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***Provision of Telecommunications Economic Activity***

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In the practice of conducting a telecommunications economic activity, taking into account a progressive convergence of the telecommunications, media and information technology sectors, doubts may arise as to the classification of certain services provided to end-users as the telecommunications services. An entrepreneur planning to conduct an activity that may be considered to be the telecommunications economic activity shall, on its own and at its own risk, analyse whether this activity fulfils the provisions of the Act on the Telecommunications Law ('TL'), defining this type of activity. If an entrepreneur determines through a self-evaluation that the services planned to be provided are the telecommunications services, this entrepreneur is obliged to submit an application for entry in the register of telecommunications entrepreneurs, indicating the types of a conducted activity. The conduct of the telecommunications economic activity by a telecommunications entrepreneur is related to being subject to a number of obligations under the Act on the Telecommunications Law, executive regulations issued on its basis, as well as regulations of other acts and the provisions of the EU law. The imposition of the aforementioned obligations on telecommunications entrepreneurs is a consequence of the evaluation that the type of services provided qualifies their activity as the telecommunications economic activity. The correctness of this evaluation may be subject to a verification only in the course of inspection activities of the registration authority after the entry is made. Doubts may be raised as to the correctness of the solution adopted by the Act on the Telecommunications Law, which consists in an automatic entry into the register of telecommunications entrepreneurs. The Telecommunications Law does not explicitly define the competencies or the obligation of the President of the Office of Electronic Communications (OEC) to respond to enquiries from entrepreneurs regarding the interpretation of the provisions on telecommunications activities, in the context of the fulfilment of the statutory requirements

for the performance of such activities and the existence of the obligation to be entered in the register. The obligation to keep a register, imposed by the law on the regulatory authority, obliges the President of the Office of Electronic Communications to perform it properly. The register should contain entries of telecommunications activities in line with the definitions of provision of telecommunications services, provision of telecommunications networks and provision of associated services. Given the above, it is reasonable to analyse whether, in order to properly perform the obligation imposed on the President of the Office of Electronic Communications, this authority is obliged to verify the legitimacy of making an entry at the request of an entrepreneur who submits an enquiry on fulfilment, given the type of services to be provided, the statutory requirements for telecommunications activity.

There is no court jurisdiction, nor are there any opinions of representatives of legal sciences expressed in scientific publications on the interpretation of provisions concerning the activities of the President of the Office of Electronic Communications in the aforementioned respect.

Based on the research issues thus outlined, this dissertation examines the research question of whether the current model of entry into the register of telecommunications entrepreneurs as laid down in the Act on the Telecommunications Law complies with the regulations of the European Union and the needs of the telecommunications market.

The scope of the dissertation has been formulated on the basis of the main research hypothesis of the lack of correctness of the solution adopted by the Telecommunications Law in the form of automatic entry into the register of telecommunications entrepreneurs, based solely on the application made by the entrepreneur, without the possibility for participants in the telecommunications market to submit to the evaluation of the President of the Office of Electronic Communications, as a regulatory authority, the nature of the activity to be actually conducted, as the telecommunications activity subject to disclosure in the register.

An auxiliary research hypothesis assumes that the role of the President of the Office of Electronic Communications limited only to the control of conformity with formal requirements of the application for entry in the register, which results in an automatic entry without any verification by the regulatory authority of the type and scope of the economic activity actually carried out by the entrepreneur, has adverse effects on the practice of conducting the telecommunications economic activity. The aforementioned automatism of the entry may lead to the imposition on this entrepreneur of obligations under the Act on the Telecommunications Law, not related to the actually conducted activity. The current provisions of the Act on the Telecommunications Law, as well as the draft act on the Electronic Communications Law

(‘ECL’), do not contain a regulation allowing the entrepreneurs to directly submit to the President of the Office of Electronic Communications an enquiry about the obligation to make an entry in the register, considering the type of services the entrepreneur intends to provide, before actually starting to provide them. It should also be considered that the criminal liability of a person representing the telecommunications entrepreneur as the applicant arises with the submission of a declaration on the truthfulness of the data included in the application for entry, despite doubts raised by the entrepreneur as to the correctness of the determination in the application of the type of telecommunications activity the latter intends to conduct. The model of the application for entry into the register of telecommunications entrepreneurs, as specified by the law, does not provide for the possibility of marking those types of activities, about which, in terms of the fulfilment of the requirements of telecommunications activity, the entrepreneur has raised reasonable doubts.

The regulations of the Directive establishing the European Electronic Communications Code (‘EECE’), which are binding on Poland as an EU Member State, relating to the general permission of electronic communications networks and services, explicitly provide for an obligation on the Member States to ensure the freedom to provide electronic communications networks and services. In the present dissertation, an attempt has been made to analyse whether the current institution of an entry in the register of telecommunications activities maintained by the President of the Office of Electronic Communications, on the basis of the applicable Act on the Communication Law as well as the draft act on the European Electronic Communications Law, adequately implements this principle, by means of a general lack of restrictions on the conduct of telecommunications economic activity. Furthermore, it has been examined whether the self-evaluation by the telecommunications entrepreneur with regard to the fulfilment of conditions for the conduct of telecommunications activity, and then the submission to the President of the Office of Electronic Communications of an application for entry in the register, fulfils the application requirements provided for in the Directive establishing the EECE. The aspect of the correctness of the application of the general permission principle with regard to the rules for the conduct of telecommunications economic activity in the territory of the Republic of Poland, as laid down in the current Act on the Telecommunications Law and the draft act on the Electronic Communications Law, has also been subject to analysis, due to the requirement of application to the register of telecommunications entrepreneurs, resulting in an entry in the register. The prepared dissertation concerns an important research issue for the practice of telecommunication activities, which has not been paid attention to in science to date.

For the purpose of verifying the research hypotheses, it has also been necessary to examine the nature and aspects of the activities undertaken by telecommunications entrepreneurs as economic activity, to analyse the types of services that constitute or do not constitute telecommunications services in view of statutory regulations, to examine the effects of entry in the register of telecommunications entrepreneurs and the role of the President of the Office of Electronic Communications, as a regulatory authority, in terms of influencing the correctness of entries in the register of telecommunications entrepreneurs.

The dissertation consists of an introduction, five chapters and a section presenting the conclusions. The introductory part of the dissertation contains an introduction to the topic of the dissertation and a brief presentation of the state of the science regarding the topic under consideration. Moreover, the introduction presents the research hypotheses discussed above, as well as the research methods used.

The first chapter of the dissertation has been intended to provide the historical background for the essential arrangements of the doctoral dissertation. The considerations contained in this chapter indicate the development and formation of the telecommunications market in Poland and the impact of the regulatory role of the state on the functioning of the telecommunications market. The chapter also presents the evolution of solutions concerning the rules for the commencement of telecommunications activity as an economic activity, after the period of state monopoly in the field of telecommunications, furthermore analyses the evolution of regulatory powers of the Polish authorities constituting the national regulatory authority and the processes of implementation of legal mechanisms supporting the development of competition on the telecommunications market.

The second chapter characterises the telecommunications economic activity. An essential element of this type of activity is its conduct as an economic activity by the telecommunications entrepreneur. For this reason, the concept of economic activity and the evolution of the way it is conducted in terms of regulated telecommunications activity have been analysed. The considerations of this part of the dissertation are also devoted to the evaluation of what factors have an impact on the qualification of an entrepreneur to a certain category and what types of conducted activities determine the status of the telecommunications entrepreneur.

The third chapter of the dissertation presents the legal aspects of the institution of the register of telecommunications entrepreneurs, including the role of the President of the Office of Electronic Communications as the authority keeping registers of telecommunications activities and activities in the field of telecommunications. It has been justified to examine aspects of the independence of the President of the Office of Electronic Communications as the

national regulatory authority, the EU regulations and the Polish law guaranteeing its compliance. The chapter also discusses the scope of the control powers of the President of the Office of Electronic Communications as the authority in charge of keeping the registers within the scope of the Act on the Telecommunications Law. The Republic of Poland, as the EU Member State, has been obliged by the Directive establishing the EECE to implement in the national law the least restrictive rules possible for obtaining powers to conduct the telecommunications economic activity. Therefore, the issue of keeping a register of telecommunications entrepreneurs has been analysed in relation to the principle of freedom to provide electronic communications networks and services, as expressed in the EECE, fulfilling only the requirement to notify the President of the Office of Electronic Communications, as the national regulatory authority, of the intention to start providing electronic communications networks and services. In view of the planned implementation by the legislator of the EECE provisions into the national regulations by the Act on the Electronic Communications Law, this part of the dissertation analyses the draft provisions on the register of telecommunications entrepreneurs contained in the draft act on the Electronic Communications Law, both from the point of view of amendments in comparison to the currently applicable Act on the Telecommunications Law, and from the point of view of fulfilling the EECE requirements for the general permission for electronic communications networks and services.

The fourth chapter of the dissertation has been devoted to the institution of an entry in the register of telecommunications entrepreneurs, which is an essential element of legalisation of the telecommunications economic activity. Consideration was given to the issue of the scope of application of the Administrative Procedure Code to the proceedings on an entry in the register of telecommunications undertakings, as well as in the case of refusal to effect such an entry. The first part of this chapter of the dissertation discusses the manner in which the President of the Office of Electronic Communications fulfils an obligation to accept an application for an entry submitted in writing as well as by means of electronic communication. Thus, it has had to be evaluated whether the obligation of the telecommunications entrepreneur to apply for an entry strictly according to the application form specified in the regulation of the minister competent for informatisation pursues the postulate of facilitating the commencement of the telecommunications economic activity, while ensuring that the entrepreneur provides the President of the Office of Electronic Communications with sufficient information on the nature of the services provided and data necessary for the proper performance of the obligations of the regulatory authority. It has also been examined whether the applicable provisions on the model application for entry enable the applicant to notify the types of activities in respect of which

there are doubts as to their nature as a telecommunications service, with the possibility of voluntary verification by the President of the Office of Electronic Communications as to whether certain services constitute telecommunications services within the meaning of the Act on the Telecommunications Law. Moreover, an important issue has been the evaluation of the provisions of the draft act on the Telecommunications Law concerning the entry to the register, both comparatively to the provisions of the Act on the Telecommunications Law in force in this respect, and to the regulations of the Directive establishing the EEC, which are binding on Poland as the Member State.

The fifth chapter of the dissertation has been devoted to an examination of the legal nature of an entry in the register of telecommunications entrepreneurs. This part of the dissertation presents the grounds for an entry, as well as it includes an evaluation of the obligations of the President of the Office of Electronic Communications to verify the content of applications and the availability of the possibility for the applicant to make an enquiry to the regulatory authority about the obligation to make an entry. The final part of this chapter presents an analysis of examples from the practice of the telecommunications economic activity, carrying findings as to the legal nature of services provided. It should be emphasised that an important issue from the point of view of the conduct of the telecommunications economic activity is the automaticity of entry into the register on the basis of an application that meets the formal requirements. The legalisation of the telecommunications economic activity takes place through an entry made by the President of the Office of Electronic Communications, without any verification of its legitimacy in the meaning of the existence of grounds for the entry due to the type of services provided. Hence, the correctness of the automatic entry into the register of telecommunications entrepreneurs on the basis of the application submitted by the entrepreneur, without the evaluation by the President of the Office of Electronic Communications, as the regulatory authority, of the nature of the activity to be actually performed has been subject to review. It has also been essential to verify the postulating whether the current regulatory model, allowing the commencement of a telecommunications economic activity upon the submission of a formally correct application for entry and obtaining an entry in the Register of Telecommunications Entrepreneurs, is correct, without checking the substantive validity of the application. It should be noted that the evaluation of the nature of the service to be provided by the regulatory authority could be of significance in the process of decision-making by an entrepreneur to commence an economic activity as a telecommunications activity. Therefore, the analysis in this part of the dissertation concerned the issue of grounds for the entrepreneur to submit an enquiry to the President of the Office of Electronic Communications about the

planned activity, taking into account the characteristics of the service indicated by the entrepreneur. The final part of the fifth chapter of the dissertation discusses practical issues leading to a determination whether the described types of contemplated investment project or services provided to other entities constitute the telecommunications economic activity or other types of services performed for entities with the status of the telecommunications entrepreneur.

The last part of the dissertation contains conclusions and *de lege ferenda* postulates, indicating the direction of possible regulations in the draft act on the Electronic Communications Law.

The subject of the considerations carried out in the dissertation has justified the use in the dissertation of the dogmatic and legal research method for the analysis of the legal provisions in force in Poland governing the conduct of the telecommunications economic activity. For the purpose of carrying out the analyses described above, the dissertation has also made use of a legal and comparative research method, with regard to the regulation of the Polish provisions contained in the Act on the Telecommunications Law with the provisions of the EU law binding the national legislator, concerning the permission to conduct the telecommunications economic activity, as included in the Directive establishing the EECE. The historical method used made it possible to analyse the process of the creation of the current normative principles for the conduct of the telecommunications economic activity, from the period of state monopoly in the area of telecommunications, through the process of liberalisation of the telecommunications market.

The research objectives of the paper defined above have also served to indicate possible directions of modifications of the obligations of the President of the Office of Electronic Communications as the authority keeping the register of telecommunications activities. It should be emphasised that although the general principle of freedom to provide services and electronic communications networks is currently regulated by the Directive establishing the EECE, and the provisions of the draft act on the Electronic Communications Law are aimed at its implementation in the Polish legal order, the aspects concerning the manner of keeping the register and the obligations of the President of the Office of Electronic Communications related to the correctness of its keeping are left to the autonomy of the EU Member States. Thus, the conclusions from the analyses carried out in the discussed dissertation may be important for the law-making and application process, especially within the context of ongoing work on the implementation of the directive establishing the EECE into the national legal order through the Act on the Electronic Communications Law, which is still within the legislative process.

