

Streszczenie rozprawy doktorskiej Mgr Marcina Kamińskiego /j.ang/ pt: „The role of EU competition law in the liberalisation and developments of the energy sector”

Summary

The energy sector in the European Union has undergone a transformation in recent years. New rules aimed at implementing competition have been introduced on the previously fully monopolized by the state markets of electricity and natural gas. The process of moving from a monopolistic system to a market that ensures competition between enterprises, at least in terms of activities not directly related to infrastructure, has been called liberalization. It was to be introduced by means of regulation creating rules for the functioning of markets. From the beginning and throughout the liberalisation process, the European Commission has made very extensive use of the EU competition law. The first two decades of the twentieth century brought many competition law proceedings concerning practices of many entities, mainly those with a dominant position in a given Member State. The aftermath of these proceedings is the situation in which part of the rules of conducting business in the energy sector results from the outcomes of competition law proceedings instead of from adopted regulations.

Extensive use of competition law in the energy sector raises many research questions. This dissertation focuses on three main aspects of this issue related to the past, present and future. The analysis of the adopted decisions makes it feasible to determine the roles that competition law has played in the past in the liberalisation of the energy sector. Its use was not limited to stimulating the development of competition but also served to fill regulatory gaps and even strengthen competition going beyond the introduced regulations. The adopted procedure consisting in the adoption of mainly binding decisions has led to the creation of detailed rules of a quasi-regulatory nature regarding the activities of energy companies which result from decision-making practice. Some of the rules thus adopted were temporary while others remained permanent. This continuing approach of the Commission should be assessed negatively for a number of reasons, including in particular from the perspective of legal certainty.

The transformation of the energy sector is not completed. It will take place in the coming decades. Numerous sectoral regulations create more and more detailed rules for enterprises, including those related to the development of renewable energy sources. Taking into account this development of legislation, the dissertation also deals with the current and future role of competition law in the energy sector. Existing possibility of applying both domains of law to

the same factual situations raises natural questions about the mutual relations between them. In such situations, competition law may apply but it should be limited to the established principles and move away from the quasi-regulatory functions performed in the past. In order to make the role of competition law in regulated sectors clearer, three postulates *de lege ferenda* have been proposed. Author of the dissertation is of the view that it would be beneficial for the legal system of the European Union to provide regulatory authorities with effective powers to correct and counteract violations of sectoral regulations and to introduce a clear division of competences within sectoral regulations. At the same time, in the context of the application of competition law in regulated sectors, the Commission should limit the use of commitment decisions. The adoption of the above postulates would improve the legal environment related not only to the application of competition law in the energy sector, but also in other regulated sectors, including the hugely challenging digital sector.