

## Editorial foreword

The Editorial Board is pleased to present the sixth volume of the **Yearbook of Antitrust and Regulatory Studies** 2012, 5(6). This year two volumes of YARS are issued: the current volume concerning the rights of undertakings in both Polish and EU antitrust proceedings, and a 'regular' volume (YARS 2012, 6(7)).

This volume (YARS 2012 5 (6)) focuses on issues concerning the rights of undertakings at different stages of antitrust proceedings, looking at the issues from both the Polish and European perspectives. The European perspective covers the issues connected with fair proceedings in the meaning of the European Convention on Human Rights and Fundamental Freedoms (ECHR), as well as a broad selection of topics relating to the European Union law. The first two articles deal with the fundamental question of the nature of the antitrust proceedings. Professor Małgorzata Król-Bogomilska analyses the standards of entrepreneurs' rights in competition proceedings from this very perspective, trying also to answer the question whether the Polish antitrust proceedings should be perceived as a matter of administrative or criminal law. Anna Błachnio-Parzych more specifically deals with the notion of "Criminal Charge" in the jurisprudence of the European Court of Human Rights, also in the context of the Polish antitrust proceedings, coming to the conclusion that some of the antitrust charges under Polish law can be perceived as criminal ones. Aleksander Stawicki presents the Polish system of judicial review of decisions issued by the Polish national competition agency (UOKiK President). These decisions are reviewed in the regular courts and in theory they exercise full jurisdiction. The author critically assesses the present practice of using the existing competences in a narrow way. Further on, Rafał Stankiewicz presents the scope of application of the provisions of the Polish Administrative Procedure Code in antimonopoly proceedings, highlighting the specificity of the Polish antitrust proceedings held in front of the UOKiK President as a particular administrative proceeding. Next Maciej Bernatt assesses the scope of entrepreneurs' access to information during and about the Polish antitrust proceedings, concluding that in its present shape it does not guarantee in full the right to be heard.

Przemysław Rosiak's article opens the part of this volume that deals more broadly with the European Union issues, albeit not abandoning the Polish perspective. He analyses the *ne bis in idem* principle in proceedings related to anti-competitive agreements in EU Competition Law, fully exposing its implications for Polish undertakings. Mateusz Błachucki and Sonia Józwiak present the practice and consequences of the exchange of information and evidence between competition authorities. This 'free movement of evidence' can have far-reaching consequences for the undertakings concerned. Next Inga Kawka analyses the rights of an undertaking that participates in the proceedings for the issuance of a commitment decision under Article 9 of Regulation 1/2003. The author critically assesses the existing practice and questions whether it should constitute a model for the Polish solutions. Bartosz Turno and Agata Zawłocka-Turno raise the important problem of the scope of the legal professional privilege (LPP) and the privilege against self-incrimination (PASI) in EU Competition Law in light of the coming into force of the Lisbon Treaty. The authors consider the existing jurisprudence as insufficient and present several arguments for reform. Krystyna Kowalik-Bańczyk analyses the principle of the EU Member States' procedural autonomy in antitrust proceedings in light of the existing jurisprudence of the European Court of Justice concerning the rights of defence. In particular she analyses the obligation to apply this jurisprudential *acquis* in national antitrust proceedings. Mariusz Baran and Adam Doniec analyze the EU courts' jurisdiction for reviewing decisions imposing fines in EU Competition Law. *Last but not least* Jan Szczodrowski analyses the standard of judicial review of merger decisions concerning oligopolistic markets, pointing out some important analogies and comparisons between the EU and Polish practice.

Aside from this very rich selection of research papers, the current volume of YARS also contains two commentaries concerning key decision in Polish jurisprudence, and a review of Maciej Bernatt's book on procedural justice in Polish antitrust proceedings. They add to the general picture stemming from this issue, i.e. that the Polish antitrust procedures might be in need of some improvement as far as European standards are concerned.

The Editorial Board hopes that this issue of YARS will aid the reader in understanding the mechanisms for protection of undertaking's rights, both in Polish and EU antitrust proceedings.

Warsaw, March 2012

*Krystyna Kowalik-Bańczyk*  
Guest volume editor