



R  
L

L



C



G



# EUROPEAN COMPETITION LAW REVIEW

Volume 39: Issue 3 2018

## ARTICLES

- The future is a foreign country: they do things differently there – the impact of Brexit on the enforcement of competition law  
*Marie Demetriou QC*
- Post-compete clauses and other ancillary agreements in R&D agreements between startups and large companies: necessary or not?  
*Stefan Tsakanakis*
- Antitrust 4.0 - The rise of Artificial Intelligence and emerging challenges to antitrust law  
*Dr Sebastian Felix Janka and Severin Benedict Uhsler*
- Bank account infrastructure as an indispensable means to provide financial services — the essential facilities doctrine revisited  
*Konrad Stolarski*
- The Commission's proposed new EU Regulation safeguarding competition in international aviation services  
*Philippe Ruttley*



SWEET & MAXWELL

of Competition and Consumer Protection conducted a proceeding in two stages. A final decision on approving the takeover of EDF Polska by PGE was made on condition that from 1 January 2018 PGE will sell most of the energy produced by Rybnik Power Station at a stock exchange of energy. The condition will remain in force till 31 December 2021.

**Prof. Agata Jurkowska-Gomułka**  
*Modzelewska & Paśnik*

## Poland

### PROCEDURE

*New legislation—Unfair use of bargaining power—Dairy sector—no-fault investigation*

☞ Agricultural produce;  
Anti-competitive practices;  
Competition procedure;  
Investigations; Poland; Pricing

A regulation concerning relationships in a chain of supply in a sector of agriculture and food—titled Act on Counteracting Unfair Use of Bargaining Power in Sales of Agricultural and Food Products—came into force on 12 July 2017. Between entering into force and mid-October the President of Competition and Consumer Protection has initiated 12 proceedings based on this Act. None of these proceedings are initiated against a particular company; they all started as so-called exploratory proceedings whose aim is to check if the Act on Counteracting Unfair Use of Bargaining Power in Sales of Agricultural and Food Products was somehow infringed by any entity. One issue being explored within a proceeding before the President of the Office of Competition and Consumer Protection is a dramatic increase in the price of butter which is broadly discussed by the public. In this case the Office of Competition and Consumer Protection demanded from the biggest retail chains in Poland the release of communications and letters exchanged with their suppliers of butter. Other proceedings concern supplies of milk, a sudden decrease of purchasing prices of apples, and the manufacture of sugar.

**Prof. Agata Jurkowska-Gomułka**  
*Modzelewska & Paśnik*

## Portugal

### GENERAL

*MoU—access to public procurement data—bid-rigging*

☞ Collusive tendering; Data sharing; Memorandums of understanding; National competition authorities; Portugal; Public procurement

On 15 November 2017, the Portuguese Competition Authority (“PCA”) and the Institute for Public Procurement, Real Estate, and Construction (*Instituto dos Mercados Públicos, do Imobiliário e da Construção*, “IMPIC”) signed a memorandum of understanding (“MoU”) whereby the PCA will be granted direct and permanent access to the national public procurement database as of 2018.

Since November 2009, public procurement procedures are fully processed on electronic platforms. Such data is collected by the Public Procurement Portal (BASE Portugal), which has interoperability with all electronic platforms involved in public procurement procedures.

While until now the PCA could have access to information related to ongoing investigations by way of requests for information to the IMPIC, such requests for information will no longer be necessary. Indeed, as of 1 January 2018, the PCA will have direct access to all information available on the platforms related to public procurement procedures, including the Public Works Observatory (*Observatório das Obras Públicas*).

According to the PCA, direct and full access to all information available on the BASE Portugal and other platforms will facilitate the detection of bid-rigging in public procurement on an *ex officio* basis, even where no complaint or leniency application has been submitted, and accelerate the investigation of such practices.

The PCA intends to analyse the data using quantitative statistical and econometric methods, namely screens aiming at detecting behavioural patterns capable of indicating collusion. Pursuant to the MoU, both the PCA and IMPIC shall ensure that the procedures comply with provisions on data protection.

With these changes related to access to information, the PCA expects to increase detection, investigation and sanctioning of bid-rigging in public procurement already within the next two years.

**Cláudia Coutinho da Costa**  
*Vieira de Almeida*

**João Francisco Barreiros**  
*Vieira de Almeida*

## Sweden

### PROCEDURE

*Swedish Lottery—alleged abuse of dominance—protracted investigation—investigation closed*

☞ Abuse of dominant position; Investigations; Locks; Lotteries; National competition authorities; Sweden

On 3 November 2017, The Swedish Competition Authority (SCA) issued a decision to close an investigation into alleged abuse of dominance by Novamedia, which operates the Swedish Postcode Lottery. The decision marks an end to the most lengthy abuse of dominance investigation by the SCA to date, which was initiated during the spring of 2013. The decision was adopted more than a year after the authority shared a draft statement of claim with Novamedia, corresponding to a Statement of Objections in European Commission antitrust investigations.

The complaint and investigation was focused on whether Novamedia held a dominant position, and if it had foreclosed an important input through exclusive co-operation agreements with a number of well-known NGOs. The SO was contested by Novamedia on the issues of market definition, dominance, as well as abuse. The core of the critique concerned unjustifiably narrow definitions of the relevant market and the input in question.

The decision is a unique case of the SCA deciding to close an abuse of dominance investigation at such a late stage. It follows from the decision that the SCA, after an overall evaluation, and taking into account the prospects of successfully litigating the case in court, has not found reasons to prioritize proceeding to bring a claim.

In July this year the Swedish Ombudsman of Justice criticised the SCA's handling of the matter on several counts, including the duration of the investigation.

The SCA closed another lengthy abuse of dominance investigation on 22 November. This related to alleged abuse of dominance by the ASSA ABLOY group in the Swedish market for the supply of wholesale services to locksmiths. The investigation started in November 2013, following the SCA's merger review of ASSA Sweden's acquisition of Prokey. In connection with this review, the SCA attained information which led the agency to suspect ASSA ABLOY of abusing its dominant position.

The investigation concerned ASSA ABLOY's use of loyalty rebates and exclusivity clauses in its agreements with customers (locksmiths and security companies). Also, ASSA ABLOY was suspected of margin squeeze through its pricing practices against certain competitors. The SCA believed these practices could have exclusionary effects on the market for supply of wholesale services to locksmiths.

Copies of articles from the European Competition Law Review, and other articles, cases and related materials, can be obtained from DocDel at the Thomson Reuters Yorkshire office.

Current rates are: £7.50 + copyright charge + VAT per item for orders by post and email (CLA account number must be supplied for email delivery).

Fax delivery is an additional £1.25 per page (£2.35 per page outside the UK).

For full details, and how to order, please contact DocDel on

- Tel: 01 422 888 019.
- Fax: 01 422 888 001.
- Email: [trluki.admincentral@thomsonreuters.com](mailto:trluki.admincentral@thomsonreuters.com).
- Go to: <http://www.sweetandmaxwell.co.uk/our-businesses/docdel.aspx>.

Please note that all other enquiries should be directed to Customer Support (Email: [trluki.cs@thomsonreuters.com](mailto:trluki.cs@thomsonreuters.com); Tel: 0345 600 9355).

## BOOK REVIEWS

- EU Competition Law Handbook 2017  
*Nicolas Charbit et al (eds)*

## NEWS SECTION

