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ICN in Poland: New challenges and enforcement tools in competition law

Tuesday 23 April 2013

Polonia Palace Hotel, Warsaw, Poland

A conference presented by the IBA Antitrust Committee, supported by the IBA European Regional Forum

Topics include:

- The role for private enforcement – recent developments and current issues
- The changing face of merger enforcement – from a structural to an effects based analysis
- Sanctions – achieving the right balance between fines for companies and (criminal) sanctions for individuals
- The role of antitrust agencies in the enforcement of competition law before national courts

Who should attend?

Antitrust and commercial lawyers in private practice, in-house counsel, economists, antitrust enforcement officials and academics.



Programme

Conference Co-Chairs

Jose Regazzini *TozziniFreire Advogados, São Paulo; Co-Chair, IBA Antitrust Committee*

Cani Fernández *Cuatrecasas Gonçalves Pereira, Madrid; Co-Chair, IBA Antitrust Committee*

Continuing Professional Development/ Continuing Legal Education

For delegates from countries where CPD/CLE is mandatory, the International Bar Association will be pleased to provide a Conference Certificate of Attendance which, subject to the exact CPD/CLE requirements, may be used to obtain the equivalent accreditation in your jurisdiction.

This conference has been accredited for CPD/CLE by the Solicitors Regulation Authority of England and Wales. New York and Californian attorneys may submit their certificates of attendance issued, and apply this credit earned to their New York and Californian CLE requirement. Delegates should ask staff at the registration desk for information as to how to obtain the hours.

The organisers may at any time, with or without giving notice, in their absolute discretion and without giving any reason, cancel or postpone the conference, change its venue or any of the other published particulars, or withdraw any invitation to attend. In any case, neither the organisers nor any of their officers, employees, agents, members or representatives shall be liable for any loss, liability, damage or expense suffered or incurred by any person, nor will they return any money paid to them in connection with the conference unless they are satisfied not only that the money in question remains under their control but also that the person who paid it has been unfairly prejudiced (as to which, decision shall be in their sole and unfettered discretion and, when announced, final and conclusive).

Tuesday 23 April

0800 – 0900 **Registration**

0900 – 0905 **Welcome remarks**

Jose Regazzini

Cani Fernández

0905 – 0910 **Introduction of keynote speakers**

Michael J Reynolds *Allen & Overy, Brussels; President, IBA*

0910 – 0935 **Keynote speaker**

Małgorzata Krasnodębska-Tomkiel *President, The Polish Office of Competition and Consumer Protection (UOKIK), Warsaw*

0935 – 1000 **Keynote speaker**

Eduardo Perez Motta *President, The Federal Competition Commission of Mexico, Mexico City; President, International Competition Network (ICN)*

1000 – 1130 **SESSION ONE**

'What role for private enforcement?'

– recent developments and current issues

This session will consider the relevance of private actions in the overall context of competition law enforcement in various jurisdictions. Possible means of private enforcement are manifold. They can range from injunctive relief for potential abuses of market power to the award of civil or punitive damages for those exposed to cartelised behaviour. Competition agencies throughout the world are keen to support the use of private actions to complement administrative and criminal enforcement of competition rules. Are they right to do so?

Panellists will consider the relationship between private and public enforcement, the extent to which private parties actually do pursue actions in various jurisdictions and how the legal environment can support private enforcement or make it more difficult. Many jurisdictions have seen changes occurring in the recent past or looming on the horizon – what lessons do they offer to agencies and practitioners elsewhere?

Session Co-Chairs

Neil Campbell *McMillan, Toronto; Council Member, IBA Legal Practice Division*

Agnieszka Stefanowicz-Baranska *Salans, Warsaw*

1130 – 1150 **Coffee/tea break**

Conference luncheon sponsors

ALLEN & OVERY

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1150 – 1320 **SESSION TWO**

‘The changing face of merger enforcement’ – from a structural to an effects based analysis

Merger review has always been a dynamic process. However, in recent years, many agencies have moved away from a formal approach that primarily considered the impact of a transaction on market structures to an approach that favours a thorough economic analysis of its effects. At the same time the ICN has been promoting the adoption of best practices for issues ranging from notification thresholds to the procedural framework of merger reviews.

The panel will consider whether we are truly living in a period of convergence where everyone is learning from everyone else. Is it realistic to assume that we will eventually arrive at a homogenous system of merger review and would such a system really be desirable? Panellists will critically review past achievements and future challenges of an increasingly global field.

Session Co-Chairs

Janet McDavid *Hogan Lovells, Washington DC; Vice-Chair, IBA Antitrust Committee*

Marta Sendrowicz *Allen & Overy, Warsaw*

Speakers

Melanie Aitken *Bennett Jones, Washington DC*

Mateusz Blachucki *Polish Office of Competition and Consumer Protection, Warsaw*

Margaret Bloom *Freshfields, London*

Karin Faden *United Airlines, Washington DC*

Lynda Marshall *US Department of Justice Antitrust Division, Washington DC*

1320 – 1420 **Lunch**

1420 – 1550 **SESSION THREE**

‘Sanctions should be effective and just’ – achieving the right balance between fines for companies and (criminal) sanctions for individuals.

Surely, everyone can agree to the proposition that sanctions should be effective and just. The devil is in the detail, though. Many parameters come into play and tweaking one is bound to have effects on another. For instance:

- Sanctions for individuals as an element of (optimal) competition policy? Should sanctions for breaches of the competition rules be directed at individuals or at companies?
- What shall be the scope of liability? Who shall be liable – only key executives or simply everyone? Punishment only for involvement in cartels or for any wrongdoing?
- Which are the right sanctions in relation to individuals – penalties or disqualification?
- What is the right level of fines and should it reflect the damage done by a cartel or be calculated on an abstract level?
- Should compliance programmes pay off?
- Sanctions on individuals and leniency – co-existence or cannibalization of enforcement tools?
- Need to respect the principles of fundamental rights (right of defense)

The panel faces many questions in an area that becomes increasingly relevant in particular in Poland since planned legislative change introduces financial sanctions for managers involved in anticompetitive agreements.

Session Co-Chairs

Dave Poddar *Clifford Chance, Sydney; Senior Vice-Chair, IBA Antitrust Committee*

Robert Gago *Hogan Lovells, Warsaw*

Speakers

Marcus Bezzi *Australian Competition & Consumer Commission, Canberra*

Sonia Józwiak-Górna *Polish Office of Competition and Consumer Protection, Warsaw*

Lisa Phelan *Chief of National Criminal Enforcement, US Department of Justice, Washington DC (invited)*

Jarosław Sroczyński *Markiewicz & Sroczyński, Krakow*

1550 – 1610 **Coffee/tea break**

1610 – 1740 **SESSION FOUR**

The role of antitrust agencies in the enforcement of competition law before national courts

Competition authorities interact with national courts in many ways. Sometimes, their administrative decisions are appealed. Sometimes, they wish to support the courts in their application of competition rules in civil litigation. Such interaction may raise a number of issues, for example the presentation of complex legal argument or economic analysis in an area which judges may not be familiar with. It may also present the question of how to support private parties that find it difficult to obtain access to the information where local discovery rules are absent or insufficient. The panel will consider the role of competition authorities in such situations, considering questions including:

- How can an authority present its case to the national judges in the most effective way?
- Is the presentation of economic evidence and its treatment by national judges different from the provision of other types of evidence relating to complex facts?
- Do national procedural rules allow competition authorities to intervene in civil litigation and should they?
- Are there any limits on the type of information authorities can share with the courts?
- Does involvement in national litigation put the rights of defence of parties accused of competition law infringements at risk?
- Should competition agencies be allowed to intervene in proceedings before arbitration tribunals in the same way as in the case of proceedings before national courts?

Session Co-Chairs

Marc Reysen *O’Melveny & Myers, Brussels; Secretary, IBA Antitrust Committee*

Malgorzata Szwej *Linklaters, Warsaw*

Speakers

Alexander Birnstiel *Noerr, Munich*

Dorota Malgin *Legal Department, Polish Officer of Competition and Consumer Protection*

Aleksander Stawicki *Wierciński Kwieciński Baehr, Posnan Representative from The German Federal Cartel Office*

1740 – 1745 **Closing remarks**

Jose Regazzini

Cani Fernández

Information

Date

Tuesday 23 April 2013

Venue

Polonia Palace Hotel
Al Jerozolimskie 45
00-692 Warsaw, Poland
Tel: +48 22 31 82 800 Fax: +48 22 31 82 801
Email: poloniapalace@syrena.com.pl
www.poloniapalace.com

Fees

Online registrations received:

	on or before 26 March	after 26 March until 15 April
IBA member	€355	€460
Non-member*	€510	€615
Polish Competition Law Association member	€355	€460
Young lawyers (under 30 years)	€265	€615
Academics/judges (full-time)	€265	€615
Public lawyers	€265	€615
Corporate counsel	€320	€615

After **15 April** registrations must be received in hard copy at the IBA office.

Hard copy registration forms and fees received:

	on or before 26 March	after 26 March
IBA member	€395	€510
Non-member*	€570	€685
Polish Competition Law Association member	€395	€510
Young lawyers (under 30 years)	€295	€685
Academics/judges (full-time)	€295	€685
Public lawyers	€295	€685
Corporate counsel	€355	€685

* By paying the non-member fee, we welcome you as a delegate member of the IBA for the year in which this conference is held, which entitles you to the following benefits:

- 1) Password access to certain parts of the IBA website.
- 2) Receipt of IBA E-news and access to online versions of *IBA Global Insight*.
- 3) Pay the member rate for any subsequent conference registrations for this calendar year.

If you would like to become a full or general member of the IBA, which includes membership of one committee or more – and inclusion in and access to our membership directory – we encourage you to do so now in order to register for this conference at the member rate. Full details of how to join can be found at www.ibanet.org.

A reduced rate is offered to lawyers who are over the age of 65, have been an IBA member for more than 20 years and are no longer practising law.

Full payment must be received in order to process your registration.

Language

All conference materials will be in English. Simultaneous translation English – Polish – English will be provided in the meeting room.

How to register

Register online by **Monday 15 April** at www.ibanet.org/conferences/conf504.aspx and make payment by credit card, to avail of the ten per cent online registration discount or complete the attached registration form and return it to Annie Dunster at the IBA together with your payment. You should receive emailed confirmation of your registration within three days; if you do not then please contact Annie Dunster at annie.dunster@int-bar.org.

Fees include:

- Attendance at all working sessions
- Conference materials, including any available speakers' papers submitted to the IBA before 15 April.
- Access to the above conference working materials from the IBA website (www.ibanet.org) approximately seven days prior to the conference
- Lunch on Tuesday 23 April
- Tea and coffee during breaks

Please note that registrations are not transferable.

List of participants

In order for your name to appear in the list of participants, which will be distributed at the conference, your registration form must be received by **Monday 15 April** at the latest.

Mobile delegate search application

All registered delegates will receive a printed list of participants at the conference, however delegates are now also able to use the mobile delegate search. This application has been developed to aid networking by giving delegates instant access to an up-to-date list of their fellow attendees, and comes with the added benefit of a built-in messaging service. All registered delegates with an internet or Wi-Fi-enabled device will have access, using their IBA username and password. Simply visit: m.ibanet.org/conf504

Registration confirmation

All documentation regarding your attendance at the conference can now be obtained from the IBA website. Upon receipt of your payment for the conference a confirmation email will be sent containing instructions on how to download the documents. Registration confirmation will not be distributed by post.

Travel arrangements and visas

Participants are responsible for making their own travel arrangements. It is recommended that you check your visa requirements with your local embassy or consulate. **We are unable to dispatch visa invitation letters to support your visa application prior to receipt of your registration form and full payment of registration fees.**

Please apply for your visa in good time.

Promotional literature

Please note that no individual or organisation may display or distribute publicity material or other printed matter during the conference, unless by prior arrangement with the IBA. Organisations and companies wishing to discuss promotional opportunities should contact the Sponsorship Department at the IBA (sponsorship@int-bar.org).

Payment of registration fees

Euro: by cheque or bank draft, drawn on a euro zone bank and converted at the current rate of exchange and in favour of the International Bar Association.

OR by bank transfer to the IBA bank account number 550/00/06570631 (Sort Code 56-00-03) at the National Westminster Bank, St James's & Piccadilly Branch, 208 Piccadilly, London W1A 2DG, United Kingdom or SWIFT address NWBKGB2L, IBAN GB58NWBK60721106570631. **Please ensure that a copy of the bank transfer details is attached to your registration form.**

Pounds sterling: by cheque drawn on a UK bank and in favour of the International Bar Association. Please send to: 4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom.

OR by bank transfer to the IBA account number: 13270222 (Sort Code 56-00-03) at the National Westminster Bank, St James's & Piccadilly Branch, 208 Piccadilly, London W1A 2DG, United Kingdom or SWIFT address NWBKGB2L, IBAN GB05NWBK56000313270222. **Please ensure that a copy of the bank transfer details is attached to your registration form.**

Use the exchange rate prevailing at the time of registration.

US dollars: by cheque converted at the current rate of exchange and drawn on a US bank and in favour of the International Bar Association. Please send to: 4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom.

OR by bank transfer to the IBA account number: 01286498 (Sort Code 56-00-03) at the National Westminster Bank, St James's & Piccadilly Branch, 208 Piccadilly, London W1A 2DG, United Kingdom. SWIFT address NWBKGB2L, IBAN GB55NWBK60730101286498. **Please ensure that a copy of the bank transfer details is attached to your registration form.**

Use the exchange rate prevailing at the time of registration.

Credit card payments: by Visa, MasterCard or American Express.
No other cards are accepted.

PLEASE ENSURE THAT YOUR NAME AND 'CON504WARSAW' APPEAR ON ANY TRANSFER OR DRAFT.

Hotel accommodation

A limited number of rooms have been reserved at the Polonia Palace Hotel for the nights of 22 and 23 April.

Polonia Palace Hotel
Al Jerozolimskie 45
00-692 Warsaw, Poland
Tel.: +48 22 31 82 800 Fax: +48 22 31 82 801
Email: poloniapalace@syrena.com.pl
www.poloniapalace.com

The following rates are per room, per night and exclusive of buffet breakfast, service charges and local taxes.

Superior room: 470 PLN per night.

To make your reservation please email **poloniapalace@syrena.com.pl** and quote **IBAWarsaw13**. Reservations should be made by **16 March**.

No deductions or withholdings

All fees payable to us by you in accordance with the terms contained in this 'Information' section shall be paid free and clear of all deductions or withholdings whatsoever.

If any deductions or withholdings are required by law to be made from any fees payable to us by you under the terms contained in this 'Information' section you shall pay such sum as will, after the deduction or withholding has been made, leave us with the same amount as we would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.

If we obtain the benefit of any tax credit or other relief by reference to any such deductions or withholdings, then we shall repay to you such amount as, after such repayment has been made, will leave us in no worse position than we would have been had no such deductions or withholdings been required.

Conference sell-outs

The IBA places its conference in venues of a suitable size for the event; however there are times when our conferences may sell out. Should this happen, prospective delegates will be informed and a waitlist will operate. The waitlist will function on a 'first come, first served' basis, subject to receiving registered delegate cancellations. The IBA will not be liable for any travel or accommodation expenses incurred by an individual who travels to the conference without a confirmed place at the event.

Cancellation of registration

If cancellation is received in writing at the IBA office by **Friday 29 March**, fees will be refunded less a 25 per cent administration charge. We regret that no refunds can be made after this date. Registrations received after **Friday 29 March** will not be eligible for any refund of registration fees.

Provided you have cancelled your registration to attend an IBA conference in accordance with the terms of the 'cancellation of registration' clause included in the 'Information' section of the relevant conference programme, you must then confirm to us in writing at the IBA office as soon as possible but in no event later than one year (12 calendar months) from the date of any such conference all necessary details to enable any reimbursement owed to you to be paid. We regret that no refunds will be made after the date that is one year (12 calendar months) after the date of the relevant conference.

Cancellation and no-show policy

Please note that in the event of any cancellations or no-shows, rooms will be charged to the individual guest's credit card given at the time of booking.

As a limited number of rooms have been blocked at the hotel, availability cannot be guaranteed once the room block is full.

Delegates are responsible for making accommodation reservations directly with the hotel and entering into an agreement with the hotel regarding credit card guarantees, cancellation terms and conditions, and room rates (should these differ from the special IBA rate). The IBA cannot accept responsibility for hotel accommodation disputes between a delegate and the hotel.

Disabled access

The Polonia Palace Hotel is wheelchair accessible. Please notify us if you require special assistance.

Registration form



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Polonia Palace Hotel, Warsaw, Poland, Tuesday 23 April 2013

Please read the 'Information' section before completing this form and return it together with your payment to Annie Dunster at the address overleaf.

Personal details *(Please attach your business card or write in block capitals)*

Title _____ Given name _____ Family name _____

Name and country to be shown on badge *(if different from above)* _____

IBA membership number *(if applicable)* _____ Date of birth _____

Firm/company/organisation _____

Address _____

Tel _____ Fax _____

E-mail _____

Special dietary requirements _____

TO OBTAIN A TEN PER CENT DISCOUNT ON THE FEES BELOW,
PLEASE REGISTER BY **15 APRIL** ONLINE AT **WWW.IBANET.ORG/CONFERENCES/CONF504.ASPX**
IBA MEMBERS CAN REGISTER ONLINE BY **26 MARCH** FOR **€355**
PLEASE SEE 'INFORMATION' FOR FURTHER ONLINE REGISTRATION DETAILS.

Registration form and fees received:	on or before 26 March	after 26 March
IBA member	€395	€510
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Public lawyers	€295	€685
Corporate counsel	€355	€685

THE IBA OFFERS SENIOR LAWYERS A DISCOUNTED REGISTRATION FEE.
PLEASE CONTACT THE IBA OFFICE FOR FURTHER INFORMATION.
*JOIN THE IBA TODAY AND REGISTER FOR THIS CONFERENCE AT THE IBA MEMBER RATE.
PLEASE FIND THE MEMBERSHIP APPLICATION FORM AT **WWW.IBANET.ORG**.

TOTAL AMOUNT PAYABLE €

FULL PAYMENT MUST BE RECEIVED IN ORDER TO PROCESS YOUR REGISTRATION.
PLEASE NOTE THAT REGISTRATIONS ARE NOT TRANSFERABLE.

Payment details

- I enclose a cheque/bank draft made payable to the IBA for the total amount payable.
- I have transferred to the IBA bank account the total amount payable and have attached a copy of the bank transfer details.
- Please charge the total amount due to my (delete as appropriate) Visa/MasterCard/American Express. *Other cards are not accepted.*

Card number _____ Start date _____ Expiry date _____

Name of cardholder _____

Signature _____ Date _____

Where did you first hear about this conference?

- IBA CONFERENCE OTHER CONFERENCE DIRECT MAIL INTERNET ADVERTISEMENT
- E-MAIL EDITORIAL RECOMMENDATION OTHER

Please provide further details, quoting code (if applicable)

IBA listings are provided to relevant third parties for marketing purposes. The IBA will treat your personal information with the utmost respect and in accordance with UK data privacy laws.

If you are agreeable to passing on your details, please tick this box

If you do **not** wish to receive IBA information and materials, please tick this box

Your details will however be included in the list of participants.

Please send the completed form to:

International Bar Association

Annie Dunster

4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom

Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091

E-mail: annie.dunster@int-bar.org www.ibanet.org

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International Bar Association

the global voice of the legal profession

The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of over 50,000 individual lawyers and 205 bar associations and law societies spanning all continents. It has considerable expertise in providing assistance to the global legal community as well as being a source of distinguished legal commentators for international news outlets.

Grouped into two divisions – the **Legal Practice Division** and the **Public and Professional Interest Division** – the IBA covers all practice areas and professional interests, providing members with access to leading experts and up-to-date information. Through the various committees of the divisions, the IBA enables an interchange of information and views among its members as to laws, practices and professional responsibilities relating to the practice of business law around the globe. Additionally, the IBA's high-quality publications and world-class conferences provide unrivalled professional development and network-building opportunities for international legal practitioners and professional associates.

The IBA's **Bar Issues Commission** provides an invaluable forum for IBA member organisations to discuss all matters relating to law at an international level.

The IBA's **Human Rights Institute** works across the Association to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

Antitrust Committee overview

The Antitrust Committee provides an international forum for the exchange of the most current thinking in the field of antitrust law. In addition, there is a strong commitment to bring together international practitioners to facilitate closer working relationships. The committee is increasingly relied upon by government officials and members of the private sector for its expertise and practical input into antitrust developments. The Committee forms working groups to study major international competition policy issues and to submit comments to regulators on proposed new and reformed legislation. Please see the projects page of the Antitrust Committee website for more information.

European Regional Forum overview

The European Regional Forum was established in 1989 to provide a focus originally on the work undertaken by the IBA in developing the practice under changing legal systems of lawyers in Eastern and Central Europe. The forum was also intended to act as a channel for IBA communication with the bar associations of these local lawyers. Since 2004 the forum has been developing and strengthening the existence of the IBA within the whole of Europe by promoting the goals of the IBA to members, non-members and others, disseminating professional know-how, and assisting the committees and other constituencies of the IBA to increase their presence in the different sub-regions of Europe, including parts of North Africa and the Middle East. The goals of the forum include addressing current and long-term needs of professional organisations and individual members within the geographical reach of the forum, as well as increasing membership and participation in the IBA and integrating them within the organisation. The forum will also facilitate cross-border activity between lawyers and bars in different European countries. The forum has a particular focus on cross-disciplinary activities. At present the forum has 7,700 members.

Contact information

International Bar Association

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E-mail: member@int-bar.org www.ibanet.org

