

Fourth National Academic Conference – Consumer in the Rail Passenger Market, Łódź (Poland), 26 April 2017

On 26 April, the Fourth National Academic Conference entitled “The Consumer in the Rail Passenger Market” was held at the Faculty of Law and Administration of the University of Łódź (WPiA UŁ). The event was organised by the Student Society of Energy Law and Infrastructural Sectors of the University of Łódź (NKPEiISI), the Department of European Economic Law of WPiA UŁ and the Polish Foundation of Competition Law and Sector Regulation *Ius Publicum* in Warsaw (*Ius Publicum* Foundation). The Conference was held under the patronage of the President of the Office of Rail Transport (Urząd Transportu Kolejowego – UTK), the Centre for Antitrust and Regulatory Studies (CARS) and the Railway Business Forum. The Strategic Partner of the Conference was PKP Intercity S.A., the Golden Partner – Polskie Koleje Państwowe S.A., the Silver Partner – Łódzka Kolej Aglomeracyjna Sp. z o.o., and the Bronze Partner – Koleje Wielkopolskie Sp. z o.o. The Regional Partner was the Marshal Office of Łódź, the Content Partner – the ProKolej Foundation, and the Publishing Partner – Instytut Prawa Gospodarczego Sp. z o.o. This year’s Conference built on previous editions¹.

The Conference was opened with a welcome address by M. Kraśniewski, MA (Deputy Chairman of the Board of the *Ius Publicum* Foundation, Chairman of NKPEiISI). Next, the floor was given to A. Liszewska, D. Sc., University of Łódź Professor (Dean of WPiA UŁ) and M. Pawełczyk, D. Sc., University of Silesia Professor (Chairman of the Board of the *Ius Publicum* Foundation, University of Silesia). On behalf of Prof. M. Królikowska-Olczak, D. Sc. (Head of the Department of European Economic Law of WPiA UŁ), A. Górczyńska, PhD (Assistant professor at the Department of European Economic Law of the University of Łódź) took the floor, and A. Giedryś (Adviser to the Marshal of Łódzkie province) spoke on behalf of Marshal W. Stępień (Marshal of Łódzkie province).

The introductory lecture was delivered by J. Marcinkowska, LL.M. – the Rail Passenger Ombudsman since 1 February 2017. She presented the legal basis for the Ombudsman, the purpose of proceedings for out-of-court settlement of passenger disputes and the form of dispute settlement by the Ombudsman, including the

¹ K. Chojecka, M. Kraśniewski, T. Mizioch, A. Sobierajska, *Third National Conference: Consumer in the Rail Passenger Market. Łódź, 25 May 2016*, YARS 2016, issue 9(14) p. 325–334.

so-called alternative dispute resolution methods. A reference to the first experiences as the Rail Passenger Ombudsman was an important part of the speech.

After the introductory lecture, M. Pawełczyk, D. Sc. opened the first panel, related to the amendment to the Act on Rail Transport. The first lecture was given by M. Będkowski-Kozioł, PhD, LL.M.Eur.Int. (Cardinal Stefan Wyszyński University in Warsaw, Kocharński, Zięba & Partners Sp. k.), who sought to assess the amendment of 16 November 2016. He presented the assumptions and main regulation areas of the amendment, including the new division of railway infrastructure, changes to the rules on access to individual infrastructure categories and to railway undertaking licences. S. Akira Jarecki, PhD (Warsaw School of Information Technology, CARS) delivered the next lecture – “The concept of public service and open access”. He presented a protection mechanism of public service against potential negative impact of decisions to grant open access to railway infrastructure. He also discussed the open access mechanism and thoroughly assessed the provisions in that respect. Next, E. Kosiński, D. Sc., UAM Professor (Adam Mickiewicz University in Poznań) discussed the legal position of the President of UTK as a regulatory element of the rail sector in the context of the amendment. He pointed at the broadly understood legal guarantees of independence of the President of UTK, discussed the impact of the amendment on the independence of the regulator in the rail sector and opposed the total structural separation of the President of UTK from government administration. The first panel was concluded with a discussion moderated by Prof. M. Pawełczyk.

The second part of the Conference was a debate on the operating model of the rail transport market in Poland. The session was chaired by A. Fornalczyk D. Sc. (first President of the Antimonopoly Office, founding partner of COMPER Fornalczyk i Wspólnicy Sp. j.). The panellists were: P. Halupczok (Chairman of the Management Board of Arriva RP Sp. z o.o.), P. Jančovič (Member of the Management Board of LEO Express Polska Sp. z o.o.), A. Kozłowska (Head of the Regulation Department in UTK), K. Krasowski (Deputy Head of the Offer and Products Development Office in PKP Intercity S.A.), A. Wasilewski (Chairman of the Management Board of Łódzka Kolej Aglomeracyjna Sp. z o.o.), W. Wilkanowicz (Chairman of the Management Board of Koleje Wielkopolskie Sp. z o.o.), T. Woźniak (Head of the Infrastructure Department in the Marshal Office of Łódź) and P. Stomma (Ministry of Development).

Prof. A. Fornalczyk referred to the differences between forecasts regarding the development of railways and actual indicators, which affect railway density and competitiveness as well as the importance of the 4th Railway Package for the market. The Chair of the panel asked whether promoting small regional undertakings or nationwide ones was better for the sector. Ms. Woźniak was first to speak. She argued that the rail development programme implied an improvement of the existing infrastructure – i.e. renovation instead of new railways (restoration of original parameters). Speaking about renovation of existing railways, Mr. Wilkanowicz mentioned the differentiation between regional and long-distance connections. He explained that high speed was impossible on short railways and did not reimburse economic expenses in the case of longer ones. Mr. Wasilewski stated that a “good offer” for potential purchasers of tickets was enough to attract customers. He stressed that

undertakings had to prepare for the 4th Railway Package. In his opinion, appropriate supply trains and modern facilities had to be prepared to ensure fair competition that benefits the passenger. Ms. Kozłowska referred to the adjustment of infrastructure to local conditions and requirements. She also spoke about the quality of infrastructure and the UTK's current and future mission which entails the development of safe and competitive rail transport. Mr. Halupczok stressed that instead of a leap in the railway infrastructure, an increase in competition was needed for the development of the rail sector. He referred to the German company DB Regio, which had increased its turnover in the rail transport market in Germany despite earlier reduction in market share. In his opinion, the efficiency of railway undertakings was vital for better market conditions. Mr. Jančovič saw the latest legal regulation as an incentive for travellers to use rail services more often. He also highlighted that offers needed to be diversified as part of competition as it was impossible for a single undertaking to satisfy the needs of all potential passengers. Mr. Krasowski opined that competition was a positive phenomenon, and the rail market had nothing to fear from it. At the same time, he mentioned high economic barriers to entry as well as exit barriers, which hardly translated into proliferation of competition. He argued that a sudden reduction of barriers, proposed in the 4th Railway Package, would be counterproductive – therefore, it would be wise to ensure conditions for the preparation for economic barriers to be lowered. Mr. Stomma said that a market model had to be defined, which is suggested by the unsolved issue of high-speed rail and the fact that in Poland the part of the sector financed from public funds in other EU states was covered by the market. He pointed out the need for a transport policy in Poland which would take into account the upcoming industrial revolution 4.0 and the Internet of Things.

The third panel of the Conference was led by Prof. M. Królikowska-Olczak, D. Sc. The discussion was related to consumer and passenger rights in the rail passenger market. Mr. Kłosowski (Nicolaus Copernicus University in Toruń, UTK) delivered the lecture “Monetary penalty as a sanction for infringement of the provisions of Regulation (EC) No 1371/2007 – an overview of European solutions”. He analysed sanctions applied in individual EU Member States in the case of infringement of the provisions of Regulation No 1371/2007, described their nature and presented entities on which they may be imposed. The next speaker was G. Pilecki, MA (UTK), whose lecture was about obligations of rail market entities in relation to the disabled. It was based on two legal acts: Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations and Commission Regulation (EU) No 1300/2014 of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility. The third paper – “Comments on Regulation (EC) No 1371/2007 concerning minimum information provided by railway undertakings or ticket vendors before the journey” – was delivered by P. Kowalik, PhD (Lublin University of Technology). He presented information requirements laid down in the Regulation and referred to the Computerised Information and Reservation System for Rail Transport. Furthermore, Mr. Kowalik discussed potential problems with the introduction of the system and the need to

regulate the rules of searching for connections. The final lecture of the third panel – “The Rail Passenger Ombudsman as UTK’s means to fulfil passengers’ expectations” – was presented by W. Wilamowski, MA (W&B Wilamowski), who highlighted the important social role of the Ombudsman.

The next panel was devoted to the financing of transport activity in the rail passenger market. The moderator of this part of the Conference was Ł. Grzejdziak, PhD (Assistant professor at the Department of European Economic Law of the University of Łódź, supervisor of NKPEIiSI).

The lecture “Changes to the procedure of outsourcing passenger rail transport in the context of the amendment to Regulation (EC) No 1370/2007” was delivered by Ł. Ziarko, MA (University of Łódź, COMPER Fornalczyk & Wspólnicy Sp. j.). He analysed the key changes regarding outsourcing and financing of public transport which would enter into force on 24 December 2017. Next, P. Kulczycki, MA (COMPER Fornalczyk & Wspólnicy Sp. j.) took the floor. He presented the basic rules for the calculation of compensation for the provision of public rail transport. The final paper of the fourth panel – “Financing of reduced fares in public transport – selected issues” – was delivered by B. Mazur, PhD (Rybnik City Hall, ProKolej Foundation). He discussed the legal basis of reduced fares, criteria for their division and reservations related to the system of reduced fares by referring to case law in that respect.

The final part of the Conference focused on environmental protection in railway law. The discussion was chaired by M. Kraśniewski, MA. The speakers were: A. Bogusz, MA (WPiA UŁ), K. Chojecka, MA (University of Warsaw) and M. Sokół (WPiA UŁ). A. Bogusz delivered the lecture “Legal issues of waste management in rail transport”. She presented issues of waste management in the context of rail transport and highlighted the role of the EU in development of these issues. Ms. Chojecka pointed at the normative issues of acoustic protection in the paper “Counteracting noise in the rail sector – analysis and conclusions”. She placed special emphasis on the installation of noise barriers and train braking technologies. The aim of the final paper, presented by Ms. Sokół – “The railway law and environmental protection in the United States of America” was to present the American environmental protection system, its specificity and methods of regulation in a brief comparison with generally described ecology law systems of other countries to show its complexity and fragmentation in the American law.

Prof. M. Królikowska-Olczak summarised the discussions and closed the conference. In her opinion, the conference was of a very high level and an inspiration for further deliberations. She congratulated M. Pawełczyk, D. Sc., Ł. Grzejdziak, PhD and M. Kraśniewski, MA and expressed her gratitude for organising the conference.

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