

POLAND

(1998)

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Summary

1. In 1998 the activity of the Office for Competition and Consumer Protection (the OCCP) went in many directions. It was based on proceedings regarding monopolistic practices and control over mergers of enterprises. The Office also conducted activities aimed at implementing the principles of government policy of strengthening competition and consumer policy.
2. Preparation of a number of draft laws which constitute an element in the harmonisation of Polish anti-monopoly law and consumer law with the European Union legislation was an important sphere of its activity.
3. The OCCP co-operated with other central government administrative bodies, making a substantial contribution to the preparation of legal acts and programme documents concerning, among others, such issues as elimination of red tape in the economy, liberalisation of selected market segments, restructuring, etc.
4. The activity of the Office served to strengthen the market mechanisms and development of competition in the economy, elimination of monopolistic behaviour and limitation of the infringement of consumer interests.

I. Changes to competition laws and policies, proposed or adopted

1. Summary of new legal provisions of competition law and related legislation

5. Legislative initiatives, covering both changes in the binding regulations and working out of draft new regulations that introduce relevant European Union directives into Polish law, were a highly important sphere of the OCCP activity.
6. Guided by the need to adapt the anti-monopoly regulations to the requirements of the developing market, the Office has taken the initiative to amend the act of February 24, 1990, on counteracting monopolistic practices, aimed at liberalising control over mergers of entrepreneurs. The amendment came into force on January 2, 1999, after being approved by the government and passed by Parliament. Its effect lies in a restriction of administrative control over the mergers of business entities that exercise no influence on the level of market competition.
7. With a view to confine administrative control over the development of entrepreneurs' structures exclusively to cases of greater importance for the market, the thresholds of annual sales of goods were increased from ECU 5 million to ECU 25 million, and of the value of the organised part of property from ECU 2 million to ECU 5 million.
8. Additionally, in order to restrict control only to the cases, when more important bundles of shares or stocks are acquired, the lowest threshold of notification was deleted in case it is planned to acquire shares or stock amounting to 10 percent of votes at the General Assembly or Assembly of Shareholders.
9. These changes will allow to focus the Office's attention on the assessment of those plans to merge entrepreneurs that can actually have substantial influence on the level of competition in the given

branch or sector of the economy. They will also free entrepreneurs from unnecessary formalities connected with activities that have no substantial influence on the level of competition in the given branch or sector of the economy.

2. *Government proposals for new legislation*

10. A *draft law on competition and consumer protection* was prepared in the Office in 1998. The new law is to replace the existing law on counteracting monopolistic practices and the protection of consumer interests, hitherto in force.

11. This draft on the one hand, takes advantage of the Office's experience relating to the to-date application of the competition law and, on the other hand, it is an element in the harmonisation of the national legislative system with the standards that are in force in the European Union.

12. The draft law provides for a number of new regulations in the Polish anti-monopoly law:

- the provision of Article 6 of the draft law provides for the possibility of introducing so called group exemptions from the ban on the conclusion of agreements restricting competition, that are related to specific types of agreements, while Article 7 of the draft law makes it possible to apply individual exemptions for agreements that are not included in the group exemptions but produce similar effects for competition and consumer interests as agreements to which the group exemptions apply;
- in addition, the draft law provides for introducing the institution of so called statutory exclusions, related to agreements concluded between competitors whose joint share in the market does not exceed 5 percent, and to agreements concluded between entrepreneurs who operate on different levels of the economic process, if their joint share in the market does not exceed 10 percent, that is so-called agreements of minor importance, the effects of which are of no importance for the state of competition on the market;
- regulations concerning the so called rule of reason will be amended; according to the new draft law, the clause will be used *ex ante*, and the premises contained in it are modelled on Article 85 of the Treaty of Rome and they will serve better the implementation of the goals of anti-monopoly law;
- the planned amendments concern regulations relating to the control of concentration (so far the expression of “merger” was used) and take into account both the experience of the Polish anti-monopoly authority, indicating the necessity of making changes that contribute to improving the efficiency of control, the clarity of regulations, and their better adjustment to the real activities of entrepreneurs in the processes of concentration, and also the need to adapt further Polish regulations to the standards that are in force in the European Union, and above all (EEC) Council Regulation No. 4064/89 of December 21, 1989, on control over concentrations of enterprises (with subsequent amendments). In the framework of the above changes, it is proposed, among others, to increase the thresholds of notification to EURO 50 million. Such a regulation of this matter is aimed at eliminating the notifications of intention of concentration that exercise no influence or an insignificant influence on competition.

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13. An important modification concerns regulations relating to the mode of proceedings before the President of the Office for Competition and Consumer Protection and also before the anti-monopoly court, which goes half way to meet the need to increase the efficiency of the Office.

14. The work on the draft law at the OCCP was completed at the end of 1998 and the new law is expected to come into force by the end of the first half of 2000.

15. In 1998, the Office gave opinion on a total of 202 various types of draft legal acts submitted to the Economic Committee of the Council of Ministers for consideration, 250 drafts submitted to the Social Committee of the Council of Ministers, and in the framework of inter-ministerial co-ordination, expressed its opinion on 445 drafts of various acts of law.

16. *The Office took a very active part in the work on draft laws that are of great importance for promoting competition in the formerly monopolised sectors of the economy.* This applies in particular to the following draft laws:

- the Telecommunication Law,
- the Postal Law.

17. Particularly important was the Office's involvement in the work on the ***new law on the conditions of the admissibility and monitoring of public aid for entrepreneurs.***

18. The draft law is to bring Polish law in this sphere nearer to the regulations on public aid which are in force in the European Union. A general ban on granting aid with simultaneous exceptions that are compatible with the regulations of the Treaty of Rome and the secondary law in this respect is formulated in this draft law. Moreover, the future law will provide for monitoring by a specialised agency of aid granted both *ex ante* (notification of planned public aid), and *ex post* (identification of the scale and destination of aid granted and its effects for competition). The functions of the monitoring authority in Poland will be entrusted to the President of the OCCP. The future system of monitoring and assessing the admissibility of aid granted will assure transparency of public aid and will discipline public expenditures for this purpose. The law is expected to come into force in the second half of 1999.

19. The Office has furthermore taken part in the works on the ***draft law on economic activity*** which is planned to come into effect as early as the first half of 1999.

20. The draft of the act stipulates for a significant limitation of the number of services the provision of which requires licensing. The requirement to obtain a licence will be annulled with respect to many services, formerly subject to licensing, which according to the new act, will be subject to a general authorisation. It should be pointed out that such an authorisation is granted, contrary to a licence, to any entity applying for it provided the entity meets specific requirements. The requirements pertain, first and foremost, to classification and technical issues that are important because of the public order in the full sense of the word.

21. The authorisation procedure does not therefore affect the free provision of services.

22. In 1998, the Office was also engaged in the work carried out in the Ministry of Economy with a view to prepare, as quickly as possible, all obligatory executive acts to the act of ***Energy Law*** that came into force on December 5, 1997. Taking advantage of its rich experience ensuing from its administrative proceedings against power plants held in previous years and from its decisions stating that they had

applied monopolistic practices, the Office submitted many remarks on and proposals for the drafts prepared in the Ministry of Economy. They concerned particularly the work that was important in the aspect of protecting consumer interests, and that had been the cause of many disputes in the past, regarding, among other things, such matters as:

- the way of financing terminals (energy, heating and gas terminals);
- determination of quality standards for the supply of electric, heating and gas energy;
- the method of fixing tariffs and the principles of settling accounts with end users.

23. The Office has also submitted many remarks on the ordinance of the Minister of Transport and Maritime Economy regarding *licences for the production and distribution of registration plates* - protesting against regulations which it recognised as monopolistic.

24. The remarks and suggestions of the Office, relating to all the drafts mentioned here, were mostly accepted.

II. Enforcement of competition law and policies

1. Action against anticompetitive practices, including competition restricting agreements and abuse of dominant position

a) Summary of activities

- of the competition authority

25. As of January 1, 1998, as many as 138 formalised proceedings instituted in 1997 were held in the Office. In 1998, 185 new proceedings were instituted regarding the use of monopolistic practices.

26. During 1998, 215 formal proceedings were completed by way of an administrative decision, including 189 proceedings conducted by the Branch Offices. As of December 31, 1998, as many as 108 proceedings, to be completed in 1999, were in course.

27. The specification below illustrates the effect of the proceedings completed:

Result of proceeding	Instituted ex officio	Concerning consumer protection	Instituted on motion	Concerning consumer protection	Total
Practice ascertained	15	14	109	35	124
No practice found or proceeding discontinued	17	6	119	22	136
Other - composition approved or refusal to institute proceeding	6	-	40	4	46
Total	38	20	268	61	306

* Matters that were classified as concerning consumer protection are related to proceedings conducted against entities from the following sectors: power engineering, municipal services, post and telecommunication.

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28. In case of the practices which affected the most the level of competition on the market, as a result of the proceedings conducted, the decisions to impose a fine were undertaken. The total amount of fines imposed on this account in 1998 amounted to PLN 266 thousand (USD 68 thousand).

– *of the Anti-monopoly Court*

29. In 1998, business entities lodged 85 appeals against 215 the OCCP decisions with 4 appeals being accepted by the Office itself, after it got acquainted with the arguments contained in each appeal. The other 81 appeals were referred to the Anti-monopoly Court.

b) *Description of significant cases*

30. In connection with the circumstance that in 1998, the executive acts to the new Energy Law were not adopted, still nearly 25 percent of proceedings held were concerned with activities of ***power industry enterprises*** dealing with the supply of electricity, heating and gas energy.

31. The biggest number of cases concerned the imposition by enterprises of onerous contractual conditions which contained demands by power plants for handing over, free of charge, electric installations to the supplier while the cost of constructing these installations had been financed by the end user of energy, or a refusal to share in the financing of installations built at the end user's expense and by his/her effort, and the imposition on him/her of the duty to operate these installations.

32. Among the decisions stating monopolistic practices and ordering the abandonment of their application, are still many decisions concerning the ***municipal services sector***. The practices applied consisted, among others, in:

- the abuse by municipal enterprises of their dominant position on the market of municipal waste disposal as a result of combining their activity connected with the management of municipal dumping ground with their rendering at the same time of municipal waste removal services, for taking action against other market participants aimed at eliminating them from the market;
- a differentiation by municipal enterprises of charges for water supply and sewage disposal from households and other customers in such a way that charges for the households were calculated below their costs while the resulting deficit was financed from incomes;
- municipal enterprises charging fees, below their own costs, for their service of liquid waste disposal with their own waste removal equipment in order to eliminate other entities from the market.

33. In ***decisions concerning the telecommunications sector***, recognised as monopolistic practices were, among others:

- the maintenance of a structure of charges for a service that is not justified by the costs of a specific service and also the charging by the Polish Telecommunication of excessively high fees for inter-zone connections;

- the reckoning of interests for surpassing the time limit for payment in situations when the payments on account of telephone subscription were made in places and at a time that were determined by the Polish Telecommunication in their Regulations for general services rendered by it. with the Regulations containing at the same time no complaint procedures with respect to reckoning interests for delay.

34. Recognised as monopolistic practices as well were actions taken in the *fuel sector* that had led to:

- a market division according to subjective criteria as a result of a privileged treatment by Petrochemia P³ock S.A. of all entities connected with refinery plants;
- an unfair influence on the fuel prices through the sale of fuels at the same price on the spot of production and in trading offices in other regions of the country;
- the imposition of onerous terms in so called patronage contracts with the owners of private petrol stations.

35. In consequence of complaints by consumers, the amount of proceedings instituted against the *operators of cable TV* has increased. The practices ascertained in the course of proceedings concerned:

- the imposition of onerous conditions for receiving a package of satellite programmes;
- the way of settling complaints, especially the failure to give discounts for pauses in the provision of TV signal;
- the introduction, to the contract on the provision of cable TV services, of a clause authorising the operator to change the list of programmes offered, the arrangement and frequency band for broadcasting them, without giving prior information to the subscribers;
- an arbitrary increase in the subscription fee and failure to provide upon request a cost calculation for this fee.

36. The decisions of the Office ordering to desist from applying the monopolistic practices ascertained in the course of proceedings, were of great importance for both the entrepreneurs whose interests were threatened by the market dominants, and for large groups of consumers.

37. Apart from formalised proceedings, the Office held many explanatory investigations, instituted most often in consequence of complaints.

2. *Mergers and takes-over*

a) *Statistics regarding the number, importance and types of concentrations notified to and/or being under control of the competition authority*

38. The following specification illustrates the material scope and the number of cases connected with the formation of the structures of business entities examined in 1998:

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Specification	Number of cases in 1998
Cases examined between 01.01 and 31.12.1998	1872
Favourable opinions issued	1510
- on transformations	121
- on divisions	-
- on mergers	1389
Including:	
1) Mergers of business entities,	24
2) Acquisition or take-over of an organised part of the assets of another business entity,	31
3) Take-over or acquisition of stocks or shares of another business entity,	1252
4) Take-over or acquisition of stocks by financial institutions involved in trade in securities,	25
5) Mergers of banks,	15
6) Assuming managerial functions in competing entities,	35
7) Take-over of control over another entrepreneur in another way.	7
Negative opinions issued	1
Number of notifications in course as of 31.12.1998	233

39. The relatively big difference between the number of cases examined and the number of opinions issued, is a result of the fact that often the issuance of opinion was immaterial since when a specific case was examined, it turned out that the entrepreneurs were under no obligation to inform the Office of their intention to merge, or when the case was examined the parties renounced their intention to merge notified earlier. This number included also cases where the notification of the intention was returned to the party as it failed to meet the formal requirements as specified in the law.

40. A vast majority of the notified intentions to merge was favourably assessed by the Office, nevertheless this area calls for constant supervision on the part of the OCCP with a view to counteract possible threats to competition.

41. The Office, as in previous years, controlled the way in which entrepreneurs observed their duty to notify their plans for a merger.

42. On the total, the Office imposed 132 fines totalling PLN 866 thousand (USD 222 thousand) on entrepreneurs who had not fulfilled this duty.

b) Summary of significant matters

43. Like in previous years, relatively the biggest number of mergers was related to the metal and engineering industry and the agricultural and food industry (processing of agriculture produce and production of foodstuff), the financial and insurance sectors.

44. At the same time, an increase could be noted in the number of mergers by entrepreneurs operating on the construction services market, both in the sphere of general building and specialist work.

Very distinct was also the growth in the number of mergers on the broadly-conceived mass media and advertising market.

III. The role of competition authority in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

45. Apart from giving opinion on draft legal acts, the Office *took a very active part in the work on the preparation of draft studies and sectoral programmes that are important for the country's economy*, concerning, for example:

- privatisation;
- the restructuring of selected sectors (fuel, power engineering, and chemical);
- the liberalisation of selected markets (telecommunication, postal).

46. In estimating the organisational and financial solutions adopted in these programmes and formulating its opinions and remarks, the Office was guided by the consideration of the compatibility of the solutions adopted with the anti-monopoly legislation, as well as the harmonisation policy.

47. In addition, representatives of the Office participated in the work of numerous inter-ministerial commissions and teams, e.g.:

- *a representative of the Office is a member of the Securities and Stock Exchange Commission;*
- representatives of the Office also take part in meetings of the Commission's working parties at which draft issue prospectuses are presented and discussed before they are submitted to the Commission for consideration at its session;
- according to Article 147 of the Law on public trade in securities, the Office analyses in the aspect of anti-monopoly law, the trade in stocks admitted for public trading;
- representatives of the *Office participated in the work of the Team for the elimination of red tape in the economy*. The Office made a full review of the binding regulations in the context of the advisability to retain the to-date principles of licensing and granting permits for business activity in specific spheres. The remarks of the Office were used when a draft amendment of the act on business activity was prepared.

48. Representatives of the Office took also part in the work of:

- the Inter-Ministerial Commission for working out proposals for changes in customs tariffs and commodity trade regulations (appointed by the Minister of Economy);
- the Council for transfer prices in the electric power engineering industry (an advisory body of the Minister of Economy);
- the Team for co-ordinating the course of privatisation in the electric power engineering industry (appointed by the Ministry of State Treasury);

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- the Council for the standards of economic regulations, accessibility of services and the methodology of fee fixing in the water-supply and sewerage sector (appointed by the Chairman of the Housing and Town Development Office);
- the Team of the Economic Committee of the Council of Ministers for the electric power engineering sector.

IV. Resources of competition authority

1. Resources overall (current numbers and data for previous year)

a) Budget

49. The budget of the Office for Competition and Consumer Protection in 1997 and 1998 was as follows:*

	1997		1998	
	PLN	USD	PLN	USD
Part 37				
Office for Competition and Consumer Protection	10.619	2.723	12.772	3.275
Section 61				
Domestic trade	3.098	794	4.105	1.053
Chapter 6182				
Chief Inspectorate of Trade Inspection	1.839	472	2.263	580
Chapter 6595				
Allocation for NGO's	1.259	323	1.842	472
Section 91				
State administration	7.521	1.928	8.667	2.222

* Data presented in thousands

b) Number of employees in the Office

	As of 31.12.1997	As of 31.12.1998
1. Head Office	112	123
2. Branch Offices	69	69
Total	181	

50. At the end of 1998, as many as 192 persons were employed in the Office, of whom 133 with a university degree, including:

- 59 lawyers,
- 41 economists,
- 33 persons with other university education.

51. Among the Office employees in 1998 were:
- 28 persons whose work seniority did not exceed 1 year,
 - 26 persons whose work seniority was between 2 and 5 years,
 - 128 persons whose work seniority exceeded 5 years.

V. Summaries of or references to new reports and studies on competition policy issues

52. In 1998, the OCCP prepared and submitted to the Council of Ministers the draft document of a programme nature “*Action against monopolies and strengthening competition - Partial strategy*”, which was accepted by it.

53. In 1998, the Office worked out and submitted to the Council of Ministers three reports on the execution of the tasks covered by the timetable for partial strategy “Action against monopolies and strengthening of competition”, pointing to the delays emerging in certain areas and the possibilities of counteracting them. This form of the Office’s activity constituted an effective instrument for the creation and implementation of the policy of competition development and consumer protection.

54. In the sphere of *co-operation with other institutions*, a particular place is taken by the Office’s co-operation with *the Parliamentary Commission for Competition and Consumer Protection*.

55. To meet the needs of the Commission, the Office prepared a number of studies and reports relating to competition and consumer protection with the studies in the sphere of competition policy being concerned with:

- the development of competition and protection of consumer interests in the power engineering sector,
- characteristics of the advertising market.

56. In the fourth quarter of 1998, the *Inter-Ministerial Team for investigation into capital concentration in mass-media*, appointed by the Chairman of the Council of Ministers, started its work.