

15 years of a Regulatory Authority in Telecommunications

(from the Volume Editor)

Articles

Daria Kostecka-Jurczyk, **Sector Specific Regulations and Competition Law in the Telecommunications Sector**

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- I. Introduction
- II. Regulatory obligations and competition law
 1. Asymmetric access obligations
 2. Symmetric access obligations
- III. Radio spectrum management
- IV. Network sharing and restrictions of competition
- V. Relations between competition law and sector specific regulation
- VI. Conclusions

Summary: The article concerns the dual normative structure characteristic for infrastructural sectors. The analysis is limited to the Telecommunication sector. The paper focuses on the problem of the role of competition law in the context of regulatory obligations, radio spectrum management and network sharing agreements. The aim of the article is to show the complexity of the normative structure of the Telecommunications sector, including sector specific regulations and competition rules, rather than exhaustively analyse the chosen regulatory aspects.

Classification and key words: K23; sector specific regulations; telecommunication; regulatory obligations; competition rules

Marcin Król, **Can Telecommunications Use the Experiences of Railways When Discussing Functional Separation?**

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- I. Introduction
- II. On the possibility of transferring experiences with structural separation among infrastructure industries
- III. Key conclusions for Telecommunications regarding structural separation applied in Railways

Summary: The article aims to show these areas of experiences with structural separation in Railways which might prove useful for Telecommunications. The context of the analysis is presented in the first part of the paper. Part II discusses the possibility to transfer experiences with structural separation among infrastructure industries. Key conclusions for the Telecommunications sector regarding structural separation applied in Railways are identified in the third part of the paper.

Classification and key words: K23; functional separation, structural separation, telecommunications, railways

Andrzej Nałęcz, **Network Neutrality**

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- II. Basic Requirements for Network Neutrality
- III. Threats to Network Neutrality
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Summary: Network neutrality means that all electronic communications passing through a network are treated equally, independent of their content, application, service, device, or sender and receiver addresses. Network neutrality serves to promote the development of innovative online content and applications. It also plays an important role for the freedom of expression and the freedom to communicate. The basic requirements for network neutrality include: competition on the Internet access services market and its transparency, as well as ease of changing the provider of Internet access services. Current threats to network neutrality include: network management in public communications networks, vertical integration of network and content layers, zero-rating, as well as the proposals submitted by network operators to change their business model. Technical means employed in network management pose threats to the privacy of end-users. To counter these threats, several EU Member States have enacted strict national network neutrality laws. A draft Regulation on the open Internet has also been proposed on the EU level.

Classification and key words: K23; Internet; network neutrality; network management; *zero-rating*; regulation; operator; content and application provider; end user

Ewa Galewska, **The Form of the Agreement on Telecommunications Access and the Consequences of that Form Not Being Observed**

Summary: Telecommunications access agreements are commonly applied on the telecoms market. Since such agreements contain conditions of telecommunications access and on related cooperation, they are of high importance to telecommunications activity. The Polish Telecommunications Act provides the obligation to conclude such agreements in a written form. Whether the appropriate form is observed, and the consequences of not observing the duty to conclude such agreements in a written form, should be assessed in the light of the provisions of the Polish Civil Code.

Classification and key words: K23; telecommunications access, agreements, form

Stanisław Piątek, **Legal Conditions of Using Cookies**

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- III. Legal grounds of using cookies
- VI. Scope of the application of rules on cookies
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- VII. Information obligation and exemptions to consent
- VIII. Cookies and personal data
- IX. Enforcement of obligations concerning cookies

Summary: The subject matter of this article centers on the use of cookies by providers of telecommunications services, information society services, and advertising services. The goal of the analysis is to identify the permissible forms of performing the information obligation and acquiring subscribers' consent for the use of cookies. The paper also considers the scope of the exclusion of these duties in light of the opinions of Article 29 of the Data Protection Working Party, regulatory bodies of EU countries other than Poland, and Polish practice. The issues of cookies are analyzed in the light of Polish Telecommunications Law provisions and respective provisions on the protection of personal data.

Classification and key words: K23; cookies, information obligation, consent, Web browser, personal data

Łukasz Pirożek, **Legal Issues Surrounding the Provision of Services in a SaaS Model by Telecommunications Entrepreneurs**

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- I. Introduction
- II. A computer program as a basic component of services in a SaaS model
- III. User interface
- IV. The right to reproduce a computer program
- V. A software license in a SaaS model
- VI. Telecommunications services and services in a SaaS model
- VII. Conclusion

Summary: This article considers the legal qualification of the provision of services in a SaaS model pursuant to Polish law. It analyzes the issue of software licensing according to the Polish

Copyright Act and considers the qualification of services in a SaaS model as telecommunications services within the meaning of the Polish Telecommunications Act.

Classification and key words: K23; cloud computing, SaaS, computer program, software, user, telecommunications services

Mariusz Czyżak, **Selected Issues of Criminal-Administrative Liability in Polish Postal Law**

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- I. Introduction
- II. Criminal-administrative liability of natural persons
- III. Liability for the breach of the information obligations
- IV. Level of financial penalty
- V. Limitation of liability
- VI. Conclusions

Summary: On the basis of the Polish Postal Law of 2012, the legislator has comprehensively specified relevant issues of criminal and administrative liability. A financial penalty can be imposed, *inter alia*, on natural persons if that person obstructs the conduct of inspections under the Act, if he/she fails to act and if he/she improperly implements a number of information and reporting obligations to the President of UKE. Guiding principles for the sanction term were modified by eliminating the need to take into account the degree of fault when setting the level of the penalty and by introducing the statute of limitation.

Classification and key words: K23, K42; post, criminal-administrative liability, administrative financial penalty

Legislation and Case Law Review

Tables of judgments of the Supreme Court, the Court of Appeals in Warsaw and the Competition and Consumers Court (SOKiK) in telecommunications cases for 2014
(Ewa M. Kwiatkowska)

Tables of judgments of the administrative courts in telecommunications cases for 2014
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Submission of an application via an electronic inbox.

Critical comment to the judgment of the Woiwodship Administrative Court in Wrocław of 24 February 2015, SAB/Wr 17/15 (Paweł Chmieliński)

Consolidation procedure and the effect of a decision on trade between Member States.

Judgment of the Court of Justice of the European Union of 16 April 2015, C-3/14 (Tadeusz Piątek)

Books Reviews

i Maciej Rogalski, **Odpowiedzialność karna a odpowiedzialność administracyjna w Prawie telekomunikacyjnym, pocztowym i konkurencji** (*Criminal and administrative responsibility in telecommunications, postal and competition law*), Warszawa 2015, ss. 132 (Marcin Rafalski)

K Maciej Rogalski, **Świadczenie usług telekomunikacyjnych** (*Provision of telecommunications services*), Warszawa 2014, ss. 145 (Mateusz Kabut)

Reports

A Report on the Official Award Ceremony for the CARS REGULATORY AWARD for 2015, Warsaw, 16 July 2015

R Current problems of pro-competitive and pro-consumer regulation in infrastructure sectors. Regulatory Authorities' Panel during the Official Award Ceremony for the CARS REGULATORY AWARD for 2015, Warsaw, 16 July 2015