

## Similarities and differences of post and telecommunications markets

(From the Volume Editor)

### ARTICLES

#### Łukasz Gajek, **Monetary penalties in the Broadcasting Act – critical analysis**

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- II. General issues
- III. Delicts punishable by administrative monetary penalties
- IV. Imposition of an administrative monetary penalty
- V. Calculation of an administrative monetary penalty
- VI. Enforcement of an administrative monetary penalty
- VII. Conclusions

**Summary:** The article is devoted to the analysis of provisions on monetary penalties contained in the Broadcasting Act. Assessed herein were the method of describing the characteristics of administrative delicts, the conditions for the application (imposition and calculation) of penalties, and the regulation of their execution (payment) in the context of the provisions of the Code of Administrative Procedure. One of the main criteria for the assessment of these provisions are the constitutional limits of the freedom to regulate administrative monetary penalties in the interpretation of the Constitutional Tribunal. The article also assessed the manner in which the Polish legislator implemented the so-called assumption of gradual regulation resulting from the Audiovisual Media Services Directive. The obtained conclusions helped to determine whether the current provisions ensure a sufficient level of protection for both the public and individual interests, as well as to formulate *de lege ferenda* postulates.

**Key words:** Broadcasting Act; administrative monetary penalties; administrative sanctions; The Chairman of the National Broadcasting Council.

**JEL:** K10, K23

#### Mateusz Chołodecki: **The Compensation Fund on the Telecommunication and on the Postal Market**

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- II. The Universal Service
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**Summary:** The Universal Service (US) on the telecommunication and postal market is an obligation of EU Member States. The Universal Service Obligation (USO) can often cause financial losses for the Universal Service Provider (USP). Thus, the USP is authorized to obtain financing from the Compensation Fund (CF) only when the USO causes the USP financial losses – such a situation is called the net cost.

The main reason for this research is the fact that in recent years the USP on the telecommunication and on the postal market does not report the net cost. The aim of this paper is to provide a legal analysis of the CF regulated in the Polish Postal Law and in the Polish Telecommunications Law. This analysis was preceded by the presentation of the scope of the US on both markets. In the conclusions, the Author points out the lack of consistency of the Polish legislator in its regulation of the CF on both reference markets.

**Key words:** The President of UKE; Net Cost; Universal Service; Postal Market Regulator; Telecommunication Market Regulator; Infrastructural Markets; Postal Market; Postal Law; Telecommunication Market; Telecommunication Law.

**JEL:** K23

Elżbieta Małecka, **Obligations of Postal Service Providers and the Instruments Available to the President of the Office of Electronic Communications Regarding the Identification and Fighting of Monopolistic Practices in the Postal Service Market in View of the Resolution of the European Parliament and Council (EU) 2018/644**

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- I. Introductory Remarks
- II. Regulatory Supervision
- III. Obligations of Postal Service Providers
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**Summary:** The goal of the Digital Single Market is to increase the share of e-commerce in the total GDP of the EU. High prices and difficulties in cross-border package delivery have been acknowledged as one of the greatest obstacles for the development of e-commerce throughout the European Union. Therefore, since 2016, the European Commission has been working on developing a resolution aimed at increasing price transparency and strengthening regulatory supervision over the services of cross-border package delivery in a way enabling the consumers and retailers to use lower delivery prices and favorable options of returning packages. The regulations of the Resolution of the European Parliament and Council (EU) 2018/644 of 18/04/2018 on cross-border services of package delivery, Journal of Laws, L 112 of 02/05/2018 implemented, *inter alia*, increased reporting requirements for the providers taking part in the process of delivering cross-border packages. These requirements are to enable domestic regulatory bodies to perform more effective monitoring of the market of such packages, in order to allow better identification of potential difficulties in its functioning. The Resolution provided also the procedure and assessment criteria of the level of affordability of service prices by domestic regulatory bodies.

**Keywords:** President of the Office of Electronic Communications, Postal Service Providers

**JEL:** K23

**Michał Masłowski, Confirmation on the availability of funds (CAF) – selected legal issues****Table of contents:**

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- II. The Payment Services Directive (PSD) and the Payment Services Directive 2 (PSD2) as EU legislator initiatives aimed at the improvement of competitiveness on the payment services market
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- VI. The CAF in comparison to the payment initiation service
- VII. Dedicated interface requirement with reference to the CAF
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**Summary:** The main goal of the article is to conduct an analysis of binding provisions with reference to the confirmation on the availability of funds (CAF) issue, also taking into account its anti-monopoly source in the adoption of the Second Payment Services Directive (PSD2). Unfortunately, jurisprudence has actually not yet tackled this issue. Hence the article refers to problems associated with the CAF regulation in the PSD2 and in the Polish Act on payment services. It also provides an analysis of this issue in the light of some selected legal problems, which stem from provisions related to the CAF. Moreover, the goal of the article is to compare the CAF with the payment initiation service, and to examine the requirement to adopt strong customer authentication in the light of the CAF. The article includes also remarks devoted to the shape of the CAF in the light of the PSD2 recitals and the requirement associated with the availability of dedicated interface with reference to the CAF.

**Key words:** payment services; PSD2; open banking; third party providers; CAF; confirmation on the availability of funds

**JEL:** K23

**Mariusz Czyżak, Facultative penal-administrative liability in light of the amendment of the Telecommunication Act of 10 May 2018****Table of contents:**

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- II. Material scope of liability
- III. Automaticity and optionality of imposing financial penalties
- IV. Nature and scope of the infringement as conditions of financial penalties
- V. Amount of the financial penalties
- VI. Conclusions

**Summary:** This article presents the amendments on facultative penal and administrative liability for the infringement of information and reporting obligations, and the failure to comply with obligations to obtain the consent of a subscriber or end user, introduced by the Telecommunication Act of 10 May 2018.

**Key words:** Telecommunications, financial penalty, administrative responsibility

**JEL:** K12, K15, K23, K42

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**Memorandum for the Secretary of State, the Secretary of the Treasury, the Secretary of Homeland Security, the Postmaster General, the Chairman of the Postal Regulatory Commission (Donald J. Trump) (trans. Magdalena Kielkiewicz)**

## BOOK REVIEWS

**M. Chołodecki, A. Piszcz, T. Skoczny (red.), *Prawo pocztowe. Komentarz [Comentary to the Postal law]*, Wydawnictwo C.H. Beck, Warszawa 2018, ss. 1057 (Stanisław Piątek)**

**Main Polish publications concerning the postal sector 2017–2018 (Mateusz Chołodecki)**

## REPORTS

**CARS Activity Report 2018**

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