

Piotr Semeniuk,
Konceptcja jednego organizmu gospodarczego w prawie ochrony konkurencji
[The Concept of a Single Economic Unit in Competition Law],
University of Warsaw Faculty of Management Press,
Warsaw 2015, 325 p.

The book under review here provides a very broad analysis of the concept of a single economic unit. The analysis refers either to many aspects of substantive rules of competition law (among them, the application of the prohibition of competition restricting agreements to agency contracts or bid-riggings, merger control, setting up of joint ventures) or to the complex problem of attributing liability for antitrust breaches and imposing sanctions for them. [why is it either or?] The Author tries to compare the application of the concept of a single economic unit in competition law and its application in other legal areas such as energy law or regulations on public procurements. The economic context is not omitted either, which must be presented due to the nature (economic as such) of the analyzed concept, economic issues are thus covered in subchapter II.3. As a result, the reviewed book presents the concept of a single economic unit in a complex legal and economic context.

The very wide scope of this publication is fully reflected in its structure – the book contains 9 chapters. Chapter I introduces the key problems covered by the Author. Chapter II presents the concept of a single economic unit from the perspective of jurisprudence and economics. Chapter III focuses on the concept of a single economic unit in merger control. Chapter IV explores the single economic unit in the context of joint ventures. In chapter V, the Author presents the relative dimension of the concept of a single economic unit with a nexus to the status of an agent and an employee. Chapter VI covers the formal aspect of the concept of a single economic unit, which is attributing antitrust liability to a particular entrepreneur being a part of an economic unit or to a unit as a whole. Chapter VII introduces problems associated with the substantive aspect of the concept of a single economic unit and clearly focuses on applying this concept to bid-riggings. In chapter VIII, the Author provides a comparison of the concept of a single economic unit and neighbouring institutions



of competition law and other legal areas. Chapter IX presents conclusions based on the analysis contained in all of the preceding chapters.

The Author's aim seems to be to convince readers that the concept of a single economic unit can have different meanings, and that the concept is subject to an analysis with a different scope and a different nature depending on the character of the legal norms the application of which demands reference to the doctrine of a single economic unit. In my opinion, this thesis as such is not particularly original – the fact that a given concept/doctrine is applied in a different manner with respect to legal norms of a different substantive scope and different goals seems to be completely clear. Instead, the original character of the reviewed book lies in the manner of the presentation of this (non-controversial by its nature) thesis.

The Author decided that a key point of the analysis leading to the conclusion on a heterogeneous character of the single economic unit doctrine was his own concept of the inclusive and exclusive context of this doctrine, its relative and absolute dimension and, finally, its substantive and formal aspects. The specific dimension of the doctrine identified by the Author that he connected with ex post and ex ante application of competition rules cannot, in my opinion, be seen as fully original. By so shaping the context and boundaries of his research, the Author shows however his abilities to properly identify a scientific and practical problem, not limiting himself to a mere description of a problem but additionally creating new (original) concepts used to better characterise the single economic unit doctrine.

What can draw the attention of the readers is the fact that on the level of particular chapters or even subchapters, the Author identifies and resolves research problems of a narrower scope than the problem identified as the core issue for the whole publication. Constructing the book in this manner results in a very broad scope of the publication. On the one hand however, this proves the Author's personal research abilities yet on the other, it turns the book into a sort of "patchwork" and makes its internal structure rather heterogeneous. This results in a slightly chaotic path of argumentation in some parts of the book's contents. In my opinion, the transparency of the structure of the book as well as the coherence of its arguments are additionally disturbed by its subchapters dedicated exclusively to the analysis of case law and decisional practice. These include, for example, subchapter II.4.2.3. Other examples of application of the concept of a single economic unit in EU competition law; VI.3.4.2. Analysis of cases concerning joint ventures; VII.3.5. Polish case law on "Polish bid-riggings" (the term "Polish bid-riggings" was introduced by the Author in a famous article published in 2013 the "internetowy Kwartalnik Antymonopolowy i Regulacyjny"). Analyses of this kind are naturally needed and determine the high quality of publications. They should, however, only serve as tools for the presentation of the merits, not a fundamental part of certain parts of the content. Moreover, many subchapters dedicated solely to EU law or EU case law (or solely to Polish regulations and case law) contribute to an unnecessary division of argumentation into the Polish and EU level.

However, a great advantage of this book lies in “breaking the borders” of competition law, resulting in the definition and resolution of problems in a very broad context. Proposals for the identification of the concept of a single economic unit (or its elements) in other legal areas can constitute an important point of reference for the analysis of this concept on the grounds of competition law. However, I consider the Author’s approach inappropriate where he combines within one chapter his findings on the concept of a single economic unit in the context of “neighbouring institutions of competition law” and “other legal areas” if the title of the book refers to competition law as such, not to its selected institutions or other legal areas where the single economic unit doctrine was confirmed in case law.

The Author presents a very creative approach to solving previously identified problems concerning the analysed concept – the attempt to transfer the basic assumptions of the single economic unit doctrine to relationships between a mother company and its subsidiaries can serve as a very good example here. Another can be found in the rebus puzzles created by the Author in order to confirm the opportunities to apply the concept of a single economic unit to agency agreements (chapter V “Relative dimension of the concept of a single economic unit – the status of an agent and an employee”).

The book delivers a presentation of the results of a review of opinions and positions of the most important representatives of Polish and European doctrine dealing with the issue of a single economic unit in their works. It seems that the Author managed to identify all Polish judgments and antitrust decisions concerning the application of this concept; the analysis of EU practice and references to American case law seem to be just sufficient. References to economic doctrines and concepts seem to be one of the strongest points of the reviewed book.

What is of fundamental importance, the opinions expressed by the Author can be the sources of controversies. There is, therefore, a great chance that they will cause debates and discussions not only in legal writing but also in judgments of Polish courts and decisions of the Polish competition authority. The Author is truly brave in formulating his own opinions, using appropriate, perfectly combined arguments. Piotr Semeniuk does not hesitate to go into a discussion with the opinions of others, often commonly recognized and appreciated representatives of jurisprudence. What I find especially valuable is the Author’s critical (although justified) approach to Polish case law and the decisional practice of the competition authority. The Author’s attitude is somehow uncompromising which – especially in the case of young researchers – should be considered an advantage. Additionally, this uncompromising approach can efficiently increase the level of the intensity of legal debate.

To the best of my knowledge the topic of a single economic unit had not yet been analysed in Polish legal literature in such a broad manner (even in the form of an article, if not a book). Undoubtedly, the book written by Piotr Semeniuk fills this gap and complements the development of Polish antitrust doctrine. However, not only is the sole fact of its publication worthy of the attention of the readers,

the quality of the book is also worth appreciating. Concepts of the inclusive and exclusive dimension of the single economic unit doctrines should somehow be incorporated by Polish jurisprudence contributing to the development of antitrust law in Poland¹.

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¹ A reference to Poland is done solely because of the fact that book – published in Polish – is accessible mainly for Polish researchers.