

Webinar “Judicial Review of Competition Cases: The CEE and SEE Countries Perspectives” 14 June 2023

On 14 June 2023, three ASCOLA (Academic Society for Competition Law)¹ regional chapters (Eastern Europe (Baltics), Central Europe (CEE), and South-East Europe (SEE)) joined together to organise a webinar entitled “Judicial Review of Competition Cases: the CEE and SEE Countries Perspectives”. This webinar was built upon an expansive *Study on Judicial Review of competition law enforcement in the EU and the UK*, led by Professor Barry Rodger, Dr Or Brook and other team members, including Professor Maciej Bernatt, as well as national rapporteurs representing the 27 EU Member States and the UK.²

Judicial review plays an important role in the enforcement of competition law. Jointly with competition authorities, the judiciary shares responsibility for shaping competition law and ensuring its effective enforcement. Most competition cases in the EU are decided at the national level. Yet, research conducted on a national level is not comprehensive, especially in relation to the rules governing the operation of national judicial review systems. To fill this gap in literature, this project sets out to provide much-needed empirical studies undertaken by national rapporteurs covering judicial review of decisions issued by national competition authorities (NCAs) related to the application of Articles 101 and 102 TFEU (and domestic equivalents) during the 2004–2021 period.

The webinar focused on judicial review of competition cases (both EU and domestic) across the selected EU Member States, such as Bulgaria, Estonia, Czechia, Croatia, Lithuania, Slovenia and Poland. The webinar opened with a keynote speech delivered by Professor Krystyna Kowalik-Bańczyk – Judge of the GC (General Court) of the EU. Judge Kowalik-Bańczyk set the scene by speaking of the most common grounds of judicial review undertaken by the GC with respect to the decisions of the European Commission. Judge Kowalik-Bańczyk enriched her speech by commenting on some of the most discussed cases.

The webinar then featured two distinct panels. The first panel, chaired by Professor Alexandr Svetlicinii (University of Macau, China; co-director of the ASCOLA SEE

¹ ASCOLA regional chapters <<https://ascola.org/regional-chapters/>> accessed 10 July 2023.

² Judicial Review of Competition Law Enforcement in the EU: Empirical Mapping 2004–2021 <<https://www.mappingcomplawreview.com/>> accessed 10 July 2023.

Regional Chapter), was based on the findings from the aforementioned *Study on Judicial Review* research project. Given that the project covered a wide range of issues, the speakers reflected on different aspects of judicial review in their respective jurisdictions. For instance, Professor Jurgita Malinauskaite (Brunel University London, UK; Vytautas Magnus University, Lithuania) focused on the total number of judicial review cases in Lithuania, commenting on the success rate of these cases, as well as observing potential reasons for the current situation. Professor Ana Vlahek (University of Ljubljana, Slovenia) evaluated the developments in Slovenia in terms of judicial review of particular types of NCA decisions (i.e. anti-competitive agreements, different types of abuses of a dominant position). Various trends identified in relation to the grounds of appeal (i.e. substantive, procedural, fines), and related specifics in Czechia, were presented by Professor Michal Petr (Olomouc University, Czechia). The two discussants of this panel, Professor Jasminka Pecotić Kaufman (University of Zagreb, Croatia) and Professor Maciej Bernatt (University of Warsaw, Centre of Antitrust and Regulatory Studies, Poland), took a comparative perspective to reflect on the relevance of EU law, including the CJEU case law, as well as the European Commission's practices, for judicial review of NCAs' decisions. They offered their observations related to the scope and intensity of judicial review, such as the standard of proof, deference to administrative discretion, respectively.

The second panel, moderated by Professor Malinauskaite, focused on practical aspects of judicial review. Professor Dawid Miąsik (Judge of the Polish Supreme Court, Poland) noted that it is difficult to change the approach of judges with respect to their mistrust of companies and their practices. It was also remarked that the focus has been on substantive aspects, while procedural issues (i.e. fair trial) were somehow being ignored. Rita Paukštė (TGS Baltic, Lithuania) further observed that the burden of proof is very high in competition cases. Competition cases are very complex and Lithuanian judges do not have sufficient expertise for an in-depth analysis of such cases, as they present only a small percentage of the administrative cases that they have to adjudicate on. Igor Mucalo (Law Office Mucalo, Croatia) commented on the situation in Croatia. Elo Tamm (Cobalt, Estonia) explained the complex competition law enforcement system in Estonia, which does not ensure sufficient transparency and the predictability of the outcomes. One must note that the European Commission has recently referred Estonia to the CJEU for failing to fully transpose the ECN+ Directive³ into national legislation.⁴ Finally, Professor Jasminka Pecotić Kaufman (University of Zagreb, Croatia), the co-director of the ASCOLA SEE Regional Chapter, closed the event with her final remarks.

³ European Parliament and Council Directive (EU) 2019/1 of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, [2019] OJ L 11, p. 3–33.

⁴ European Commission, The EU Commission refers Estonia to the Court of Justice for failing to transpose the ECN+ Directive, 14 July 2023, e-Competitions July 2023 – II, Art. N° 113182 <<https://www.concurrences.com/en/bulletin/news-issues/july-2023/the-eu-commission-refers-estonia-to-the-court-of-justice-for-failing-to>> accessed 12 July 2023.

This webinar presented a much needed platform for raising awareness of national judicial review systems in the CEE and SEE countries. Simultaneously, it also identified the challenges faced in these jurisdictions.

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