one economic entity because subsidiaries are coordinated by the dominant company within the group. A joint venture is also a form of concentration whereby control is exercised together by the participants to the concentration.

There can be strategic, financial and managerial reasons for concentrations. Practice shows that strengthening of the market position of a given operation's participants constitutes an important reason for concentrations, especially when it involves competitors[39]. This is why P. Kotler recommends concentrations and the acquisition of brands among other methods of arriving at and maintaining market dominance. Summing up the strategy, it is worth knowing that concentrations are subject to preventive control by competent authorities, the conditions of which are specified by competition law.When assessing the market consequences of a planned concentration the following are taken into account: existence of distribution agreements between the participants; market scope of the distribution networks belonging to the parties to the planned concentration; as well as their joint undertakings[40]. The effects and organization of the marketing activities of the participants of a concentration may thus be important for a competition law assessment of its market consequences. An extensive distribution network belonging to the parties covering a substantial part of the market in question may make it difficult for the transaction to be cleared. A prohibition of a concentration may also occur when the planned operation leads to the creation of a duopoly or an oligopolistic market structure[41].

[38] Decisions of the UOKiK President: DOK-12/2010; RKT-48/2010; RGD-31/2010; DOK-6/2010; RKT-47/2009; RKT-44/2009; RKT-43/2009; RKT-114/2008; RKT-79/2007.

[39] A. Fornalczyk, *Strategie…*, pp. 152-153.

[40] *Pilkington-Techint/SIV*, 21 December 1993, IV/M.358.

[41] Case IV/M. 190 - *Nestlé/Perrier*; 97/816/EC *Boeing Company (Boeing)/ McDonnell Douglas Corporation (MDC)*; COMP/M.3943. T-102/96 *Gencor Ltd v Commission*, ECR [1999] II-753; T-342/99 *Airtours plc v Commission,* ECR [2002] II-2585; T-5/02 *Tetra Laval v Commission*, ECR

Concentrations restrict market competition in most cases, decisive for a competition law assessment is the scale of that restriction. Competition law stipulates that if a market is dominated by a company created as a result of a merger, or by a capital group created by acquisition, the appropriate competition law body is likely to issue a negative or conditional decision in that case. Divestiture is a usual approval condition for a new company or capital group. When advising a company or a capital group to gain market power by way of a concentration, it is worth stressing the need to perform a pre-merger assessment of the operation in light of competition law criteria. A pre-emptive evaluation conducted within the company will save it crucial time and money during the official investigation and will allow it to better prepare the notification documents that must be submit to the relevant authority.

Companies often perceive the duty to notify concentrations which meet the criteria of specific competition law regimes as an obstacle to such transactions. Statistics show, however, that the European Commission does not block transaction justified by economic reasons. Between 1990–2011, the Commission received a total of 476 notifications. Only 36 of them underwent a more detailed assessment (they went through to the 2nd stage of the procedure) as a result of which, 21 negative and 4 conditional decisions were ultimately issued[42].

V. Antitrust recommendations for modern marketing

Market success achieved thanks to high product quality, good customer care, high market share, continuous product improvements and new product entry, entering fast growing markets, or going beyond customer expectations[43] does not raise competition law objections. Such problems may appear, however, when a company arrives at a dominant position and starts abusing it so as to subordinate the market to itself and to dictate business conditions to other market players (suppliers, customers, consumers). In order for market success not to transform into a competition law problem, it is worth being aware of the restrictions inscribed thereby upon marketing activities of a dominant company. A strategy of low prices cannot take the form of predatory pricing but competition law will not be infringed if low prices result from cost reductions

[2002] II-4381; T-310/01 *Schneider Electric v Commission*, ECR [2002] II-4071. Decision of the UOKiK President: DOK-41/06.

42 Available at http://ec.europa.eu/competition/mergers/statistics.pdf (23 September 2011).

43 Such recommendations are formulated by P. Kotler in his book *Kotler o marketingu…*, pp. 23–29.

due to technical or technological innovations or efficient goods distribution which reduces the dominant company's transaction costs.

Strategic alliances, as long-term agreements on business cooperation, may contribute to the achievement of any of the aforementioned elements of market success. They should not, however, take the form of cartels that monopolize the market (horizontal agreements) and should not restrict competition by limiting the pricing and purchasing independence of distributors (vertical agreements). Economic importance of cooperation and competition was correctly defined by A.M. Brandenburger and B.J. Nalebuff as co-opetition, that is, cooperation in value creation and competition in its division[44]. Value is created in the production process (R&D, techniques and technology) and divided on the market where competition is protected by the law. The strategy of achieving and maintaining market dominance should not infringe competition law if a company wishes to avoid becoming subject to enforcement proceedings leading to the prohibition of its anti-competitive or exploitive practices as well as a pecuniary penalty.

Concentrations meeting the criteria specified in competition law are subject to a notification duty to the relevant competition body. Well drafted notification documents, preceded by an initial assessment of the probability of a positive decision, shorten the wait for an official decision to be taken by the relevant authority. This, in turn, translates into cost savings in the transaction budget. Managers who conquer markets following P. Kotler's recommendations should be aware of these facts.

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