

More and more effectively? (from the Editor-in-Chief)

ARTICLES

Laura Zoboli, **The EU Geo-blocking Regulation: much ado about little?**

Table of contents:

- I. Introduction
- II. Geo-blocking within the digital single market strategy
- III. Geo-blocking within the Commission's sector inquiry into e-commerce
- IV. Geo-blocking Regulation: scope and key provisions
- V. The distinction between justified and unjustified geo-blocking
- VI. Concluding remarks

Summary: Geo-blocking can be defined as a digital instrument aimed at segmenting the purchase of applications online, on the basis of the nationality, place of residence or place of establishment of customers. The scope of the article is – first – to frame the geo-blocking phenomenon within the activity of the European Commission – starting from the digital single market strategy and then focusing on the data collected within the sector inquiry into e-commerce. Second, the article will discuss Regulation (EU) 2018/302, which entered into force last 22 March 2018 and applies from 3 December 2018. In particular, the article deals with the geo-blocking ban introduced by Regulation 2018/302 and discusses its weaknesses.

Key words: Geo-blocking; Geo-filtering; Localization; European Union; Fundamental freedoms; Regulation (EU) 2018/302; E-commerce

JEL: K20, K33

Anna Sadkowska, **The importance of 'reservations' regarding a notified concentration in proceedings before the President of UOKiK and their similarity to the Statement of Objection**

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- I. Introduction
- II. Regulations of 'reservations' in Polish law
- III. 'Statement of Objection' and 'reservations' in Polish law
- IV. Decisions of the President of UOKiK
- V. Summary

Summary: The institution of 'reservations' towards a concentration of entrepreneurs exists in the Polish law since 18 January 2015, it was introduced into the 2007 Act on the protection of competition and consumers by the Amending Act of 10 June 2014. There are two different positions of doctrine concerning the relation of Polish 'reservations' and the EU 'Statement of Objection' (SO) – list of objections presented in proceedings conducted by the European Commission with respect to concentrations with community dimension. Statements of objections are regulated in Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations. The paper argues

that they are not identical institutions, since they perform different roles in merger proceedings and are applied at different stages of these proceedings. Reservations were repeatedly filed by the President of UOKiK towards concentrations that could lead to the creation of a dominant position on the market by the entrepreneur which applied for clearance.

Key words: concentration; reservations; act on the protection of competition and consumers; Community concentration; significant reduction of competition

JEL: K21

Marcin Kulesza, **The 2017 Amendment to the Administrative Procedure Code and Fines for a Breach of the Prohibition of Competition Restricting Conduct**

Table of contents:

- I. Introduction
- II. Administrative nature of anti-trust fines
- III. General provisions of the Administrative Procedure Code on fines
- IV. Application of the provisions of section IVa of the Administrative Procedure Code to anti-trust fines
- V. Summary

Summary: This study is dedicated to fines imposed by the Polish competition authority (President of UOKiK) on the basis of Articles 106 and 106a of the Competition and Consumer Protection Act of 16 February 2007 in the context of general provisions regarding fines introduced by the 2017 amendment to the Administrative Procedure Code. The introduction presents the scope of the amendment of the Code and its relation to the provisions concerning proceedings before the Polish competition authority and to the imposition of fines by the President of UOKiK. The second part briefly describes positions of the judiciary and doctrine as to the legal nature of anti-trust fines. Part three presents the contents of the new section IVa of the Administrative Procedure Code; part four includes an assessment of the scope of the application of these provisions to anti-trust fines imposed on the basis of the Competition and Consumer Protection Act of 2007. In the summary, the paper comments on the narrow scope of the application of the general provisions of the Code to fines and the impact of the general provisions on the assessment of the legal nature of anti-trust fines.

Key words: administrative fines; Polish anti-trust law; administrative proceedings

JEL: K21, K23

Piotr Cybula, **On the evolution of the conditions for the provision of tourist services from the perspective of consumer interest**

Table of contents:

- I. Introduction
- II. Evolution of the conditions for the provision of services of tour operators, travel brokers, travel agents and traders facilitating linked travel arrangements
- III. Evolution of conditions for the provision of tour managers and tour guides
- IV. Evolution of conditions for the provision of hotel services
- V. Summary

Summary: The aim of the article is to illustrate the evolution of the conditions for the provision of tourist services from the point of view of the interests of consumers of these services. The author distinguishes three trends. First is the general liberalization tendency. The second is the reverse process related to financial security in case of insolvency of tour operators and travel brokers, and, since 1 July 2018, also tour operators and traders facilitating linked travel arrangements. The third trend is the modification of the scope of some other regulations (partial liberalisation, partial regulation) for businesses operating as tour operators and the abolition of regulations governing the activities of travel brokers and the introduction of protection in the case of linked travel arrangements. The analysis covers primarily the provisions of the Act of 29 August 1997 on Tourist Services (from 1 July 2019, the Act on Hotel Services and Services of Tour Guides and Tour Managers) and the provisions of the Act of 24 November 2017 on Tourist Events and Linked Travel Arrangements, the provisions of which partially replaced the provisions of the Act on Tourist Services. Contrary to the, frequently encountered in literature, postulates indicating the need to tighten regulations within the scope of the requirements in question, the article indicates that important public interest does not usually speak in favour of it. In the near future, however, the legislator should review the current regulations, which justifies the presentation of this article.

Key words: tourist services; regulation; liberalization; freedom of services

JEL: K12, K22, K23

Łukasz Zimończyk, **Character and control over decisions issued by the Patent Office in a contradictory proceeding**

Table of contents:

- I. Introduction
- II. Characteristics of contradictory proceedings
- III. Non-essential findings in contradictory proceedings and their control
- IV. Essential findings in contradictory proceedings and their control
- V. Summary

Summary: In this paper, the author presents the characteristics of contradictory proceedings conducted by the Polish Patent Office. The paper covers initial findings, findings issued in the course of the proceedings, as well as essential findings, in particular decisions issued by the Patent Office. Noted is also the issue of judicial-administrative control of the decisions and findings issued in the course of the contradictory proceeding. The analysed issues have so far not been considered by legal literature, even though the importance of this type of proceeding is increasing, also in the context of the growing number of research projects and the attempt to harmonise patent law in Europe.

Key words: Polish Patent Office; contradictory proceedings; judicial-administrative control

JEL: K41, O30, O34

CASE LAW REVIEW

Anna Laszczyk, **When an excessive price is unfair – analysis in the light of the CJEU preliminary ruling in AKAA/LAA case dated 14 September 2017**

Table of contents:

- I. Introduction
- II. Factual background
 1. Proceedings before the Latvian competition authority and national courts
 2. CJEU ruling
 3. Opinion of AG Wahl
- III. Comments

Summary: This article critically assesses the CJEU preliminary ruling concerning the abuse of a dominant position by a copyright collecting society consisting of charging excessively high rates for licences for the public performance of musical works. The Latvian Supreme Court sent judicial questions to the CJEU concerning mostly the methods of determining the excessiveness of the prices, the difference between actually applied price and the benchmark price, indicating the existence of an abuse, and the chances for a dominant undertaking to offer an objective justification. The CJEU reaffirmed the appropriateness of applying other than price-cost methods, including comparison methods. The CJEU indicated that the comparison of prices should be in accordance with objective, appropriate and verifiable criteria. As regards the difference between prices, the CJEU explained that it should be significant and persistent.

In the opinion of the author, the CJEU ruling lacks practical guidance on the assessment of excessive prices. At the same time, the CJEU leaves national courts and competition authorities some room to manoeuvre in their assessment. The opinion by AG Wahl is more informative and indicative in this regard. As a consequence, his attempt to present in a comprehensive manner all relevant criteria for the assessment of the excessiveness of prices should be assessed positively.

Key words: abuse of the dominant position; excessive prices; preliminary ruling; CJEU

JEL: K21

Swietłana Podhajska, **Definition of ‘competitive disadvantage’ and discriminatory prices; the judgement of the CJEU of 19 April 2018 in case C-525/16 MEO – Serviços de Comunicações e Multimédia SA v Autoridade da Concorrência**

Table of contents:

- I. Introduction
- II. Facts of the case
- III. Analysis
- IV. Conclusions

Key words: dominant position; competitive disadvantage; discriminatory prices; art. 102 c of the Treaty

JEL: K21

Gabriela Raczykowska, **Reception of the axiological assumptions of anti-trust law to application of national competition law. Commentary to the judgment of the Supreme Court of 20 March 2018, III SK 5/17**

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- I. Introduction
- II. Facts of the case
- III. Axiological assumptions of anti-trust law
- IV. Natural monopoly
- V. Unfair price
- VI. Summary

Key words: antitrust law; competition protection; dominant position; unfair price; natural monopoly; social market economy; neoliberalism

JEL: K210, L410, L430

Mariusz Czyżak, **The calculation of fines. Commentary to the judgment of the Supreme Court of 10 August 2016, III SK 45/15**

Table of contents:

- I. Argument
- II. Facts
- III. Comment

Key words: fine; telecommunications

JEL: K23

Łukasz Presnarowicz, **Commune as a natural monopoly, Judgement of the SOKiK of 22 February 2018 in case XVII AmA 17/15**

Table of contents:

- I. Introduction
- II. Facts of the case
- III. Commentary
- IV. Conclusion

Key words: commune; natural monopoly; Act of collective water supply and collective sewage disposal; terminal

JEL: K21

BOOK REVIEWS

A party injured by a competition law delict. Review article of a monograph by Marek K. Kolasiński, Legal instruments for injured or threatened by a violation of competition law in the United States law the European Union law, TNOiK, Toruń 2016, p. 570; review by Sławomir Dudzik

Joseph E. Harrington Jr, The Theory of Collusion and Competition Policy, MIT Press 2017, p. 133, review by Marcin Alberski

REPORTS

Report on the 8th International PhD Students Conference on Competition Law. Białystok, 10.10.2018 (Radosław Niwiński)

Report on the Seminar ‘Compliance programmes and sanctions imposed by competition authorities. What conclusions for UOKiK?’ Warsaw, 8 January 2019 (Małgorzata Krasnodębska-Tomkiel)

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