STEFAN AKIRA JARECKI

ANNEX NO. 3

SUMMARY OF ACADEMIC AND PROFESSIONAL ACCOMPLISHMENTS

1. Name and surname

Stefan Akira Jarecki

2. Diplomas and Academic Degrees – including their name, place and year of issue as well as the title of doctoral dissertation.

- 26th June 2006

  Cardinal Stefan Wyszyński University in Warsaw (UKSW), Faculty of Law and Administration

  Bachelor of Administration diploma with a very good grade and award of the Dean of the Faculty of Law and Administration of the third degree

  Diploma thesis "The Role and Place of the President of the Office of Rail Transport in the Polish Legal System", written under the supervision of Prof. UKSW dr. hab. Zbigniew Cieślak

- 20th June 2008

  Cardinal Stefan Wyszyński University in Warsaw (UKSW), Faculty of Law and Administration

  Master's degree in administration, diploma with a very good grade and honours, award of the Dean of the Faculty of Law and Administration of the first degree

  Master thesis "Regulation of the Railway Transport Market in Poland", written under the supervision of Prof. UKSW dr. hab. Zbigniew Cieślak

- 19th February 2013

  Cardinal Stefan Wyszyński University in Warsaw (UKSW), Faculty of Law and Administration

  Ph. D. in Law

  Doctoral thesis „Models of Procompetitive Legal Solutions in the Area of Passengers Railway Transport", written under the supervision of Prof. UKSW dr. hab. Zbigniew Cieślak

3. Information on previous employment in scientific entities

- 21st September 2012 – 30th September 2013 – lecturer at the Faculty of Information Technology Management of the Warsaw School of Information Technology (WIT) under auspices of Polish Academy of Science (PAN), Warsaw (Poland) – administrative studies
- 1st October 2013 – Present – assistant professor at the Faculty of Information Technology Management of the Warsaw School of Information Technology (WIT) under auspices of Polish Academy of Science (PAN), Warsaw (Poland) – administrative and management studies
- 6th October 2017 – Present – associate of the chair of Public Economic Law at the Faculty of Law and Administration of Cardinal Stefan Wyszyński University in Warsaw

4. Demonstration of achievements in the meaning of article 16 of the Act of 16 March 2003 on Academic Degrees and Scientific Titles and Degrees and Titles in Arts (Dz.U. (Journal of Laws) 2017, item 1789)

Stefan Akira Jarecki, "Disintegration as a Tool of the Regulation of the Railway Transport Market", EuroPrawo, Warsaw 2019

[Publisher's reviewer: prof. UKSW dr. hab. Zbigniew Cieślak].

Under Article 16(2) of the Act of 16 March 2003 on Academic Degrees and Scientific Titles and Degrees and Titles in Arts, the aforementioned monograph is my main academic achievement after obtaining the Ph. D. in Law degree. This book is a result of analyses and reflections concerning several decades of the EU legislator's activity in the field of introducing procompetitive regulatory solutions in the area of railway transport services.

Initially it was considered that for opening up railway transport market to competition it would be generally sufficient to ensure all interested railway undertakings (railway carriers) equal and non-discriminatory access to the railway network (railway infrastructure such as tracks). No wonder then that providing such access for a long period of time was the primary objective of the EU regulations. However, as the implementation of the new solutions progressed, the EU legislator was more and more

convinced that the railway network is not the only production factor, access to which is needed for railway undertakings to compete with the incumbent operator. This conclusion was based on two factors. First of all, third party access to the railway network did not lead to the development of competition on the railway transport market, as it had been assumed by the EU. Secondly, the opinions of the new railway operators, according to which the reason why the effect of the liberalisation of the railway transport market is unsatisfactory is the lack of the access to production factors other than the railway network, which are necessary to provide economic activity in the railway transport sector. They argue that these production factors are at the disposal of the incumbent operators, which use them to obstruct (or even prevent) the development of the competition on the rail transport service market (market of transport of goods and passengers).

In my opinion, for the scientific reflection on the economic regulation of the railway industry and, in particular, to determine the directions of the interpretation and the future development of law in this area, it is important to answer the question - whether taking into consideration the method of opening up the railway market to competition and the nature of the economic regulation is indeed necessary to introduce regulatory measures concerning the provision of access to production factors other than the railway network to all undertakings interested in providing railway transport services. Then, it is necessary to explain in case of which production factors it is justified to introduce such measures. What are the solutions established in this regard by the EU and to which production factors do they apply? Are they related to the introduction of some type of mechanisms of state intervention in the rail transport sector? Do they have common features that distinguish them from other mechanisms used by the state in this sector (do they constitute a new type of legal regulatory measures concerning railway transport)? In my research I focused on examining how these issues are *de lege lata* regulated in the EU law. Another purpose of my research was to clarify whether the solutions established in the EU law are adequate to the identified problems, and whether they ensure effective implementation of the EU legislator's goals. In this area I formulated conclusions *de lege ferenda*.

In the monograph I focused on the existing law regulations, their clarification (interpretation) and systematization. Therefore the character of my research was generally dogmatic.

The structure of the monograph is the result of my research goals. In the first chapter I explained the concept of economic regulation. I proposed my own definition of the economic regulation. That was necessary to determine the area of my scientific research. In my opinion, proper understanding of any law regulations is impossible in isolation from their axiology. That is why, before constructing the definition of the economic regulation I examined axiology of the railway transport regulation. In the second part of the first chapter I examined production factors, other than the railway network, access to which requires regulatory measures and how this issue was solved by the EU legislator. I analysed regulatory mechanisms introduced in this area by the EU and identified their common features. In the next three chapters I focused on the regulatory measures concerning production factors other than railway network, such as service facilities and rail related services, rolling stock and human resources (employees). According to the EU, it is necessary to provide access to these production factors to all parties interested in providing economic activity on the railway transport market.

In the second chapter I examined the notions of service facilities and rail-related services. I also explained the terms 'service facility' and 'operator of service facility'. I have identified and analysed disintegration solutions concerning railway service facilities operators.

Chapter three is devoted to the solutions applicable to the rolling stock. In this chapter I explained the influence of the provision of access for the rolling stock for the railway operators on the competition on the railway transport market (in particular from the point of view of the legal model of the organization of this market). I examined how this issue was solved in the EU law and national regulations of some EU Member States.

In the fourth chapter I analysed the disintegration solutions concerning human resources (employees). The structure of this chapter is similar to the previous two. Firstly, I explained the relation between the human factor and the competition on the railway transport market, then I analysed how this issue was regulated by the EU. I separately

examined the solutions to the transfer of employees between railway operators (in case of the change of the operator providing public services in passenger railway transport) and solutions concerning awarding of rights to perform a certain profession.

In the last, fifth chapter, I examined the influence of the disintegration solutions on the structure of the rail transport market players. I also explained the notion of the railway operator.

The last part of my monograph is the afterword. In the afterword I summarized the most important findings made in the book and formulated conclusions *de lege ferenda*.

To determine the area of my research I examined the axiology of the law provisions on railway regulation. The EU legislator recognised that for social, environmental and economic reasons railways should have a high share in modal split. Taking into consideration the economy theory and the rules of the economic system the optimal way to achieve this objective is to introduce competition on the railway services market (both on the passenger services market and the freight services market). In this meaning, the competition has an instrumental value. It is merely a tool for the realization of other values important to the legislator.

The aim of the economic regulation is to introduce competition in certain sectors of economy. The reason why there is no effective competition in these sectors is the significant market power of some market players. The source of this market power is the specific characteristic of the given market that distinguishes it from other (typical) markets. Due the specific characteristic, this market is functioning in a way that is far from the perfect market model. This characteristic results from specific entry and exit barriers existing in this market sector . The economic regulation should eliminate or at least reduce these barriers. In this way undertakings would not be able to use their market power to prevent or obstruct the development of the competition.

Legal writers formulate two main concepts of the economic regulation. According to the narrow one there is an inseparable link between the notion of the economic regulation and the introduction of the competition on the given market (in case of certain economic

activities). According to the broad one, it is any state intervention in the functioning of market mechanisms. It does not have to be a procompetitive intervention. In my book I used the narrow concept of the economic regulation. I explained in details why I decided to that.

I proposed a definition of the economic regulation. It is a set of rules addressed to operators in certain sectors of economy. The aim of these rules is to introduce competition. It is achieved through the influence of the state on the rules of economic activity in these sectors (other than those based on the antitrust law) in the area of the production factors, which constitute the specific market entry and exit barrier, and therefore are the source of the significant market power of some market players. They are also a source of specific characteristic of the given sector and distinguish this sector from other sectors of economy. It follows that the economic regulation is closely related to the issue of market entry and exit barriers, which are the source of lack or improper functioning of competition on the given market.

I determined that in the railway transport sector there exist several production factors, which can be used by the incumbent operator, to block the development of competition on the railway transport market. These production factors constitute a specific railway transport market entry and exit barrier. The analysis of EU legal acts led me to the conclusion that the EU legislator identified following production factors that have such a character: service facilities as well as rail related services, rolling stock and human resources (employees). It is worth mentioning that, mainly due to the different organization model, not all of them are equally important in case of freight and passenger transport, as well as in case of public and commercial services (services provided at a commercial operator's own risk).

Competition authorities tried to solve the problem of access to production factors other than the railway network. They classified the refusal of access to such production factors as the abuse of the dominant position consisting in the anti-competitive refusal of supply. However, the mechanism provided in the competition law was insufficient to introduce competition on the railway service market. They do not provide undertakings

with the sufficient level of legal certainty to take a significant economic risk and enter the railway service market, mainly because there are applied in individual cases.

The most important scientific finding made in my book is the conclusion that to solve the above mentioned problem the EU legislator introduced specific regulatory measures of general nature. I called them the disintegration solutions. I noticed that, although in terms of their construction there are significant differences among them, they all have the same purpose, and in this regard, are homogeneous. It also should be underlined that the name that I used is neither positive nor negative. I used it as the most descriptive short name for legal solutions introduced in the EU law concerning the functioning of undertakings on the railway market which integrate many different production factors that are necessary to provide railway services and related to this phenomenon problems for the development of competition in the rail transport sector. It therefore refers to the current state of affairs so desired by the EU legislator.

The idea of the above mentioned solutions is to determine the conditions of providing the economic activity in the railway sector in a way that will weaken the link between production factors that constitute specific market entry and exit barriers and railway operators. This way, these factors would be available to all railway operators or would be used in a given period only by one operator, however they could easily be transferred from one operator to another (in the sense of using given production factors) – from the operator that ended performing services to the operator chosen to provide services for the next period. As a result, they should prevent or limit the possibility to use a significant market power by some market players in the anticompetitive way. These solutions are currently the main instrument of the railway transport regulation.

I also made several detailed conclusions in may monograph. They mainly concern specific disintegration solutions.

Main and the most important production factors, which are a source of the specific characteristic of the railway sector and may be used by incumbent operators to prevent competition development, are service facilities and rail-related services. Service facilities are the infrastructure production factors (other than the railway network) which are necessary to provide railway transport services. These are installations which have been

specially arranged, as a whole or in part, to allow the supply of one or more rail-related services, such as railway stations, freight terminals or maintenance facilities. Rail-related services means services listed in the EU sectoral regulations other than related to the provision of access to railway network (going beyond the scope of so-called minimum access package), which are necessary to provide railway transport services. The basic disintegration solutions introduced in this area are the third party access to the services facilities as well as the unbundling of the operation of the service facility and the provision of railway transport services. It includes the obligation to organise the structure of an undertaking in such a way that would guarantee the independence of the operator in terms of organisation and decision-making.

The serious drawback of the examined regulation is the lack of the explanation how to understand independence of the service facility operator in terms of organization and decision-making. The problem of the interpretation of similar rules concerning railway infrastructure (railway network) led to the a dispute between the European Commission and many EU Member States. Lack of the regulation of the above mentioned issue may lead to similar problems in the future with regard to service facilities. The analysed provisions of the EU law may be interpreted and applied differently by various EU Member States. In my opinion, it should be clarified in the provisions of the EU law what requirements should be exactly fulfilled to recognise that the service facility operator is indeed independent in terms of organisation and decision-making.

The general rules on the provision of access to service facilities are provided in the directive 2012/34/EU establishing a single European railway area[1], which sets out the basic principles of the organisation of the rail transport sector in the EU. Detailed rules regarding the access to service facilities are provided in the European Commission implementing regulation (EU) 2017/2177 on access to service facilities and rail-related services[2] issued on the basis of the directive 2012/34/EU.

1 Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, OJ L 343, 14.12.2012, p. 32–77, as amended.
2 Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services, OJ L 307, 23.11.2017, p. 1–13.

Access to service facility does not have to be provided when the infrastructure has so called "private status", there is a viable alternative (it means there is a real possibility to use another service facility) or its capacity has been exhausted. Moreover, according to the above mentioned implementing regulations, it is possible to exempt service facilities from the specific obligations provided in this regulation.

In my opinion, the concept of so called private infrastructure may rise interpretational doubts. It is an infrastructure used exclusively by its owner to meet their own need related to transport of goods. It should be underlined that the infrastructure managed by the freight operator cannot be classified as private, because this operator uses it not to meet their own needs but to meet the needs of the end user, such as a factory. The definition of this concept should be more precise. For example, it should be explained what exactly "own needs of the owner of the infrastructure" means.

A viable alternative means access to another service facility which is economically acceptable to the railway undertaking, and allows it to operate the concerned railway transport services. There is no such an alternative when there is no real substitute of a given service facility or when such a substitute exists, however it does not allow to provide railway transport services on the economically acceptable terms. The EU law does not specify how to conduct such an analysis. In my opinion, the assessment of whether there is a viable alternative should be made in principle in the same way as the analysis of whether the refusal of access to a given infrastructure constitutes the abuse of the dominant position prohibited by Art. 102 of the Treaty on the Functioning of the European Union (hereinafter "TFEU"), consisting of anti-competitive refusal to supply.

According to the implementing regulation the service facility operator should not deny access to the given facility even if there is a viable alternative, which means they should not deny access to the facility even if the applicant (railway undertaking applying for access to the facility) may use another service facility. Such a solution is a significant drawback of the examined regulations, and can even be considered as unacceptable. In my opinion, EU law should not interfere in the matter of ownership rights and relations between undertakings (private entities) when it is not necessary to achieve the EU policy goals. It is clearly unnecessary when access to the given facility is not needed to provide

railway transport services. In such a situation the denial of access to the facility cannot be treated as infringement of Article 102 TFEU (abuse of dominant position). It is vital considering the fact that the competition law and the rules on the economic regulation of the railway transport have in such a case the same purpose. It should be underlined that there is no such an obligation in the directive establishing a single European railway area. In my opinion, the Commission's implementing act should not introduce obligations that do not arise from the act on the basis of which it was issued, especially obligations contrary to it provisions. Therefore, the above mentioned obligation should be removed from the implementing regulation.

In my opinion, exemptions from the application of all or some of the provisions of the European Commission implementing regulation provided in this regulation should also be assessed negatively. The regulation explains in detail how to meet the general requirements provided in the directive. Railway service facilities operators exempted from the application of the provisions of the regulation to comply with the requirements provided in the directive will have to apply solutions similar to those provided in the regulation. Therefore, the implementation of the exemptions may be a complicated process and may not bring any practical benefits. It may result in legal uncertainty and unequal treatment of market players. In my opinion, the EU legislator should resign from this exemptions or, what seems more rational, should introduce such exemptions in the directive establishing a single European railway area.

Another specific production factor existing in the railway sector is the rolling stock. The EU legislator decided that provision of access to necessary rolling stock is justified only in case of passenger public services. This production factor has a specific character due to the organisation model of the railway public services market. On this market competition is introduced as so called competition for the market. Provision of passenger railway services is entrusted for specific period of time through the competitive procedure. According to the EU law that period is limited generally to 15 years. However, the useful life of the rolling stock is longer (the rolling stock has a longer period of depreciation than 15 years). Therefore, an operator does not have the guarantee that the cost of the investment in the rolling stock will be recovered during the period of the

entrustment of public services. This puts new operators in a disadvantageous position, because they have to invest huge amount of money to obtain necessary railway vehicles. At the same time it is the source of competitive advantage of incumbent operators, which have large fleets of their own vehicles and do not have to undertake such investments. The analysed factor is not so important in case of commercial services, because in this case the decision on how long the rolling stock will be used depends entirely on the operator, not on whether and under what conditions they will be again entrusted with the provision of public services.

In the EU law there have been established two fundamental disintegration solutions concerning the rolling stock. First of all, with a view to launch a competitive tendering procedure, public authority responsible for provision of passenger services on the given territory (called in the Polish law - the organiser) will assess whether measures are necessary to ensure effective and non-discriminatory access to the suitable rolling stock. Moreover, the organiser has a possibility to introduce such measures. The EU law provides examples of possible solutions that the organiser can apply in this regard.

The aim of the aforementioned analysis is to establish whether a guarantee to the effectiveness of competitive procedure and fulfilment of requirements laid down in the regulation 1370/2007[3] is necessary to provide operators with access to the suitable rolling stock. The EU law does not specify what elements should be included in such a analysis, or on the basis of which criteria an assessment of the necessity of the roiling stock measures should be made. It may result in a very different approach to this issue, both at the level of EU Member States and at the level of particular public authorities responsible for the provision of transport services. In my opinion, the content of the analysis and the method of its preparation should be clearly described in the provisions of the EU law. It should be made in the same way as the assessment of whether a company's refusal to supply constitutes an abuse of its dominant position, and thereby infringes Article 102 TFEU. Therefore, it should be checked whether lack of the rolling stock measures will

3 Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315, 3.12.2007, p. 1–13, as amended.

result in in the elimination of any effective competition at the stage of selecting the rail passenger transport operator (elimination of the competition for the market or the risk of such a situation). If it results in the elimination of effective competition, the rolling stock measures should be introduced. If not, it will not be necessary.

In my opinion, the results of the analysis will depend mainly on two factors: parameters of the rolling stock established by an organiser in the tendering (entrustment) documentation and the availability of the suitable rolling stock on the market (entities functioning on the market providing for the leasing of the rolling stock). At the same time, the parameters of the rolling stock set by the organiser will have an impact on the availability of suitable railway vehicles on the market. Therefore, there is a direct and inseparable link between the specific features of a given entrustment (tender procedure) and the need to apply the regulatory measures concerning the rolling stock.

I also examined how the concept of leasing should be understood in case of the EU sectoral regulation on railway transport. Taking into consideration the purpose of rolling stock leasing in case of public services, which is to enable operators to use railway vehicles for a period of time shorter than their useful life (period of deprecation), in Polish conditions, should not be understood in the narrow concept laid down in article 709^1 et seq. of the Polish Civil Code[4], but in broader meaning, as it is defined in the Common law. Also other types of contracts regulated in Polish law, on whose basis the operator can obtain railway rolling stock for temporary use, such as usufructuary lease, should be understood as leasing in the meaning of the analysed EU regulations.

The EU law does not specify how to determine the relevant market for the purpose of analysis of the need to introduce the rolling stock regulatory measures. In my opinion, taking into consideration the regulatory character of these measures, and therefore, their close relationship with the competition law, the relevant market should be established exactly in the same way as in case of competition law (antitrust regulations). However, this issue should be clarified in the EU law.

4 Act of 23 April 1964, Dz. U. [Journal od Laws] of 2018, item 1025, as amended.

According to the EU law, the organisers have wide discretionary powers in case of deciding on the introduction of regulatory measures concerning the rolling stock. At the same time, the list of possible rolling stock measures is not exhaustive. It means that the organisers may also introduce other measures than those explicitly provided for by EU law. Such unlimited discretionary power of the organisers results in many doubts regarding the effectiveness of the procompetitive solutions introduced by the EU legislator, particularly those concerning effective competition at the stage of selecting operators and their non-discriminatory and fair treatment. In particular, it is doubtful what the relation between the result of the analysis of the need to introduce rolling stock measures and the decision of the organiser to introduce or not introduce such measures really is. The EU law does not provide any answers to this question. It is a serious drawback of legal regulations examined in my monograph. Several interpretation are possible in this regard, including such an interpretation that there is no link between the results of the analysis and the decision of the organiser to introduce regulatory measures concerning the rolling stock. However, in such a case there is no point in preparing the analysis on the need of introducing rolling stock regulatory measures.

In my opinion, rolling stock regulatory measures should always be introduced when the lack of such measures will mean that operator selection procedure will no longer be competitive. Taking into account the specific regulatory context and regulatory nature of this procedure in case of examined regulations, the competitive character of such a procedure should not be assessed only on the basis of the public procurement rules. It should be analysed not only whether in case of the given entrusting procedure the rule of fair competition between economic operators was not broken, for example by preparing a description of the elements of the procurement in the area of the rolling stock in the way that would favour a certain undertaking, but also whether the procedure provided a real opportunity for many operators to take part in the tender. The second of the above mentioned elements goes far beyond simple complying with typical public procurement rules. It includes not only the prohibition of taking action by public authorities that could lead to breach of competition between economic operators (limiting their number in an unjustified way), but also an obligation to adopt active measures to create higher number of economic operators capable of fulfilling a public service contract (by providing them

with the production factor necessary for its implementation). However, this issue remains open and it is a controversary. Therefore, it should be clearly regulated in the EU law.

The last of the specific production factors existing in the railway sector examined in the monograph are human resources (employees). The aim of the analysed regulations is to reduce the influence of the market entry barrier resulting from the need to have properly qualified staff on the competition on the railway services market. Another aim of these rules is to alleviate the social tensions related to the change of the public service operators (entities performing transport services). It should be underlined that social tensions also have an impact on the state of the competition in the rail transport sector. They can result in employee resistance to the change of the operator. It may obstruct the development of the competition. The purpose of the "employee" solutions examined in my monograph is also to prevent distortions of competition resulting from the phenomenon of the so-called social dumping.

There are two groups of disintegration solutions regarding employees. The first group concerns awarding of rights to perform a certain profession. They are used in case of employees who are necessary to perform an economic activity on the railway transport market and whose training procedure is time and cost-consuming, and therefore, constitutes an important burden for railway operators. These solutions apply both for passenger and freight railway services.

The second group of solutions concerns ensuring of smooth transfer of human resources between operators in case of a change of the operator performing railway transport services. They are applied only for passenger public services. It is justified, exactly like in case of the rolling stock, by the organisation model of railway public services market ("competition for the market" model). Public services are provided on the given territory in the given period of time by one operator. Therefore, employees linked to the specific service generally work only for this operator (the operator currently providing services). The new operator (another entity selected in the competitive procedure to perform passenger services) must take at least a significant part of the staff taken on to provide services by the previous operator. The procedure of the change of the operator may lead to social unrest, which, in extreme cases, may distort competition at

the stage of entrusting public services. This may result in ineffectiveness of the "competition for the market" model. This phenomenon may be fuelled by the incumbent operator to obstruct the liberalisation of the railway transport market (development of competition in this sector).

In case of the transfer of employees the regulatory solution is the possibility to apply the provisions of the directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses[5] to a situation where it normally does not apply. The provisions laid down in this directive will be used as a regulatory measure when normally (in a typical case) they would not be applicable to the given situation, but they are applied. In this respect, my research shows that the provisions of the directive should always be applied whenever the change of the operator (resulting from the competitive selection procedure of the public service provider) will result in the takeover of important equipment (tangible or intangible assets) used to provide public transport services (such as rolling stock) by a new operator from its predecessor. It is irrelevant whether the transfer of equipment takes place directly or indirectly - through the organiser. If the transfer of important equipment does not take place, the provisions of the directive 2001/23 will not have to be applied unless the competent authorities decide to apply them. In such a situation the provisions of the directive will be used as a regulatory measure.

The regulatory solutions concerning awarding of rights to perform a certain profession to employees necessary to provide railway transport services, whose training procedure is time and cost-consuming, consist mainly of the separation of the document demonstrating that its holder has general qualifications to drive a railway vehicle and the right to issue such a document from railway undertakings, especially incumbent operators. It enables free movement of employees between railway market players, disintegrating human resources and incumbent railway operators. The EU law introduces

5 Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.3.2001, p. 16–20, as amended, special edition in Polish: Chapter 05 Volume 004 P. 98 – 103.

such solutions only for drivers. In my opinion, it should be considered to introduce similar solutions in case of other groups of railway staff such as train managers that are necessary to provide railway services which require specific qualifications and whose training procedure is expensive and time-consuming.

I came to the conclusion that examined disintegration solutions may lead to the development of a new category of railway market players - so called railway operators. It is an undertaking providing substitute railway transport services to those performed by railway undertakings, without having the status of such an undertaking. The railway operator is not a railway undertaking in a legal sense, because it does not ensure traction (railway vehicles and drivers). Railway operators obtain traction as well as the majority of other production factors necessary to provide railway transport services from other entities. The growing importance of this category of railway market players may result in the necessity to introduce changes in the examined regulations, such as clear determination in the EU law that railway operators may apply for access to service facilities.

As long as the approach of the EU legislator to the axiology of the railway regulation remains unchanged, they will focus on expanding and improving of the disintegration solutions. A number of them have been introduced recently. Generally, there is no experience in their application. It is possible that under the influence of the practice of the functioning of the railway transport market the EU legislator will decide to apply disintegration solutions also to production factors other than those to which these solutions are already applied.

Findings made in my book may be useful in the application and the interpretation of rail transport regulations. They can also be an inspiration to change the law.

5. Summary of other academic and research achievements

The list of my other scientific and research achievements is included in Appendix no. 4 to the application for the conduct of habilitation proceedings. They concern issues of competition law, economic regulation, especially railway transport regulation, as well

as State aid (in this area I also focused on the issues of the transport sector, particularly railway transport).

Apart from the above-presented book, among the scientific and research achievements, there should be presented in the first place the monograph entitled "Models of Pro-competitive Legal Solutions in the Area of Passenger Rail Transport" (EuroPrawo, Warsaw 2013). It was the extended version of my doctoral thesis. The book presents the results of research on procompetitive legal solutions in the area of passenger railway transport. The purpose of the research was to recognise the nature the above mentioned solutions, to identify their common features and the differences between them.

The issue of procompetitive legal solutions in the area of passenger railway transport is particularly important because these services meet elementary social needs related to travelling (to workplaces, education facilities, leisure sites, etc.). My analysis was pioneering in the Polish literature. According to the original concept of the author, the assumption was made that basing on the two determinants of the occurrence of competition in the railway sector – the determinant of access to the market and the determinant of the unprofitability of a large part of transport services - it is possible to construct two basic models of pro-competitive legal solutions in the area of passenger railway transport services – "competition on the market" model and "competition for the market" model. In case of the "competition on the market" model the aim of the law is to ensure competition between railway undertakings at the stage of performing transport services. It is based on equal and nondiscriminatory access to railway infrastructure for all railway undertakings interested in providing railway transport services. In case of the "competition for the market" model the railway transport services are entrusted through a competitive and nondiscriminatory tender procedure. In such a situation competition occurs at the stage of the selection of the service provider, however it is excluded at the stage of providing the transport services. It is worth mentioning that some of the solutions proposed by me in this monograph have been introduced into the provisions of the Polish law. For the aforementioned book I was nominated in 2015 for the regulatory award of the Center of Antitrust and Regulatory Studies of the Faculty of Management of the University of Warsaw.

In the area of research concerning railway transport regulation, several other publications should be mentioned (chapters of books and scientific articles). The following publications are particularly worth mentioning: *How to Improve the Functioning of the Administration in the Area of Passenger Railway Public Services?* [in:] Z. Cieślak, K. Zalasińska, *Study Works of the Warsaw Seminary of Axiology Administration - Sketches in the Field of Administration Science* (Presscom, Wrocław 2013); *Opening the Market for Domestic Rail Passenger Transport Services to Competition. Rules of Access to Infrastructure for Commercial and Public Services.* "Internetowy Kwartalnik Antymonopolowy i Regulacyjny" 2013, no. 4; *The Rolling Stock vs. Competition in Passenger Rail Transport* [in:] J. Gola, W. Szydło, *The Regulation in the Railway Sector and its Judicial Control,* „Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu" 2014, no. 368; *The Need and Legal Possibilities of State Intervention in the Field of Railway Single Wagonload Traffic*, „Przegląd Ustawodawstwa Gospodarczego" 2015, no. 11; *The Opening of Domestic Passenger Rail Markets and Public Services*, "Internetowy Kwartalnik Antymonopolowy i Regulacyjny" 2017, no. 4; *Other Than Competitive Efficiency Incentives* [in:] M. Pawełczyk, *Railway Market - Legal and Economic Aspects of Functioning* (Ius Publicum, Warsaw 2017); *The Notion of Public Services and Open Access* [in:] M. Pawełczyk, *Railway Market - Contemporary Legal and Sectoral Determinants of Competition and Consumer Protection* (Ius Publicum, Warsaw 2017). In the above mentioned publications I focused mainly on the issues of public services in the railway transport. I examined relations between public services and commercial services, especially the possibility to limit access to the market for commercial operations due to the necessity of the protection of the public service economic equilibrium. I was also interested in influence of the activity of the public administration responsible for the organisation of public transport on the competition on the railway transport services market. In this area I also focused on the disintegration solutions, such as measures related to the provision of access to necessary rolling stock for operators. The separate area of my research was the issue of so called single wagon load traffic. The method of financing of this traffic introduced in some EU Member States is similar to the solutions used in case of public services.

I also conducted research on the economic regulation in a broader context, including the economic regulation of other sectors of the economy and the relationship between the economic regulation and other branches of law. I also dealt with competition law issues. In this areas the following publications are worth mentioning: *The Relationship Between the Axiological Foundations of the Railway Regulations and Environmental Protection Law*, „Kwartalnik Prawa Publicznego" 2009, no. 3/4; *Public Service in Transport – Problems with Defining*, "Kontrola Państwowa" 2012, no. 5; *Can the Public Body Office Be Considered As an Undertaking?* [in:] Z. Cieślak, A. Kosieradzka-Federczyk, *Study Works of the Warsaw Seminary of Axiology Administration - New Phenomena in Public Administration* (Warsaw School of Information Technology, Warsaw 2015); *Between Exercising of Public Powers and Economic Activity. The Latest Findings on the Notion of Entrepreneur Made in the Process of Judicial Review of the Decision of the President of the Office of Competition and Consumer Protection*, „Central and Eastern European Journal of Management and Economics" 2017, no. 2; *Influence on Trade Among EU Member States as a Rationale of Competences Division Between National Regulatory Authorities and the European Commission* [in:] *Institutional Dimension of the Telecommunications Sector. Courts and Other Public Bodies*, „Prace naukowe Uniwesrsytetu Ekonomicznego we Wrocławiu" 2017, no. 495; *State Aid and Sectoral Regulation*, „Wrocławskie Studia Sądowe" 2018, no. 2.

In case of both the above mentioned areas of research I actively participated in numerous national and international scientific and thematic conferences, organized among others by the University of Leeds; Masaryk University - Institute of Transport Economics, Geography and Policy; Faculty of Law, Administration and Economics of the University of Wrocław (Department of Competition Law and Sectoral Regulation), Faculty of Law and Administration the University of Lodz, Department of Administrative Science and Environmental Protection of Faculty of Law and Administration of Cardinal Stefan Wyszyński University in Warsaw, the Faculty of Information Technology Management of the Warsaw School of Information Technology in Warsaw, *Ius Publicum* foundation, Economic Chamber of Urban Transport, or Ministry of Development.

In the area of railway transport regulations I was an author of a scientific expertise entitled "Assessment of Public Financing, Including EU Resources, of the Investment in the Railway Station Buildings in the Context of the Notion of State Aid in the Meaning of the Article 107(1) of the Treaty on the Functioning of the European Union". The expertise was commissioned by the Polish State Railways. The aim of the opinion was to assess whether public financing of the investment in the rehabilitation (modernisation) of railway station buildings constitute state aid in the meaning of the article 107(1) of the Treaty on the functioning of the European Union. The purpose of the expertise was also to answer the question whether the support for such investments should be notified to the European Commission in line with the article 108(3) of the Treaty on the functioning of the European Union. I also actively participated in the preparation of the W*hite Paper Competition in the Railway Transport* (edited by T. Syryjczyk, Railway Buisness Forum, Warsaw 2018). The study contains an analysis of issues related to competition in rail transport. Most of the observations made in the study concern competition in rail passenger transport.

Another important area of my research includes issues concerning State aid. I am particularly interested in the impact of public financing of infrastructure and transport services on competition in the transport sector (mainly the rail transport sector), including the compatibility of such financing with the rules of the EU internal market. I am also dealing with the issue of State aid in other sectors of economy. In the above mentioned areas, the following publications are worth mentioning: ***Public Service Compensation in Land Transport. When Does It Not Constitute State Aid?***, „Polish Review of International and European Law" 2013, no. 2; *Application of State Aid Rules to Railway Rolling Stock Investment Projects: Polish Experiences*, „European Structural & Investment Funds Journal" 2014, no. 2; *De Minimis aid for Undertakings Entrusted with Provision of Services of General Economic Interest,* „Przegląd Ustawodawstwa Gospodarczego" 2014, no. 1; *Financing of the Infrastructure in the Form of Public Service Compensation in the Financial Perceptive 2014- 2020*, „Prawo Pomocy Publicznej" 2015, no. 1; *The New Approach of the European Commission to Public Financing of the Construction of Transport Infrastructure. Consequence of the Leipzig Halle Judgement*, „Internetowy Kwartalnik Antymonopolowy i Regulacyjny" 2015, no. 1; *Support for Local*

Infrastructure – State Aid or Not?, „Prawo Pomocy Publicznej" 2015, no. 4; *Public Financing of Cable Cars and the EU Internal Market Rules*, „Przegląd Komunikacyjny" 2015 no. 8; *Infrastructure Financing - a Continuous Change in the Commission's Approach*, „Prawo Pomocy Publicznej" 2017, no. 3; *Support for Transport Hubs and Railway Stations and State Aid*, „Prawo Pomocy Publicznej" 2017, no. 5; *Aid for the Purchase of Rolling Stock – If Not a Compensation, What Then?*, „Prawo pomocy publicznej" 2018, no. 1; *Electromobility and State Aid*, „Prawo pomocy publicznej" 2018, no. 3; *Financing of the Purchase of Rolling Stock in the New Financial Perspective*, „Prawo pomocy publicznej" 2018, no. 5.