

Editorial foreword

The Editorial Board is pleased to present the fifth volume of the **Yearbook of Antitrust and Regulatory Studies** (YARS 2011, 4(5)). In the fourth year of its publication, two volumes of YARS are issued in 2011: the current ‘regular’ volume as well as a sector-specific one dedicated solely to competition protection and regulation in the energy sector in Poland (YARS 2011, 4(4)).

YARS 2011, 4(5) continues to present to our foreign readers a number of academic papers dealing with key problems of substantive and procedural competition rules and regulation. Although the papers concentrate on Polish law and practice, they also usually refer to European experiences in the enforcement of competition law and regulation in infrastructure markets. We believe the papers presented in the current volume of YARS can inspire Polish and foreign academics alike to conduct further research in both its fields. We hope the readers of YARS 2011, 4(5) will be encouraged to co-operate with us in the future as the periodical is now open to foreign authors writing on antitrust and regulatory issues in Central and Eastern Europe. Setting our sights on such regional expansion, we thus welcome Professors Kolesná, Pecotić Kaufman, Stanikunas, Tichy and Tihamér, this region’s most prominent academics, as new members of the YARS Scientific Board.

YARS 2011, 4(5) opens with a paper by Prof. Anna Fornalczyk, former President of the Polish Antimonopoly Office, analyzing Philip Kotler’s marketing recommendations from the perspective of competition law. The author points out, most importantly, that some of the proposals on how to reach and sustain market dominance may in fact cause a violation of Polish and European competition law. Antoni Bolecki presents the problem of hub-and-spoke conspiracies, practices that involve an exchange of confidential information in a vertical context, with reference to three decisions issued in recent years by the President of the Polish Office of Competition and Consumer Protection. Considering the issue from entirely different perspectives, two separate articles deal with the exercise by the Polish competition authority of its powers of inspections. Dr. Maciej Bernatt focuses on procedural guarantees of proportionality as the actions of the public authority limit the economic freedom and right to privacy of the inspected undertakings in the name of competition protection. The aim of the paper by Konrad Stolarski

is to assess if fines for a failure to co-operate with an inspection carried out in the framework of antitrust proceedings constitute ‘the ultimate weapon’ for its enforcement bodies. The article considers the decisional practice of the Polish competition authority as well as the European Commission and presents the way in which their approach has evolved over the years. Łukasz Grzejdziak analyses the recent reform of the Polish healthcare system from the perspective of State aid rules. The author considers the hypothesis that a debt write-off in favour of public hospitals only constitutes in fact State aid within the meaning of EU law. In the next paper, Dr. Marlena Wach presents key issues relating to the methods of mobile termination rates calculation by the Polish telecoms regulator. The final article by Dr. Michał Wolański analyses different de-monopolisation approaches used in Polish and European urban public transport. It compares the efficiency of these models and estimates the total losses incurred in Poland due to high monopolisation of its public transport.

Aside from its research papers, the current volume of YARS contains also a review of new Polish antitrust legislation and key jurisprudence as well as a series of detailed reviews of legislative amendments in specific infrastructure sectors: telecoms, energy, rail transport, aviation, and the postal sector. Most of these reviews refer to 2010; the developments in the postal sector cover both 2009 and 2010.

The following part of YARS 2011, 4(5) contains a number of case comments concerning both European and Polish antitrust jurisprudence. Two separate judgments delivered by the European Court of Justice, both regarding Polish telecoms operators, are discussed by Anna Pisarkiewicz (C-522/08) and Cathal Flynn (C-99/09). Two important judgments of the Polish Supreme Court are then presented by Dr. Bartosz Targański (III SK 37/09) and Szymon Syp (III SK 41/09). M. Modzelewska de Raad comments on a judgment of the Court of Appeals in Warsaw (VI Aca 61/09) and Dr. Małgorzata Kozak discusses two decisions of the Polish competition authority concerning inspections during antitrust proceeding.

Reviews of Polish books concerning various aspects of EU competition rules are presented next. They concern the general characteristics of EU competition rules, co-operation in mergers cases within the European Competition Network and, EU antitrust jurisprudence in the years 2004-2009. YARS 2011, 4(5) closes with a report on the conference ‘New Amendments Introduced to European Union Competition Law Due to the Expiration of Block Exemption Regulations’ and reports on the activities of CARS: general Activity Report for 2010 and on the CARS open PhD seminar dedicated to conditional approvals of mergers.

The Editorial Board hopes that YARS will once again provide its readers with up to date insights into the workings of antitrust and regulation in Poland.

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Agata Jurkowska-Gomulka
Volume editor