

Editorial foreword

It is our great pleasure to present to you the newest issue of the Yearbook of Antitrust and Regulatory Studies. We are proud that the YARS continues to attract original contributions discussing the developments in Central Europe and beyond.

The issue covers diverse topics of direct relevance for competition law, competition economics and sector-specific regulation. As usually, they concern both substantive and procedural issues. However, one needs to observe that 2019 brought controversial developments on the institutional side. Starting on 1 January 2020, Poland's competition authority (UOKiK) will be responsible for combating payment gridlocks. It will be entitled to establish proceedings and impose fines on firms that failed to pay their contractors on time. While the problems with liquidity of Polish SMEs may indeed exist, it is difficult to see any coherence between the UOKiK's core mission and its new powers. Rather, this is an example of amalgamation of competition authority's mandate, which is counter-productive to its principal role to protect competition and consumers in the public interest. Taking into account the significant scope of the new tasks, and the related increase in budget, there is a risk that the UOKiK's new competences will further weaken its prominence as an independent antitrust enforcer. On a more positive note, it is interesting to observe how the preliminary references sent by courts from Central Europe continue to shape EU competition law. Its most recent example is the Hungarian Kuria's preliminary reference in *Budapest Bank*, C-228/18, concerning the character of interchange fee agreements and the distinction between agreements prohibited by object/by effect.

The issue opens with an article by Krystyna Kowalik-Bańczyk, a judge of the General Court, on the intensity of judicial review of fines imposed by the European Commission for a violation of EU competition rules. The article, by presenting vast case-law, clearly explains what are the limitations of the review by the General Court. The General Court, while it has unlimited jurisdiction as far as fines are concerned, is not empowered to act *ultra petita* or to raise some issues on its own motion, and it does not have a competence to reform the substance of a Commission decision. Andrzej Nałęcz puts forward arguments aimed at demonstrating that freedom of expression of end-users

of Internet access services should be safeguarded when determining the rules of network neutrality in Europe. The article is based on the concept of state positive obligations in the human rights field, developed in the case-law of the European Court of Human Rights. Its analysis leads the author to an important conclusion: the state has a positive obligation to prevent private Internet Service Providers from engaging in practices that violate the freedom of expression of the end-users of their services. Artur Salbert analyses the compatibility of Polish rules regulating the use of electronic communications for direct marketing purposes with EU law. The author reaches the conclusion that Polish law, by providing for the opt-in rule as far as the use of electronic mail for direct marketing purposes of products or services similar to ones previously sold or provided, is contrary to EU regulations, which are based on the opt-out rule. Oleksandr Khlopenko addresses, primarily on the basis of Ukrainian experience, the methods of the implementation of anti-money laundering regulations. The author discusses their long-term effects in developing economies, and, in particular, the restrictive effects they produce for financial inclusion in developing economies. The EU competition rules serve as a point of reference for the author's analysis. Elias Zigah presents, from an interdisciplinary perspective, the challenges faced by West African countries as far as energy security is concerned. The principal challenge is that most of the countries studied do not have a diversified source of natural gas supply. In addition, gas storage facilities are insufficient to safeguard the continuous supply of natural gas. Therefore, disruptions in domestic gas production are likely to adversely affect the natural gas supply security.

The issue contains several contributions analysing the developments in case-law. Judit Firniksz and Borbála Dömötörfy offer a topical analysis of information exchange arrangements in the context of data-driven economy. They analyse to what extent the existing Hungarian case-law informs the competition assessment of information exchange in the digital context. The recent challenges faced by the Hungarian competition authority in successfully proving the anticompetitive character of information exchanges are scrutinized in this respect. Laura Skopowska analyses the Bundeskartellamt's Facebook decision. Her main criticism focuses on the BKA's direct application of the General Data Protection Regulation as a basis for finding a competition law violation. The author argues that assessments related to the GDPR are a task for the data protection authority and not for the competition authority. She argues that the latter should take action only after the infringement of data protection rules is established by the data protection authority. Nora Memeti fills the existing gap in the literature by describing competition law regimes of the Member States of the Gulf Cooperation Council: Qatar, Kuwait, the United Arab Emirates, Oman, Bahrain and Saudi Arabia. After analysing existing

developments, the author argues for a creation of regional competition law system and provides recommendations on how to accomplish this endeavour. Dragan Gajin describes the developments in the field of competition law in Western Balkans (Serbia, Montenegro, Bosnia and Herzegovina, and North Macedonia). The author's analysis suggests that the countries of the region are more focused on merger review than on antitrust enforcement.

The issue concludes with three book reviews and three conference reports.

We would like to thank all who contributed to this issue of YARS. Our special gratitude goes to all peer-reviewers as well as to Claudia Massa, Ewelina D. Sage and Laura Zoboli.

Enjoy reading!

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