

POLAND*(1997)***Table of contents**

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Executive Summary

1. In 1997, the scope of competence of the former Antimonopoly Office have been enlarged, as a result of the economic centre reform, to include issues concerning consumer protection, which has also been reflected in the Office's name being changed. Therefore, it is the President of the Office for Competition and Consumer Protection being the central body of administration subordinate to the Council of Ministers, who has been responsible for performance of tasks within the scope of competition development and consumer policy. Also the State Trade Inspection has been submitted to the President of the Office. This means that the competence ranging from counteracting monopolistic practices through competition development supporting the consumers rights protection have been combined within one body of the State administration.

2. The purpose of transformation of the former Antimonopoly Office into the OCCP, of enlargement of its competence in the area of consumer protection and of subordination the State Trade Inspection to the OCCP was to:

- raise efficiency of information circulation among the Office's territorial units and the State Trade Inspection units thus enabling fast response to the occurring incorrectnesses,
- establish a mechanism of consumers protection against unfair competition including, in particular, misleading advertising,
- to provide more effective consumer protection, especially in monopolised markets (*e.g.* telecommunications, power industry),
- to ensure better use of the STI control potential for market control (counteracting transgression of purchasers' interests).

3. By the Regulation of 5 February 1997, the Prime Minister has granted the bye-laws to the Office for Competition and Consumer Protection. The Office has been headed by the President assisted by vice-presidents, General Director, directors of departments and nine directors of territorial representations of the OCCP.

4. By virtue of the Order N^o 2 of 8 April 1997, the Office has been granted, by its President, the organisational regulations, governing its internal organisation, specific scope of tasks of its organisational units and procedure of its activities.

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

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

5. The Polish legal instruments in the field of competition policies reflect economic situation of both Poland and the European Union Member States, giving the OCCP the powers in the area of influencing the market subjective structure (control of transformations, merger control, decisions on business entities division and dissolution) as well as counteracting entities' anti-competitive behaviours (monopolistic agreements and abuse of dominant position in the market).

6. While the presently existing Counteracting Monopolistic Practices Act has been generally convergent with the Community regulations, however, facing the transformations experienced by the

Polish economy and having in regard the impending start of the membership in the European Union negotiations, efforts were initiated by the OCCP in the late 1997 to prepare a draft of the new law which provisions are to be fully consistent with the legal instruments of the Community law. The work on the new law is planned to be completed by the end of 1998.

7. In spite of the work on the new law concerning counteracting monopolistic practices being initiated in 1997, late in the same year work was started to prepare, in parallel, the framework for making amendments to the presently existing Act, the main purpose of which was, in the first place, to bring about liberalisation of the administrative control over entrepreneurs. The changes, as planned, are going to concern the following issues:

- raising the thresholds of the yearly sales of goods value from ECU 5 m to ECU 25 million and the organised part of the equity value from ECU 2 million to ECU 5 million - with the view to restrict the administrative control over the entrepreneurs' structure modelling to instances having real significance for the market exclusively;
- change of the method of the total yearly sales of goods value calculation, which would result in the duty of notifying, to the President of the OCCP, the intended mergers where a new entrepreneur is to be established, under a different procedure than in the case of the entities already active in the market. It is proposed to sum up the yearly sales of goods values including shares;
- harmonisation of the provisions concerning shares in public turnover through the application of the same principles both in relation to acquisition and to taking over shares;
- repealing the duty to notify the intended transformation of a company or a State-owned undertaking into the sole shareholder company of the State Treasury, as well as of a municipal undertaking into the commune's company, due to the commercialisation process being highly advanced in Poland. Certain types of similar transformation have already been governed by a statute;
- adaptation of the authorisation to pass the statutory instrument to the requirements of the Constitution of the Republic of Poland;
- non-institution of the proceedings concerning entrepreneurs' mergers in situations where some interested parties fail to lodge applications notifying such an intention;
- introduction of the five years period of limitation for institution of proceedings where the duty of notification of the entrepreneurs' merger intention has not been fulfilled. This is intended in order to remove the gap in the Antimonopoly Act.

2. *Other relevant measures, including new guidelines*

8. As regards legal instruments concerning the competition policy, it should be noted that the President of the OCCP has, under the Counteracting Unfair Competition Act, the power to raise claims in cases concerning unfair competition, including, in particular, misleading advertising which affects purchasers interests.

3. *Government proposals for new regulations*

9. Within the framework of preparation of the draft governmental programme of the competition development policy as well as preparation of amendments to the legal provisions in the field of competition, it should be stressed that the President of the Office for Competition and Consumer Protection created, in April 1997, the Team for preparation of the governmental programme of competition development until the year 2002. Pursuant to article 19 of the Polish Act on Counteracting Monopolistic Practices, preparation of the governmental programmes of competition development lies within the OCCP's scope of responsibilities.

10. It was assumed during the work of the team in which representatives of departments and of selected territorial representations of the OCCP took part, that formulation of competition development policy tasks would be preceded by discussion on the present state of competition, in particular sectors of the Polish economy. The first version of the study „The State and development of competition in Poland until the year 2002” was prepared by the end of 1997 while it was planned to have the work completed by the beginning of 1998. Subsequently, the programme entitled „Monopolistic transformations and competition strengthening” was prepared on that basis and adopted by the Economic Committee of the Council of Ministers in the early 1998.

11. The OCCP representatives participated in the Inter-ministerial Team for co-ordination of work on legislative acts governing the issue of customs, created by the Prime Minister in May 1997. The Team has prepared the following four draft acts:

- on administration of turnover in goods and services with foreign countries,
- on protection against imports at dumped prices into the Polish customs territory,
- on protection against excessive import of certain textiles and garments into the Polish customs territory,
- on protection against excessive import of certain goods into the Polish customs territory.

12. The above draft acts have been adapted to requirements adopted in appropriate provisions of the World Trade Organisation (WTO) and to the European Union legislation.

13. The Office's for Competition and Consumer Protection participation in the Inter-Ministerial Team for preparation of documentation for the needs of Poland's negotiations with the European Union, created in 1997, was one of particular importance. The purpose of its work was to review and to indicate the degree of the European Union's legal provisions implementation in the Polish legislation, among other things in the field of competition.

14. The OCCP representative has also participated in the work of the Inter-Ministerial Task Group for Structural Policy, created in order to prepare the study entitled „Poland's Structural Policy in perspective of Poland's integration into the European Union”.

II. Enforcement of competition laws and policies

1. Action against anticompetitive practices, including agreements and abuses of dominant positions

a) Summary activities of

Competition authorities:

Number of proceedings instituted <i>ex officio</i>	45
Number of proceedings instituted on motion	165
Monopolistic practice ascertained	73
Monopolistic practice not ascertained	70
Discontinued or settlement approved	39
Refusal to institute proceedings	28

Courts:

15. In the year 1997 out of 199 decisions made by the OCCP 62 were appealed against by business entities. Seven of those appeals have been resolved by the Office itself after it having considered the arguments presented in the appeals. The remaining 57 appeals have been submitted to the Antimonopoly Court.

16. In 1997 the Antimonopoly Court considered altogether 67 cases concerning appeals against the Office's decisions, out of which:

- in 49 cases judgements were passed;
- in 16 cases the decision rejecting the appeal was given due to formal transgressions;
- 2 cases were discontinued as a result of the appeal being withdrawn.

17. Out of 49 cases in which judgements were passed by the Antimonopoly Court:

- in 25 cases the appeal was dismissed;
- in 11 cases the decision was annulled in the whole or in part;
- in 13 cases decision was changed either in the whole or in part.

18. Out of 57 appeals submitted to the Antimonopoly Court in 1997, 31 cases remained to be considered in 1998.

b) *Description of significant cases, including those with international implications*

Telekomunikacja Polska SA (TP SA)

19. The following TP SA's behaviours have been ascertained as monopolistic practices:
- evading by TP SA conclusion of the agreement on the conditions of networks co-operation with one of the local operators;
 - imposing blatantly short time limits and onerous negotiation conditions which leads to certain cellular telephony operators being unable to react in time to Telekomunikacja Polska SA's demands;
 - abuse by TP SA of its dominant position by way of termination, without any legal grounds, of an agreement with one of the cellular telephony operators and by imposing upon him non-equivalent accounts settlement for costs of mutual connections, to disadvantage of the development of cellular telephony services;
 - refusal to grant to a local operation a part of revenues on account of both operators' network co-operation, thus counteracting competition development in the local market;
 - dishonest pricing for universal telecommunications services in the area of four communes belonging to one of Poland's voivodships, with a view to eliminate another operator from that market as well as subsidising and privileged treatment of certain groups of customers to the disadvantage of other groups who are also TP SA's services customers, including those still waiting for access to telecommunications services provided in the public use network;
 - unlawful threatening one of the cellular telephony operators to cut him off international connections if he refuses to accept required by TP SA rules of accounts settlement.

The municipal economy sector

20. Issues concerning the municipal economy sector activities have constituted the largest group among the proceedings concluded with monopolistic practices being ascertained. The subject matter of those cases has been water supply, sewage and solid waste disposal or heat supply. As a result of the proceedings related to the market of such kind of services were ascertained such monopolistic practices as imposition of onerous contract conditions and dishonest influence upon pricing.

2. Mergers and acquisitions

a) Statistics on number, size and type of mergers notified and/or controlled under competition laws

21. The total of 1387 cases have been considered. 1225 positive opinions have been given concerning the following processes:

- transformation - 152;
- merger - 1073, in which:

Business entities mergers	37
Acquisition or taking over of an organised part of another business entity's equity	33
Taking over of or acquisition of shares of another business entity	952
Bank mergers	2
Combining functions in competing entities	18

22. Two negative decisions have been given, in relation to mergers by acquisition of another business entity' shares.

b) Summary of significant cases

Cases concerning acquisition or taking over of shares of entrepreneurs active in the field of agricultural/food processing

23. A significant group of cases (126) concerning acquisition or taking over of shares of entrepreneurs active in the field of agricultural/food processing has been in the meat industry as well as in the poultry processing, fodder, cereal-milling, potato processing and sugar industries. Among the investors there have been large Polish companies as Rolimpex, Animex, Meat Plant in Sokolów Podlaski, Meat Plant Ostróda-Morliny, as well as foreign companies, the latter ones investing mainly in the fat (edible oil) industry. Moreover, the national investment funds have been actively seeking investment opportunities, in particular in the meat and poultry processing industries, enlarging their blocks of shares through raising of equity capital of the portfolio companies. National investment funds have also eagerly invested in wood industry and in potato processing. Additionally, the Agency of Agricultural Market has also been active as an investor acquiring shares, mostly in the cereal-milling industry.

Financial institutions

24. Another important group of cases has related to financial institutions. Fifty-seven such cases have been considered, relating mainly to acquisition of shares, in most cases in insurance companies and - to a smaller degree - in banks, trust funds, stockbrokers' undertakings, leasing companies and other similar types of entities. In a considerable number of cases foreign entities have been investors.

25. One should not overlook the fact that in 1997 some national investment funds were acquiring from other such funds the minority blocks of shares possessed thereby in companies included in the Mass Privatisation Programme.

Creation of holdings and large capital groups

26. The analysis of opinions given in relation to the intended mergers has been a clear indication of a tendency towards creation of holdings and other and large capital groups, with „Próchnik” SA, the company which has acquired 50 per cent of textile industry companies’ shares from each national investment fund, being an example.

27. The OCCP has also recorded a significant number of notifications of an intention to merge in the widely-understood media market. A considerable capital concentration has been observed on the local market in the field of radio broadcasters and cable television networks operators as well as in the field of press publications.

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

28. Throughout the year 1997 the OCCP participated in the legislative process, submitting opinions on draft legal acts prepared by other bodies of the State authorities and administration in the various stages of the applied procedure, *i.e* :

- inter-ministerial agreements;
- giving opinions on the legal acts directed to the Economic Committee and to the Social Committee of the Council of Ministers;
- giving opinions on these draft legal acts when submitted to the Parliament commissions.

29. Moreover, the Office’s representatives have participated in the work on preparation of, among other things, the following draft acts:

- on the Energy Law;
- on the Railway Transport;
- Act on conditions of performing services in domestic passenger road transport;
- Act on financial restructuring of black coal mining sector.

30. Performing its statutory tasks the Office was giving opinions on draft legal acts from the point of view of their compliance with the provisions of The Act on counteracting monopolistic practices and possible impact on competition level and development.

31. Among documents and studies prepared by other ministries and having considerable importance for Polish economy were the following programmes:

- assumptions for the industrial policy by the year 2002” - this elaboration contains all aspects of the long-term industrial policy and specifies its strategic aims. In the OCCP’s opinion it would be purposeful to indicate the role to be played by special economic zones;

- directions of privatisation in 1998” - the OCCP suggested that the scope of the basic criteria for an investor selection, such as: price offered for shares, terms of payment, investment, social and environmental packages should be extended by the criterion of effects which the choice of the given investor may have for competition and, in particular, whether competition restriction would not follow as a result thereof;
- the iron and steel industry in Poland modified restructuring programme” - the OCCP has decided that it should actively participate in iron metallurgy privatisation process since that process may be a significant factor of concentration;
- thanks to the activities of the OCCP in the document adopted by the Economic Committee of the Council of Ministers, Minister of Communication took an obligation to grant since January 1, 1999 access to the inter-zonal telecommunication services to other operators as well as to submit to the Council of Ministers information about availability of public network for local operators, other than TP SA and progress report on hitherto internal restructuring of the company.

32. The OCCP has also given opinions on documents relating to the black coal sector situation, concluding that excessive production capacities still exist in that area.

33. Among the draft legislative acts being the object of the Office’s opinions in 1997 those should be taken into account in the first place, which concern the following fields:

- functioning of the special economic zones - the OCCP has stressed the point that it should be ensured in practical implementation of the project that basic objectives of Poland’s economic policy are pursued without competition rules being in breach;
- telecommunications - opinions have been given on the draft legal acts, which aim at liquidation of the monopoly enjoyed by the „Telekomunikacja Polska SA” as well as on the draft telecommunications agreement which is to be concluded between the Minister of Communications and TP SA. The OCCP has submitted its numerous and exhaustive comments on the purpose of which was, on the one hand, to cause adoption of such solutions which could contribute towards the restriction of TP SA’s monopolistic position restriction and, on the other hand, towards making both market entry and carrying on business activity easier for other telecommunications operators.

34. The Office has also given opinions on draft amendments to the Act on Communications and to the Act on Municipal Economy.

35. Moreover, the Office has submitted its vast comments to the preliminary assumptions for the new statutory regulations in the field of telecommunications and post, submitted by the Minister of Communications.

36. Moreover OCCP’s opinion about privatisation and restructuring projects in given economy sectors as well as opinions concerning draft legal acts, one should note the particular significance of the OCCP’s position in relation to accessibility of shares of companies of special importance for the national economy and opinions in cases of some undertakings subject to liquidation. The OCCP’s officers, have participated, in order to prepare appropriate opinions, in the sessions of working groups of the Securities Commission and in the work of the Transfer Prices Board which has been as opinion-giving body of the Ministry of Economy in cases concerning the electric power wholesale trade and accounts settlement in

the electric power industry sector. Additionally, the Office has taken part in the work of the group implementing the concept of regulation of price relations between professional power industry and coal mining industry.

IV. Resources of competition authorities

1. Resources overall (current number and change over the previous year)

a) Number of employees

The present employment in the Office (number of full-time jobs)

	As of 31 December 1996	As of 31. December 1997
1. Headquarters	102.75	112
2. Representations	65	69
3. Total	167.75	181

37. As of the end of December 1997 181 jobs, out of 186 jobs established for the Office according to the limit, were filled.

38. At the end of the year 1997 185 persons were employed in the Office; 131 of which have university education. Among them there were:

- 51 lawyers;
- 50 economists;
- 30 persons having other education.

39. Among the officers employed in the Office at the end of December 1997 there were:

- 59 persons, whose period of employment did not exceed 1 year;
- 58 persons, whose period of employment was between 2 and 5 years;
- 68 persons, whose period of employment did exceed 5 years.

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

40. The following should be mentioned among the concentration studies initiated or continued by the Office in 1997:

- studies on the ownership structure of press publications. They have been continuation of the studies initiated in 1995. While their results, used in the everyday work of the Office for Competition and Consumer Protection, do not qualify to come up with conclusions stating the market being threatened with one of the existing press editors' dominant position, they

nevertheless show that the concentration process reached the advanced stages which may lead, over time, to competition restriction. Accordingly, the Office is going to monitor that market at a constant basis in order to timely counteract any threats to the present state of competition as they appear;

- studies on the meat industry and poultry processing market. That market has been highly differentiated and fragmented to a considerable degree. Due to easy market access there is a dynamic increase in a number of undertakings in these sectors;
- studies of the cable television market covering the whole territory of Poland. It has been stated, among other things, that the present structure of the Polish cable television market has been undergoing significant changes tending towards the subjective concentration. Besides, competition's advantageous influence upon the provided services quality and upon the variety of the programme offer has been observed;
- studies on the potato starch production market. It has been noted that the field is exposed to strong competition from abroad;
- noodles production market. The results of the studies carried out in that market have been used while considering notification on the entrepreneurs' intention to merge as such a merger tends to bring about a serious change in the largest Polish noodles manufacturer's shareholders structure;
- studies on the market of personal savings bank accounts. The results of these studies gave grounds for initiation of the administrative proceedings against PKO BP bank concerning the exercise thereby of monopolistic practices;
- studies on the market of property insurance. The results of these studies have been used in the administrative proceedings being under way against PZU SA insurance company, concerning the exercise thereby of monopolistic practices.

41. Out of the studies carried out in 1997, concerning the issue of pricing under the restricted competition conditions, the following should be mentioned:

- controls of the Poland's largest liquid fuels manufacturers, *i.e.* of „Mazowieckie Zakłady Rafinerijne i Petrochemiczne Petrochemia Póck SA” (the „Petrochemia Póck” refinery and petrochemistry joint-stock company) and „Rafineria Gdańska SA” (the „Gdańsk Refinery” joint-stock company). The purpose of the control has been to check whether the pricing policy as well as organisation and conditions of fuels sale, imposed by the above mentioned companies, infringe the antimonopoly provisions. The study has been carried out upon the Republic of Poland's Prime Minister's recommendation;
- controls:
 - . of distribution of spare parts for agricultural tractors and the amount of profit margin applied at their sale by one company;
 - . of principles of receiving and fulfilment of orders for metallurgical products by ironworks and metallurgical plants;

. activities of printing houses belonging to one of the two press editors.

42. Those studies have been carried away on the commission from the Supreme Chamber of Control and their purpose has been to check whether the mentioned undertakings' activity infringes the antimonopoly provisions or not and whether some of their behaviours could be regarded as constituting monopolistic practices or not.