

End of the year – waiting for new challenges (from the co-Editors-in-Chief)

ARTICLES

Katarzyna Karasiewicz, Tomasz Kaźmierczak, Competences of competition authorities on regulated markets, on the example of a decision concerning anti-competitive practices identified on the heating market

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Summary: This article addresses the issue of the admissibility and scope of competition authorities' interference in activities of entrepreneurs undertaken in regulated markets, with particular emphasis on the energy sector.

Contrary to the recent theses of some of the doctrine, the authors take the position that the competition authority is competent to intervene in every case where the undertakings are free to make their own market decisions. The competences of competition authorities are in this respect complementary to these available to sectorial market regulators.

Key words: regulations; monopoly; heating; potential competition; competence.

JEL: K12, K21, K23, K32, K33

Matylda Berus, State Aid and aviation in the EU – legal basis, chosen cases and realities of the COVID-19 pandemic

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Summary: State aid has been introduced to the European legal system through the Treaty of Rome and now plays a crucial role in the economy and in the competition system of the European Union. The impact of State aid measures on aviation is especially worthy of attention – European airlines and airports have been the beneficiaries of State aid for almost 30 years. Firstly, the author will present the legal basis of State aid in European law and its procedural aspects in Polish law. Then, the relation between State aid and aviation will be analysed. At the end, the topic of providing State aid to airlines in the times of the COVID-19 pandemic will be discussed.

Key words: state aid; aviation; COVID-19; EU law; competition law.

JEL: H84, K29, P45

Konrad Zawodziński, Energy solidarity as a general principle of European Union law

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Summary: By judgment of 15 July 2021 in Case C-848/19 P, the Court of Justice (Grand Chamber) upheld the judgment of the General Court of the European Union (extended composition of the First Chamber) of 10 September 2019 in Case T-883/16 concerning the amendment of the regulatory regime of the OPAL gas pipeline. The CoJ judgment was handed down after an appeal submitted by the Federal Republic of Germany against the GC judgment of 2019 that had granted, in its entirety, the Republic of Poland's action for annulment of the European Commission's decision of 2016 (C(2016)6950) which, in turn, had approved – in its essential part – a national act (German: Vergleichsvertrag, literally: settlement agreement) concluded with the participation of the German Federal Network Agency (German: Bundesnetzagentur). Thus, it has been determined that energy solidarity constitutes a justiciable principle, constituting a normative pattern for judicial review and a basis for effective pleas in law. It can potentially be a source of a limitation of procedural and institutional autonomy at the national level, and its meaning extends not only to manifestations of

regulatory activity, but also to decisions in the field of competition law and the monitoring of foreign investments. While the principle is yet to be specified, its two dimensions are worth mentioning: first, procedural and institutional (for example, cooperation between authorities, right to be heard accorded in an appropriately broad fashion) as well as, second, substantive (a test of contradictory interests and rules on solving emerging conflicts).

Key words: energy solidarity; horizontal principles of EU law; general principles of EU law; action for annulment; Court of Justice of the EU; EU litigation.

JEL: K20, K23, K33

Aleksander Stawicki, Where are we and where are we going? Reflections on possible directions of changes in Polish competition law

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Summary: The article outlines possible directions of changes in the provisions of Polish competition law. The considerations relate first of all to the aims of antitrust enforcement. In this respect, there is a need for more flexibility in the selection of these targets, while fine-tuning specific regulations so as to ultimately reduce, not increase, legal uncertainty and regulatory risks. The condition for greater flexibility of the regulations, and the objectives pursued by them, should also ensure full independence of the competition protection authority, and perhaps also a change in its structure (shift to a collegial authority). It is also crucial to ensure full rights of entrepreneurs that will indirectly contribute to the substantive nature of the decisions issued. If these conditions were met, it would also be possible to amend specific provisions of the Act, both in the area of competition-restricting agreements and in the area of the prohibition of abusing a dominant position on the market.

Key words: competition law; changes; goals; independence of the authority; rights of entrepreneurs.

JEL: K20, K21

LEGISLATION AND CASE LAW REVIEW

Bartosz Wyżykowski, Derogations for low-value payment instruments, Commentary to the judgment of the Court of 11 November 2020 in case C- 287/19 DenizBank AG against Verein für Konsumenteninformation

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Summary: The subject of this commentary is the judgment of the Court of Justice of the European Union (First Chamber) of 11 November 2020 in Case C-287/19, DenizBank AG v Verein für Konsumenteninformation, ECLI:EU:C:2020:897. The CoJ ruled on doubts that arose under the provisions of the Payment Services Directives (PSD1 and PSD2) governing derogations for low-value payment instruments. First, the CoJ decided that the near field communication (NFC) function, by means of which low-value payments can be initiated, constitutes a separable payment instrument, although it is incorporated within a personalized payment card assigned to a specific user. Moreover, the court ruled that the use of such functionality constitutes an anonymous use of the payment instrument. The distinction whether or not in a given case an instrument may be considered as used anonymously, and whether it is not possible to block or prevent the further use of such instrument, is key in order to determine whether, and if so than to what extent, the payment service provider can make use of the particular derogations provided for in the PSD2. Moreover, the court stated that contractual terms governing the tacit consent of a user, being a consumer, to changes in a payment services framework contract may be subject to assessment whether they constitute unfair terms in the meaning of Directive 93/13. The discussed judgment is of no small importance for the banking and payment sector as so far, it was rather rare for the CoJ to rule on the interpretation of the provisions of the PSD2.

Key words: payment instrument; near field communication (NFC); low-value payments; changes in a payment services framework contract; unfair contact terms.

JEL: K12, K15, K23, K24, K41

Dominik Borek, Commentary approving of the judgment of the Provincial Administrative Court (WSA) in Warsaw of 27 November 2019, file ref. act: VI SA / Wa 1521/19

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Summary: This article presents the facts described in the judgment of the Provincial Administrative Court (WSA) in Warsaw of 27 November 2019, file ref. act: VI SA / Wa 1521/19. The commented ruling is of great importance for the hotel services market in Poland as it concerns an administrative decision issued 'on condition'. However, this is not a condition within the meaning of Article 162 § 1 point 2 of the Code of Administrative Procedure, a realisation that has been demonstrated and clearly discussed in the legal analysis.

Key words: hotel facility; hotel; fire regulations; conditional decision.

JEL: K20

REPORTS

Report from the Nationwide Scientific Conference entitled 'Legal and practical aspects of tourism and recreation', which took place in Katowice on 17 December 2020 at the Katowice Business University (KBU). The conference was organized by the Department of Law and Administration of the KBU and under the patronage of the Ministry of Development, Labor and Technology (Katarzyna Płonka-Bielenin)