

C O N F E R E N C E R E P O R T S

ASCOLA South East Europe Chapter webinars series September–December 2020

During September–December 2020, the South East Europe (SEE) chapter of the Academic Society for Competition Law (ASCOLA) co-chaired by Prof. Jasminka Pecotic Kaufman (University of Zagreb) and Prof. Alexandr Svetlicinii (University of Macau) organized a series of webinars covering a range of topics related to competition law enforcement in the SEE region and beyond. The jurisdictions covered by the presenters so far included: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia, and Slovenia.

The first webinar was held on 30 September 2020 under the theme *Identifying Main Challenges to Effective Competition Law Enforcement in South East Europe*. The speakers included: Prof. Dusan Popovic (University of Belgrade, Serbia), Prof. Jasminka Pecotic Kaufman (University of Zagreb, Croatia), and Ms. Martina Sever (Rojs, Peljhan, Prelesnik & partners, Slovenia). Prof. Popovic described the status quo of the competition enforcement in Serbia and highlighted the need for further training of judges that handle competition law cases. Prof. Pecotic Kaufman summarized the history of competition law development in Croatia and then addressed the challenges of competition law enforcement with special focus on competition culture. Ms. Sever, as a competition law practitioner, focused on the challenges of competition law enforcement in Slovenia and discussed the enforcement procedures including court warrants for the investigatory actions by the national competition authority and enforcement of fines.

The second webinar entitled *Competition Law Enforcement During COVID-19 Pandemic in South East Europe – Lessons and Experience* took place on 15 October 2020. The speakers included: Ms. Zoya Todorova (Dimitrov, Petrov & Co. Law Firm, Bulgaria), Dr. Valentin Mircea (Mircea & Partners Law Firm, Romania) and Ms. Srdjana Petronijevic (Schoenherr, Serbia). First, Ms. Todorova shared her views on anti-competitive practices during the pandemic in Bulgaria, such as the price spikes of certain products and the measures taken by the national competition authority to combat these activities. Next, Dr. Mircea illustrated the challenges of competition law enforcement encountered by the Romanian competition authority on the background of COVID-19. Finally, Ms. Petronijevic presented how the competition authorities in the SEE region addressed cooperation among competitors and how the pandemic affected the merger control practice in Serbia.

The third webinar *Antitrust and Politics – the US Experience* was held on 19 October 2020, with Prof. Spencer Weber Waller (Loyola University Chicago, United States)

as the main speaker, Prof. Maciej Bernatt (University of Warsaw, Poland) and Prof. Alexandr Svetlicinii (University of Macau, China) as discussants, and Prof. Jasminka Pecotic Kaufman (University of Zagreb) as moderator. In this webinar, Prof. Waller presented his recent work on the relationship between antitrust and politics,¹ examining the place of antitrust issues in the U.S. political parties' programmes and campaigns, as well as the role of political motivation in antitrust enforcement. Prof. Bernatt discussed this issue using the example of Hungary and Poland, noting that the independence of judiciary and the checks and balances principle have been called into question in those countries recently, which had a negative effect on the competition system overall. Finally, putting the issue of antitrust and politics in the context of European ex-socialist states, Prof. Svetlicinii addressed the impact of a strong control of the state over economic activity and the role of the privatisation process.

The fourth webinar *Landmark Cases in SEE Countries – What Have We Learned So Far?* was held on 29 October 2020, with Mr. Ermal Nazifi (PhD cand., University of Tirana, Albania), Dr. Avdylkader Mucaj (University of Prizren, Kosovo), and Mr. Miro Martinovic (Kvesic & Martinovic, Bosnia and Herzegovina) as speakers, and Prof. Jasminka Pecotic Kaufman (University of Zagreb) as moderator. First, Mr. Nazifi presented the 2007 collective abuse of dominance decision of the Albanian Competition Commission (Albanian Mobile Communication sh.a. and Vodafone Albania sh.a.), in which the authority imposed one of the largest fines, and the subsequent merger cases, to describe the developments in the Albanian mobile electronic communications market. Next, Mr Martinovic presented the 2012 decision of the Bosnia and Herzegovina competition authority in case UniCredit Bank et al., related to an abuse of dominance by the biggest banks in that jurisdiction in the market for international money transfer.

Finally, Dr. Mucaj used the first antitrust case in Kosovo, related to anticompetitive agreements by insurance companies, to showcase the challenges to competition enforcement posed by limited enforcement experience and lacking understanding of competition law by the appellate courts.

The fifth webinar of ASCOLA SEE “Experiences with EU Law Enforcement and Transposing the ECN+ Directive in SEE Countries” was held on 12 November 2020 and featured the following speakers: Dr. Mirta Kapural (Agency for Protection of Market Competition, Croatia), Mr. Andrej Matvoz (Slovenian Competition Protection Agency), and Ms. Gabriela Edreva (Ernst & Young, Bulgaria). First, Dr. Kapural introduced the transposing process of the ECN+ Directive in Croatia and pointed out the challenges related to imposition of fines in the Croatian competition law system. She also highlighted several provisions of the ECN+ Directive that appear vague and

¹ Waller, Spencer Weber and Morse, Jacob, *The Political Face of Antitrust* (July 26, 2020). Brooklyn Journal of Corporate, Financial, and Commercial Law (Forthcoming), available at SSRN: <https://ssrn.com/abstract=3660946>; The Political Misuse of Antitrust: Doing the Right Thing for the Wrong Reason, CPI, July 16, 2020, available at: <https://www.competitionpolicyinternational.com/the-political-misuse-of-antitrust-doing-the-right-thing-for-the-wrong-reason/>

would need to be clarified in relation to their transposition and application. Second, Mr. Matvoz presented the history of the Slovenian competition authority and then commented on the coherence of the present competition law procedures with the requirements of the ECN+ Directive. At last, Ms. Edreva presented an overview of Bulgarian experience with application of the EU competition rules (Articles 101 and 102 TFEU) and the progress with transposition of the ECN+ Directive in Bulgaria considering the investigation powers of the Bulgarian competition authority.

The sixth webinar “Antitrust Damages in SEE Countries – Experiences and Challenges” was held on 26 November 2020, with Prof. Vlatka Butorac Malnar (University of Rijeka, Croatia), Dr. Andrej Fatur (Fatur Menard Law Firm, Slovenia), Ms. Donka Stoyanova (Dimitrov, Petrov & Co., Bulgaria), and Mr. Lucian Bozian (D&B David and Baias, Romania), as speakers, and Prof. Jasminka Pecotic Kaufman, as moderator. First, Prof. Butorac Malnar presented the situation in Croatia as regards private enforcement, noting that the number of cases predating the legislation implementing the Damages Directive was low, and that the situation will probably not change in future, particularly due to non-plaintiff friendly character of this jurisdiction. Second, Dr. Fatur spoke on the situation in Slovenia, noticing similar features of the private enforcement system as in Croatia (long duration of court cases, predominantly follow-on cases etc.), and emphasising the significance of the new discovery rules implemented under the Damages Directive. Third, Ms. Stoyanova, noting similar challenges as compared to the jurisdictions already presented, described the main characteristics of the antitrust damages system in Bulgaria. Finally, Mr. Bozian, discussing Romania and the introduction of the 20% overcharge presumption, highlighted the importance of having an active competition authority for a vital private enforcement system.

The seventh webinar “Competition Law Research in SEE – Directions for Legal Scholarship” took place on 10 December 2020 and featured Prof. Jurgita Malinauskaite (Brunel University London, United Kingdom), Prof. Jasminka Pecotic Kaufman (University of Zagreb, Croatia) and Prof. Dijana Markovic Bajalovic (University of East Sarajevo, Bosnia and Herzegovina). First, Prof. Malinauskaite introduced the comparative methodology and explained the intricacies of using this methodology in competition law research. She emphasized the importance of research questions and objectives and urged the competition law scholars to acquire deeper knowledge of the studied jurisdictions through law-in-context. Then, Prof. Pecotic Kaufman shared her experience with researching competition law in Croatia and briefly introduced her current research project based on the interviews of the stakeholders. At last, Prof. Markovic Bajalovic shared her experience as competition law academic and former chairwoman of the competition authority in Serbia and emphasised the importance of legal guarantees in competition law enforcement. In her opinion, the competition law scholars should actively engage with the policy makers to promote legal certainty and rule of law in the competition law domain.

The series of webinars turned out to be a success (more than 150 registered participants and more than 250 followers on LinkedIn). Their questions and comments allowed the co-chairs to define the topics of future events to be organized by ASCOLA

SEE Chapter in 2021. The organizers are also grateful to Ms Yin Yanni (student at the University of Macau) for providing technical assistance in the organization of the webinars.

The detailed information about the webinars is available through the LinkedIn <https://www.linkedin.com/company/ascola-south-east-europe/> and the dedicated webpage <https://ascolasee.net.efzg.hr/>.

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