

## The economy and the market in the application of competition law (from the Editor-in-Chief)

### Articles

**Janusz Michalek, Mirosław Pachucki**, Support of automation and robotization processes with public aid regulations, conclusions *de lege ferenda*

**Summary:** In this article, the authors analyze the legal aspects of the possibility of using existing fiscal solutions for technology transfer to companies from the SME sector, also proposing the adoption of specific legislative solutions in this regard. In the authors' opinion, changes taking place in the global economy, remodeling of supply chains in connection with COVID-19, or the war in Ukraine, force the process of investment relocation closer to the relevant markets. Imperfections in the level of automation among Polish entrepreneurs, resulting from the lack of awareness in this area, or from the lack of capital set aside for the purchase of robots, make it necessary to consider the introduction of additional tax solutions that will strengthen technology transfer and cooperative ties.

**Key words:** industry 4.0; technology transfer; tooling; Polish investment zone; quality criteria; tax incentives; automation and digitization of industry; relief for robotization.

**JEL:** 230

**Jadwiga Urban-Kozłowska**, Permissible forms of state aid for airlines in the era of the COVID-19 pandemic (part II)

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#### III. Aid to remedy a serious disturbance in the economy of a Member State

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2. Individual aid as an appropriate measure to remedy a serious disturbance in the economy of a Member State
3. Proportionality of anti-crisis assistance provided to air carriers during the COVID-19 pandemic

#### IV. Comparison of both exclusions and final conclusions

**Summary:** The aim of this study is to critically analyze the use of two types of state aid – emergency aid (Article 107(2)(b) TFEU) and anti-crisis aid (Article 107(3)(b) TFEU), which played a key role in supporting air carriers during the COVID-19 pandemic. This will make it possible to compare both types of aid, and to answer the question of their importance and usefulness in the context of supporting air carriers, and more broadly, entrepreneurs overall, during extraordinary events such as COVID-19.

The premises for each of these exemptions will be discussed separately, and theoretical considerations will be accompanied by examples from the decision-making practice of the European Commission and the case law of EU courts. In the field of emergency aid, three issues of particular

importance will be examined. First, the paper will consider whether the COVID-19 pandemic can be considered a phenomenon falling within the scope of Article 107 section 2 letter (b) TFEU. Secondly, it will be analyzed what types of damages may be compensated on this basis. Thirdly, the paper will discuss the methods of determining the amount of compensation due, so that it meets the condition of proportionality.

The analysis of the anti-crisis aid exemption will begin with a discussion of the most important conditions for its admissibility. The paper will then examine in detail the question whether, and if so, in what cases, a national measure in the form of individual aid can be considered appropriate to remedy a serious disturbance in the economy of a given Member State. Finally, the requirements that an aid must meet, in order to be considered proportional, will be examined.

The analysis carried out will show the most important differences and similarities between emergency aid and anti-crisis aid. In particular, the different purposes served by these two types of aid will be presented. It will be shown that both emergency and anti-crisis aid play an important role in the process of overcoming the COVID-19 crisis, and that the funds granted within them complement each other. Therefore, these exemptions, from the general EU state aid ban, provide the necessary flexibility in the EU state aid system, enabling Member States to adapt their economic policies to the serious disturbances or crises that sometimes occur.

**Key words:** state aid; COVID-19 pandemic; aviation law; European Union competition law; air carriers.

**JEL:** H84, K33

**Jan Polański, Irrelevant markets**

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**Summary:** There is a widespread view in Polish antitrust literature that it is necessary to define the relevant market in every antitrust case. The above is in contradiction with, for example, the approach adopted in EU law. However, it is pointed out that such an obligation results in Polish

law, in particular, from the actual wording of the Act on Competition and Consumer Protection. This article aims to defend the opposite thesis: defining relevant markets is not always necessary, and emphasis on defining them every time is even harmful and leads to the definition of “irrelevant” markets.

**Key words:** antitrust analysis; economic analysis of law; competition protection; antitrust law; competition law; relevant market.

**JEL:** K21

**Daria Kostecka-Jurczyk, Katarzyna Marak**, Protection of an insolvent undertaking – comments against the background of Simplified Restructuring Proceedings

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**Summary:** In 2020, as a result of the crisis caused by the COVID-19 pandemic, many legal and economic tools were implemented in Poland to stop undertakings from going bankrupt. One of such solutions was the Simplified Restructuring Procedure. A few months later, it was replaced by Proceedings for the Approval of the Arrangement. Both of these procedures are extrajudicial, and their main purpose was to protect debtors and assist their restructuring. Indirectly, the procedure was also keeping the business activities of an insolvent undertaking going, with all the consequences that are associated with it, and above all, the protection of jobs and the protection of creditors. The aim of this study is to show the simplified restructuring law tools, implemented during the COVID-19 pandemic, meant to stop mass bankruptcies of undertakings, and the importance of these tools from the point of view of the legal situation of debtors, especially from the perspective of the scope of debtor protection. An analysis of the provisions governing these proceedings leads to the conclusion that, despite the broad protection granted to debtors, they did not weaken the position of creditors.

**Key words:** restructuring proceedings; entrepreneur’s bankruptcy; debtor protection.

**JEL:** K2, K20, L14, L26, G33

**Joanna Affre, Mateusz Restel**, A new model for imposing fines for competition law violations by business associations – risks and consequences

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### IV. Summary

**Summary:** On 20 May 2023, an amendment to the Act on Competition and Consumer Protection entered into force in Poland, which implements the provisions of the ECN+ Directive. One of the pillars of the ECN+ Directive is to give National Competition Authorities (NCAs) the power to impose effective, proportional and dissuasive penalties on business associations. In a situation where the violation committed by an association of undertakings is related to the activities of its members, the fine may amount to up to 10% of the total global turnover of those members of the association that operated on the market where the violation occurred. In this article, the authors examine whether the Polish legislator has properly implemented these EU provisions, and what consequences and risks, for business associations and their members, result from the amendment. The aim of the article is to indicate the most important interpretative doubts related to the new model of fines imposed on business associations.

**Key words:** ECN+ directive; entrepreneurs’ union; financial penalty.

**JEL:** K21, K42, L44

**Justyna Kownacka**, Hearing Officers in competition proceedings conducted by the European Commission for the implementation of Article 101 and 102 TFEU

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**Summary:** The article analyzes the role played by the Hearing Officer in competition proceedings conducted by the European Commission to implement Article 101 and 102 TFEU. Currently, the Hearing Officer is a guarantor of the effective exercise of procedural rights in the course of all competition proceedings before the EC, while contributing to the objectivity, transparency and efficiency of the proceedings. The article also discusses the proposals to change the scope of the

powers of the Hearing Officer, as reported in doctrine and literature, and refers to the possibility and legitimacy of introducing such institution into Polish competition law.

**Key words:** the right to be heard; hearing; Committee; hearing officer; competition law.

**JEL:** K21, K40

## Legislation and Case Law Review

**Dominik Borek**, Case comment in support of the judgment of the Warsaw-Praga District Court of 24 May 2022, file reference number: IV Ca 752/21 on the boundary between the management of a hotel service and a tourist package

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- IV. Endorsement of the position of the Warsaw-Praga District Court and commentary on press releases regarding the decision
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**Summary:** This article cites the facts described in the judgment of the Warsaw-Praga District Court of 24 May 2022, ref. no. file: IV Ca 752/21. The ruling is of great importance for the hotel market and tourism organizers in Poland, as it concerns the definition of a hotel service, as opposed to a package-tourist event. The judgment sparked numerous comments in the tourism industry and the press. Even though it concerns a legal status no longer applicable in the field of organizing tourist events, it has practical significance for the functioning of the market. It should be kept in mind that the combination of tourist services, which did not constitute a tourist event under the previous legal status, will not result in its creation under the current legal status. These aspects will be discussed extensively in this case comment.

**Key words:** hotel; tour operator; hotel service; tourist service; tourist package; tourist event.

**JEL:** K20

**Dominik Borek**, Critical commentary on the judgment of the Provincial Administrative Court (WSA) in Warsaw of 27 October 2022, ref. no. file: VI SA/Wa 2058/22 on the boundary in managing consumer relations with tour operators during the COVID-19 pandemic

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- I. General remarks
- II. Brief description of the facts
- III. Disapproval of the position taken by the Provincial Administrative Court in Warsaw and the endorsement of the administrative decisions preceding the judgment
- IV. Conclusions and summary

**Summary:** This article cites the facts described in the judgment of the Provincial Administrative Court (WSA) in Warsaw of 27 October 2022, ref. no. file: VI SA/Wa 2058/22. The scrutinized judgment is of great importance for the market of tour operators and insurance companies in

Poland, as it concerns setting the limits of liability for actions of entrepreneurs in extraordinary and unavoidable circumstances.

In the judgment in question, two values are considered, namely consumer protection, and resolving doubts in favor of entrepreneurs. These two key axioms should be balanced and assessed appropriately in the light of this controversial ruling.

**Key words:** tour operator; insurance company; consumer; insurance guarantee; COVID-19.

**JEL:** K20

**Marta Mackiewicz**, Compensation liability for antitrust damages caused by related companies – development of the concept of a single economic unit. Case comment to the CJEU judgment of 6 October 2021 in case C-882/19 *Sumal SL v Mercedes Benz Trucks España SL*

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- I. Facts of the case and the subject of the case comment
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**Summary:** The subject of this case comment is the analysis and assessment of the judgment of the Court of Justice of the European Union (CJEU) issued on 6 October 2021 in case C-882/19, brought by *Sumal SL against Mercedes Benz Trucks España SL*. The *Sumal* judgment concerns an important issue in the area of competition law, both public and private (*private enforcement*) – determining the group of entities responsible for infringements of competition law operating within one economic body. Earlier CJEU case law in this regard focused primarily on determining the liability of the parent company within a group of companies. In the *Sumal* judgment, however, the CJEU raised the issue of the liability of subsidiaries in the event of a breach of competition law by the parent company. The CJEU has by no means crossed out its earlier case law on the *single economic unit*, but looked at the issue from the opposite direction and specified the liability conditions of subsidiaries. Such clarification was undoubtedly desirable. However, it calls into question the principle of liability of subsidiaries in a situation where they were not directly involved in the infringement, rather than only indirectly or informally.

**Key words:** private enforcement; single economic unit; determining the entities responsible for repairing the damage; infringement of competition law.

**JEL:** K21, K41, K42

#### Literature Reviews

Paulina Korycińska-Rządca, *Ochrona tajemnic strony postępowania antymonopolowego w sprawach praktyk ograniczających konkurencję* [*Protection of secrets of the party to antitrust proceedings concerning competition-restricting practices*], C.H. Beck, Warszawa 2020 (**Anna Piszcz**)

#### Reports

Seminar on the Rule of Law and the Internal Market of the EU/EEA (**Jacek Mainardi**)