

## POLAND

(1999)

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## **Executive Summary**

1. The key areas of activities of the Office for Competition and Consumer Protection (“OCCP”) include counteracting monopolistic practices, merger control and consumer protection. In 1999, within the scope of its responsibilities related to the protection of competition, the Office conducted numerous proceedings in cases concerning monopolistic practices, as defined by the Act of February 24, 1990 on Counteracting Monopolistic Practices and Protection of Consumer Interests, i.e. involving anti-competitive agreements between entrepreneurs and abuse of a dominant market position as well as merger control proceedings.
2. Moreover, the Office worked on implementation of assumptions of the governmental policy for strengthening competition and consumer policy.
3. Legislative works were another important area of activities of the Office. As a result of these efforts, a number of new regulations was developed and accepted that contributed to harmonisation of the Polish antimonopoly and consumer protection laws with the European Union legislation. Other legal regulations are in the drafting phase.
4. In addition, OCCP co-operated with other central government agencies, making important contributions to the elaboration of legislative acts and policy documents crucial for the development of the economy in the environment of free and undistorted competition.
5. Particularly important is the engagement of the Office in development of the draft Act on admissibility and monitoring of state aid for entrepreneurs as well as the draft amendment of the Act on Special Economic Zones as the result of the delegation to the President of the OCCP of the new competence in the field of state aid monitoring.
6. Activities of the Office helped to strengthen market mechanisms, develop competitive business environment, eliminate monopolistic behaviours and limit infringements of consumer rights.

### **1. Changes to competition laws and policies, proposed or adopted**

#### ***1.1 Summary of new legal provisions of competition law and related legislation***

7. On January 2, 1999, the amendment to the *Act of February 24, 1990 on Counteracting Monopolistic Practices and Protection of Consumer Interests*, elaborated in the Office in 1998, entered into effect. The adopted changes were intended to liberalise the administrative control of mergers to align the law with the EU legislation in that area.
8. Moreover, in 1999, OCCP developed proposals of the following executive regulations to the effective *Act on Counteracting Monopolistic Practices and Protection of Consumer Interests*:
  - *Regulation of the Council of Ministers of December 7, 1999, concerning the detailed requirements for notifications of intended mergers of entrepreneurs and defining organs of entities, obliged to perform such notifications, replacing the Regulation of the Council of Ministers of July 13, 1995, concerning the detailed requirements for notifications of intended mergers or transformation of business entities and defining organs of entities, obliged to perform notifications;*

- *Regulation of the Council of Ministers of February 15, 2000, concerning the detailed terms and procedures of conducting controls of entrepreneurs compliance with the provisions on counteracting monopolistic practices.*

9. Moreover, the Office prepared drafts of the following three executive regulations to the *Act on Trade Inspection* of February 25, 1958, which is subordinated to the OCCP's President:

- *Regulation of the Council of Ministers of October 19, 1999, concerning the terms of co-operation between the bodies of the Trade Inspection and district (municipal) consumer advocates, other public administration bodies, control institutions and non-governmental organisations, acting in the field of protection of consumer interests;*
- *Regulation of the Prime Minister of November 16, 1999, concerning the terms and procedures of collecting free samples of goods by the organs of the Trade Inspection;*
- *Regulation of the Prime Minister of November 23, 1999, concerning the rules of procedure of the organs of the Trade Inspection.*

## **1.2 Government proposals for new legislation**

10. The legislative work of the Office was particularly intensive in 1999. It resulted in elaboration of the following draft acts:

- draft *Act on Competition and Consumer Protection*, aimed at comprehensive solutions of all issues related to harmonization of the Polish competition law with the UE legislation and issues resulting from the experience learned by the Office from application of the former and amended regulations of the *Act on Counteracting Monopolistic Practices and Protection of Consumer Interests* of February 24, 1990;
- proposals of three legislative acts concerning consumer protection.

11. Moreover, a new *Act on Trade Inspection* has been in the process of inter-governmental consultations.

12. Also, the Office participated in other legislative works of the government providing its opinions to the governmental draft legal acts. While giving opinions to the submitted drafts, the Office gave thorough consideration to the likely effect of the regulations on competition and legal situation of consumers and compatibility of the regulations with the conditions of granting state aid for entrepreneurs.

13. At the stage of inter-governmental consultations, the Office provided its comments concerning 72 proposed pieces of legislation, including, but not limited to, the following important acts:

- draft act on the conditions of admissibility and monitoring of state aid for entrepreneurs;
- amendment of the act on Special Economic Zones;
- on the rules of supporting regional development;
- Air Law,
- Postal Law,

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- amendment of the act on Civil Proceedings Code;
- large retail complexes;
- amendment of the toll road law;
- environmental protection;
- amendment of certain acts governing the functions of the public administration;
- protection of tenants, municipal housing resources, and welfare houses;
- prices;
- sugar market regulation and transformation of the sugar industry.

14. The Office was extensively involved in the work related to preparation of the draft *Act on admissibility and monitoring of state aid for entrepreneurs*. At the stage of inter-governmental consultations, this co-operation included not only assessment of the entire project but also independent development of its procedural section. This unique model of co-operation resulted from entrusting to the OCCP's President of the competence of state aid monitoring authority. Pursuant to the new Act, powers of the President will include the responsibility for ensuring compliance with the terms of granting state aid in Poland from the point of view of consistency with the Act and international treaties signed by Poland. The supervisory powers will relate to draft legal acts, decisions and agreements being the basis for granting such aid. In addition, the President will be responsible for collecting, registering and processing information about, and assessing performance and efficiency of, all such grants.

15. In connection with assuming the new responsibilities and powers pursuant to the aforementioned Act the OCCP's President appointed the State Aid Team on June 30, 1999.

16. Other important comments to the proposed legislation, contributed by the Office, include remarks concerning the draft *Air Law*. Upon the initiative of the Office, the prerequisites for block exemptions proposed by the draft law were adapted to the proposed provisions of the draft *Act on Competition and Consumer Protection* and therefore to the EU regulations.

## **2. Enforcement of competition laws and policies**

### ***2.1 Action against anti-competitive practices, including agreements and abuses of dominant positions***

#### *a) Summary of activities of:*

Office for Competition and Consumer Protection

17. In 1999, OCCP conducted 347 antimonopoly proceedings related to application of monopolistic practices by entrepreneurs, of which 235 were initiated in 1999 and 112 in the previous period. 234 cases were closed in 1999. As of December 31, 1999, 113 cases were still open.

18. In 1999, 240 cases were concluded with administrative decisions. The resolutions involved 355 instances of monopolistic practices (one proceeding can relate to several monopolistic practices). In 35

percent of cases monopolistic practices were ascertained, 18 percent of proceedings were discontinued and approximately 2 percent of proceedings were closed by settlements. As a consequence of preliminary investigations, where no grounds were found for initiating antimonopoly proceeding or the charges were not confirmed, OCCP refused to accept approximately 31 percent of the demands received, requesting ascertaining monopolistic practices. Other resolutions related to 13 percent of practices.

19. More than 50 percent of practices ascertained concerned entrepreneurs operating in the municipal sector, approximately 15 percent involved the energy sector, 11 percent concerned the water and sewage management, and the remaining cases concerned the industry, agriculture, trade and services.

Result	Cases initiated ex officio	In which: consumer protection	Cases initiated on request	In which: consumer protection	Total
Practice ascertained	19	12	108	45	127
Requests denied (practice not found)	3	3	110	53	113
Proceedings discontinued	5	1	59	13	64
Settlements	1	1	4	4	5
Other resolutions	15	2	31	12	46
Total	43	19	312	127	355

20. In total, the Office imposed fines amounting to PLN 5,065,113.37 on the account of violation of the Antimonopoly Law. 20 percent of this amount related to application of monopolistic practices by 37 entrepreneurs, ca. 78 percent involved failures to notify intended mergers, and the remaining 2 percent concerned failures to implement decisions or resolutions of the Antimonopoly Court or provision of unreliable information.

#### *Antimonopoly Court*

21. The Antimonopoly Court received 87 appeals from the decisions of the OCCP's President. The Court:

- sustained 43 decisions of the Office (issued by the departments of the Head Office or Branch Offices), representing 49.4 percent of all appeals reviewed by the Antimonopoly Court in 1999;
- sustained 7 OCCP's decisions in part (8 percent of resolutions),
- revoked 16 OCCP's decisions in full (18.4 percent),
- changed 14 OCCP's decisions in full (16.1 percent),
- terminated 5 proceedings (5.8 percent),
- suspended 2 proceedings (2.3 percent).

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### *b) Description of significant cases*

22. The largest number of monopolistic practices were found in the following sectors:

#### *Energy sector*

23. Majority of practices of energy distributors concerned monopolising of the connection services market.

24. The disputes between power utilities and installation companies, concerning connections to the power grid, started following implementation of the executive regulations to the Energy Law that made the power utilities responsible for connecting consumers to the grid and financing related costs where the grids were a part of the local land use plans. The Office concluded that the power utilities prevented their customers from selecting installation contractors and, thus, denied them the option to choose less expensive contractors.

25. Another frequent practice involved the power utilities charging entrepreneurs with the installation costs of the connecting hardware and then demanding to transfer the ownership to the power utility.

26. Moreover, power utilities invited contractors to tenders in order to select installers and provide them with exclusive rights to install connections in specific areas. Such practice prevented operation of other eligible installers within such areas. Also, the result of the practice was division of the market based on the subjective criterion, as the selected company was granted specific area of operation.

#### *Telecommunications sector*

27. One of the practices applied by the Polish Telecom (Telekomunikacja Polska SA) involved making the conclusion of a contract for telecom station use conditional upon the acceptance or fulfilment of other services not associated with the subject matter of the contract, consisting in the additional requirement to repay any debts incurred by the former subscriber.

28. In addition, the Office found that TP SA made municipalities assign their shares in local telecom assets to TP SA and granted privileged treatment to entities participating in development of the network, other than municipalities.

#### *Cable TV networks*

29. The Office issued the decision ascertaining the existence of an agreement between cable TV service operators, aiming to restrict the access of other cable TV operators to the market and eliminate competitors other than the parties to the agreement.

#### *Road transportation*

30. The Office issued the decision ascertaining the existence of a price fixing agreement between the Road Transport Enterprises (*Przedsiębiorstwa Komunikacji Samochodowej - PKS*), i.e. the agreement between the transport services market competitors, which resulted in setting identical fares.

*Agriculture*

31. The Office determined that an edible fat producer imposed onerous terms of contract, consisting in unilateral modification of its rape-seed supply agreements.

*Different industry sectors*

32. In the industry the following practices were applied:

- unfair influence upon the formation of prices of tires by including a “minimum re-sale price” clause to the sales contracts,
- abuse of its dominant market position by one of the steelworks by development of a selective sales chain for its own products, leading to privileged treatment of certain entrepreneurs.

33. Moreover, in 1999 OCCP conducted **949 explanatory proceedings**. Approximately 14 percent of the cases were initiated in the preceding year and 86 percent were new. 834 proceedings were closed in 1999 and the remaining ones will be finalised in 2000.

34. Most of the explanatory proceedings undertaken by OCCP involved natural monopolies: electric power, heat, natural gas, or cable TV services. Many cases related to the municipal sector: mainly water supply and sewage disposal. Many proceedings involved studies on: terms of pricing, price levels, market structures and sales organisations.

35. Many complaints concerned operation of power utilities. They were related to the level and structure of tariffs, methods of settlement of accounts for heat supply, and terms of supply of gas, power and heat. The other group of complaints included those related to delivery of telecom services and related financial settlements.

## **2.2 Mergers and acquisitions**

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

36. In 1999, OCCP investigated 1079 cases related to merger control. In 85 percent of them favourable opinions were issued. In 1999, the Office issued no negative decisions. 15 percent of the cases were related either to providing explanations to business entities who were uncertain whether or not they were obliged to notify a merger to the Office or returning the motions to the entities who notified without legal obligation.

37. In 1999, OCCP imposed 53 fines on entrepreneurs who failed to notify the intention to merge on time. The fines imposed amounted to PLN 4 million.

38. The table below presents the subject matter and number of cases related to formation of organisational structures of entrepreneurs, reviewed in 1999.

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Specification	No. of cases in 1999
Cases reported to OCCP	1238
Cases reviewed in 1999	1079
Favorable opinions issued, concerning:	917
- divisions	0
- mergers:	917
1) mergers of entrepreneurs,	13
2) acquisition or take-over of an organised part of the assets of another entrepreneur,	17
3) take-over or acquisition of stocks or shares of another entrepreneur,	630
4) acquisition of stocks/shares in a newly established business entity,	194
5) acquisition of stocks/shares by financial institutions (professional dealers),	11
6) mergers of banks,	14
7) assuming managerial functions in competing entities,	29
8) take-over of control over business entity by other means	5
Negative opinions issued	0
Other resolutions	162
Number of notifications not reviewed in 1999	159

b) *Summary of significant cases*

39. Many mergers finalised in 1999 involved construction companies/developers, the IT market, as well as retailing and wholesaling of foodstuffs and industrial goods. A large number of mergers were noted for the companies active in the sales and distribution of pharmaceuticals. The same trend was clearly increasing in the financial sector: particularly with respect to banks, insurance institutions, retirement funds and the National Investment Funds. Like in 1998, many mergers involved media operators and advertising agencies.

**3. The role of OCCP in the formulation and implementation of other policies (e.g. regulatory reform, trade and industrial policies)**

40. In 1999, the Office provided opinions to the following *governmental programs*:

- “Extensive Chemical Synthesis”, sectoral program for 1999-2010
- “Policy of the Government towards SMEs by 2002”
- “Assumptions for the Polish energy policy by 2020”
- “The strategy for telecommunications development in rural areas in 2000-2004”
- “Assumptions for the state transportation policy in 2000-2015”
- “Concept of the land use policy in the national development”
- “A program for restructuring the Polish Railways”
- “A program for restructuring the coke industry”

- “Adjustment of the program for restructuring of the bituminous coal mining”
- “Customs policy. The role of tariff quotas vs. the Polish trade policy”

41. In addition, the Office submitted its comments regarding the following:

- Information of the Minister of Economy on implementation of the reforms in the bituminous coal mining industry – annual report for 1998
- Information of the Minister of Treasury on the process of restructuring and privatisation of the oil industry in Poland
- Project: „Concept of medium-term economic development till 2001”
- “Information about central investments completed in 1998”
- Draft study: “Assessment of the process of privatisation of the State Treasury’s properties in 1998”
- “Directions of privatisation of the of the State Treasury’s properties in 2000” – a document prepared by the Minister of Treasury, a part of rationale of the proposed Budget Law for 2000
- Protocol of amendments to the European Convention on Trans-Border TV Broadcasting
- Preliminary version of the “Domestic trade program”
- Draft “Annual program for the intervention of the Agricultural Market Agency”
- Draft document: “General assumptions for the program of emerging and developing producer groups in Poland”

42. In its opinion concerning the “**Assumptions for the Polish energy policy by 2020**” presented by the Minister of Economy, the Office made an objection concerning proposed administrative intervention in coal pricing. According to the Office, the proposed solution could impede adjustment of the bituminous coal mining sector to its functioning in the market economy conditions. Objections of the Office were accepted and related provisions removed from the draft project submitted to the Economic Committee of the Council of Ministers.

43. In its opinion concerning the “**The strategy for telecommunications development in rural areas in 2000-2004**”, the Office emphasised that the proposed design should have put more emphasis on the opportunities resulting from competition between operators at the licensing stage. This would guarantee the development and implementation of optimum ‘investment solutions’. For this reason, according to the Office, the final version of the document should better describe the procedures of, and criteria for, selection of operators. Also, it should clarify the issue of settlement of accounts between operators as an important factor in stimulating the investment processes.

44. Moreover, the Office assessed a number of documents and studies concerning protection of the Polish market against excessive imports of certain goods, dumping, setting tariff quotas, customs tariffs, etc.

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**4. OCCP's Resources**

**4.1 Resources overall (1999 & 2000)**

*a) Annual budget (PLN & US\$)*

45. The Office for Competition and Consumer Protection had the following budgets in 1998 and 1999 \*:

	1998		1999	
	PLN	USD	PLN	USD
Part 37				
Office for Competition and Consumer Protection	12.772	3.275	14.709	3.510
Section 61				
Domestic trade	4.105	1.053	5.212	1.243
Chapter 6182				
Chief Inspectorate of Trade Inspection	2.263	580	2.947	703
Chapter 6595				
Allocation for NGO's	1.842	472	2.265	540
Section 91				
State administration	8.667	2.222	9.497	2.266

\* Figures in 000's

*b) Human resources*

46. The Office had the following staffing levels:

	Dec. 31, 1998	Dec. 31, 1999
Head Office	123	121
Branches	69	69
Total	192	190

47. In the end of 1999, the Office employed 190 members of staff, including 145 persons with university background:

- 70 lawyers,
- 49 economists,
- 26 representatives of other fields.

48. The personnel working in the Office in the end of 1999 included:

- 17 persons, whose work seniority did not exceed one year,
- 28 persons, whose work seniority was between two and five years,
- 145 persons, whose work seniority exceeded five years.

## 5. Summaries of, or references to new reports and studies on competition policy issues

49. Implementation of the governmental program: "Counteracting Monopolies And Strengthening Competition".

50. The Council of Ministers approved the program in 1998. According to the program, after updating its timetable, OCCP monitored the competition level in selected industries in 1999. On the basis of information obtained from the Ministries in charge for specific tasks included in the program, OCCP developed and presented to the Economic Committee of the Council of Ministers a summary report presenting the implementation of the program. Analysis of the works in most of the areas shows that they have been accomplished according to the schedule. The implementation of the program used observations and research made by the Office for Competition and Consumer Protection. The analysis covered both: industries with strong monopolies and those with diversified structure and strong trends towards concentration. Because of likely threats to competition, the concentration processes in these areas are closely monitored.

51. Analysis of the work in most of the areas in 1999 shows what follows:

- the foundations for elimination of the monopoly in the telecommunications sector have been established owing to evaluation of the tender and granting licenses to three independent operators;
- works towards achieving an integrated schedule of implementation of the energy market and privatisation of the entities in this sector were intensified,
- restructuring processes are underway in the bituminous coal mining industry according to the amendment of the program for "The reform of the Polish bituminous coal mining industry in 1998-2002" approved by the Council of Ministers.

52. Also, the government has been working on updating the restructuring and privatisation programs for other areas (e.g. fuels, natural gas).

53. Moreover, representatives of the Office participated in the work of inter-ministerial teams (commissions), which has lead to developing documents and studies important for the competition policy.

54. The Economic Committee of the Council of Ministers established the **Permanent Energy Industry Task Force** in April 1999. The Under-secretaries of State from the Ministry of Finance, Ministry of Economy and State Treasury and the President of the Energy Regulatory Office are involved in these works. The President of the Office for Competition and Consumer Protection chairs the Task Force.

55. In June 1999, following a review of the document: "Reform of the power industry. Privatisation and creation of the electric energy market. Diagnosis and work directions." submitted by the OCCP's President, the Economic Committee of the Council of Ministers requested a comprehensive document concerning operation of the electric energy market, including privatisation program.

56. In October 1999, the Energy Industry Task Force provided the document consisting of two studies:

- Privatisation of the energy industry. Program assumptions and implementation (prepared by the Ministry of State Treasury),

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- The rules of operation of the electric energy market in 2000 and thenceforth (prepared by the Ministry of Economy and the Energy Regulatory Office).

57. The Economic Committee approved the document and requested the Task Force to prepare a schedule for privatisation and implementation of the electric energy market.

58. *The Inter-ministerial Task Force for Research of the Ownership Changes and Capital Concentration in the Mass Media* continued its work in 1999. The Task Force was established by the Order of the Council of Ministers N 64 of September 22, 1998, to investigate into the processes of concentration in the mass media and prepare a final report.

59. The Vice-President of OCCP chaired the Task Force. The report was produced in March 1999 and it was accepted by the Economic Committee and the Council of Ministers. The Council of Ministers requested the Office for Competition and Consumer Protection to repeat the research for the 4<sup>th</sup> quarter of 2000.

60. In 1999, the Office completed a number of research projects concerning *price levels in restricted competition environment*, concerning in particular the following aspects:

- storing and neutralising municipal waste;
- waste removal;
- sewage collection and treatment in biological facilities;
- unit costs of water supply and liquid waste disposal;
- cable TV subscription fees (including the price/service package size relationship);
- pricing policies in the fuels sector;
- pricing policies on the rape purchasing and rape seed processing markets;
- prices on the cement market;
- prices on the sulfur market.

61. *The concentration level studies* covered, among others, the following markets:

- distribution of press;
- digital and cable TV operators;
- newspapers;
- cement market;
- monitoring compliance with the obligation to notify an intention to merge (local activities).