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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN POLAND

-- 2010 --

This report is submitted by Poland to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 29-30 June 2011.

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1. Changes of competition laws and policies, proposed or adopted

1. 2010 was a year of very intensive activities in the competition protection. Office of Competition and Consumer Protection conducted 143 antitrust proceedings in antitrust cases and 222 in cases of merger control proceedings.

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

2. In 2010 UOKiK prepared Regulation of the Council of Ministers on the exemption of certain vertical agreements in the motor vehicle sector from the prohibition of competition-restricting agreements. The regulation was adopted on 8 October 2010. The regulation determines *inter alia* conditions which are to be satisfied for the vertical agreement in the motor vehicle sector to be considered exempted from the general prohibition. It also states which clauses in a vertical agreement in the motor vehicle sector are not deemed to be an infringement of competition. This regulation is valid until 31 May 2013.

1.2 Other relevant measures, including new guidelines

3. The Office issued *Clarifications on notification of intended concentration to the President of UOKiK*. This document is not legally binding, but it shows the interpretation of regulations applied by UOKiK and the methodology of conducting proceedings concerning control of concentration. Its intention is to increase the level of knowledge among interested undertakings regarding the obligation to notify the intention of concentration, as well as facilitate the interpretation of regulations governing the notification procedure. Publication of *Clarifications* improves preparation of applications and thus accelerates the issuing of decisions regarding mergers and acquisitions.

2. Enforcement of the competition laws and policies.

2.1 Actions against anticompetitive practices including agreements and abuses of a dominant position

2.1.1 Summary of activities

4. Antitrust proceedings in Poland are instituted only ex officio. However, it is possible to provide the President of UOKiK with a written notification about suspected practices which are forbidden. Last year, the Office received **369** such notifications, and consequently launched **161** explanatory proceedings and **20** antitrust proceedings.

5. In 2010 UOKiK launched 143 proceedings in cases concerning anti-competitive practices (including 1 on the basis of Art. 101 and 102 of the Treaty).

6. The table represents the structure of the proceedings in detail:

	Total	Completed in 2010
Antimonopoly proceedings:	143	103
Antimonopoly proceedings regarding horizontal agreements of which:	17	9
• conducted on the basis of Art. 101 TFUE	0	0
Antimonopoly proceedings regarding vertical agreements of which:	23	18
• conducted on the basis of Art. 101 TFUE	0	0
Antimonopoly proceedings regarding abuse of a dominant position of which:	103	76
• conducted on the basis of Art. 102 TFUE	2	2
Explanatory proceedings:	507	370

Structure of the decisions issued by the President of UOKiK in 2010

	Horizontal agreements	Vertical agreements	Abuse of a dominant position
Number of decisions assessing practices as restricting competition and ordering to refrain from their application	5	1	28
Number of decisions assessing practices as restricting competition and declaring them to be discontinued	3	14	18
Other decisions	2	3	22
Total number of proceedings discontinued of which:	1	0	10
• stating that the practice has not been applied	1	0	7
• for other reasons	0	0	3

2.1.2 Description of significant cases, including those with international implications

7. The Office detected numerous infringements of antimonopoly law and imposed financial fines on law-breaking enterprises.

Selected decisions of the President of UOKiK issued in 2010 regarding competition-restricting agreements

- Paint price fixing - decision of 24 May 2010 (DOK-4/2010)

As a result of antimonopoly proceedings conducted in 2006, the President of the Office found that from 2000 to 2006, Tikkurila, Praktiker and Castorama collectively maintained a minimum retail price level for sale of Tikkurila paints and varnishes. The agreement was reached by emails between highly ranked employees at the undertakings' headquarters. Emails served as the primary sources of evidence in the proceedings conducted by the Office. These were provided to the President by Castorama and Tikkurila, who decided to cooperate with UOKiK within the *leniency* program.

The President of the Office determined that Tikkurila initiated the agreement and directed price-fixing propositions to Castorama and Praktiker - participants of the agreement. In cases where rates other than the established ones were used, the participants risked, among other things, suspension of delivery and increase in the selling price of a given product. The effect of these prohibited practices was a lack of competition among sellers of Tikkurila products, which affected mainly consumers, who had to pay more for paints and lacquers than they would have in unimpeded competition.

The President of UOKiK refrained from fining Castorama and reduced the fine for Tikkurila - exceeding PLN 9 million - thanks to the institutions' application of *leniency*. The third participant of the agreement, Praktiker, was fined PLN 39 million.

- Price fixing for office products - decision of 26 April 2010 (DOK-3/2010)

Last year the President of UOKiK also detected a collusion on the paper and office products market. One of the parties to the agreement, Office Pulse, admitted to entering into a non-competitive agreement with its market competitor, the firm Papier Hurt, and provided the Office with essential evidence. The antimonopoly proceedings initiated in this case confirmed this information. UOKiK determined that the collusion had been initiated by Papier Hurt, which

within the agreement obligated Office Pulse to refrain from conducting competitive activities with Papier Hurt, especially to refrain from making commercial offers to the latter's clients. As punishment for violating the agreement, Papier Hurt would withdraw its offer and imposed financial sanctions on Office Pulse. The concluded agreement resulted in dividing clients between the two companies, which allowed Papier Hurt to avoid market pressures caused by its competitor. Office Pulse cooperated with the President of UOKiK within the *leniency* program, and thus it avoided fines. The second participant to the agreement, Papier Hurt, was fined PLN 90,000.

- Bid rigging agreement - decision of 4 October 2010 (RWR-24/2010)

Detection of anticompetitive agreements is also possible thanks to information obtained from non-participating entities. In this way, the President of the Office found out about a bid rigging agreement from the Branch Office of the Polish Post in Łódź, whose suspicions were aroused by the behaviour of an undertaking conducting its business activity as commercial-service firm "Krystian" K. Kwoczała, Oleśnica. After winning a tender for the production of automatic stamps, the enterprise withdrew from execution of the order, giving as the cause a breakdown in the equipment needed for production. In accordance with the law, the organizer of the tender in such a situation should select the most favourable bid from among the remaining undertakings who participated in the tender, in this case Biuro Grupa Dolny Śląsk [Lower Silesia Group] S. Kwoczała. The proceedings revealed that antimonopoly regulations prohibiting enterprises participating in tenders from agreeing on offer conditions had been violated. On the basis of collected evidence, it was determined, *inter alia*, that the resignation from realization of the order took place one day after the tender winner discovered that the second participant in the agreement had placed the second most favourable bid. Furthermore, the stamp production equipment breakdown had taken place prior to the tender. Additionally, the existence of organizational cooperation between both undertakings was detected. The President of UOKiK imposed on FHU "Krystian" a fine exceeding PLN 13,000 and Biuro Grupa Dolny Śląsk more than PLN 2,000.

Selected decisions of the President of UOKiK issued in 2010 regarding the abuse of a dominant position

- The right to public broadcast of sporting events - decision of 12 February 2010 (DOK-1/2010)

Proceedings against Cyfrowy Polsat [Polsat Digital] were conducted in 2009, following the analysis of information located on the undertaking's websites as well as complaints filed to the Office. These concerned conditions for sale of rights to public screening of Euro 2008, to which Cyfrowy Polsat had exclusive rights. Enterprises interested in transmission of the games had to conclude an agreement with the undertaking.

The Office determined that Cyfrowy Polsat, which held a dominant position on the market, had conditioned the sale of rights to public screening of games on a purchase of a decoder model specified by the firm, as well as technical support services. In this way it obtained unfair profits.

Still at an early stage of the proceedings, the undertaking filed an application to the Office, on the basis of which the President of UOKiK imposed an obligation on it to, *inter alia*, repurchase decoders from the enterprises involved, as well as reimburse the costs of technical support. Cyfrowy Polsat will have to file a report on realization of the decision during next three licensed sporting events for which it will acquire exclusive rights to the sale of rights to public broadcasting.

The President of the Office, by issuing commitment decision, refrained from imposing financial penalty on the company. However, sanctions may take place if the undertaking does not fulfil its commitments. In such a case, the maximum financial penalty would be 10,000 euros for each day of delay in meeting the obligations.

2.2 *Mergers and acquisitions*

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

	Number
Cases concerning control of concentrations conducted by UOKiK in 2010, total of which:	222
• concluded in 2010	188
Types of decisions regarding control of concentrations issued in 2010:	147
a. consent for concentration, total of which:	0
• consent for concentration, as a result of which competition on the market is significantly restricted - desistance from banning concentration (Art. 20 par. 2)	0
b. conditional consent for concentration	2
c. prohibition of concentration	0
d. closure of antimonopoly proceedings regarding concentration	9
e. withdrawn merger notification	27
f. decisions imposing finances for failing to submit the notification of intended concentration	1
g. other conclusions	2

2.2.2. *Summary of significant cases*

Selected decisions of the President of UOKiK concerning concentrations of undertakings in 2010:

- Conditional consent for takeover of Simon Ivanhoe by Unibail-Rodamco - decision of 12 July 2010 (DKK-64/2010)

Among all consents issued in 2010 by the President of UOKiK, there were two conditional consents. The first concerned the application of Unibail-Rodamco - co-owner of the shopping centre Golden Terraces and Galeria Mokotow, for taking control over Simon Ivanhoe, which manages Arkadia shopping centre and Galeria Wileńska. Analysis of the effects of intended concentration revealed that the transaction would lead to significant restriction of competition on the market for rental of commercial space in large shopping centres in the Warsaw agglomeration. Nevertheless, the President of UOKiK decided that it is possible for Unibail-Rodamco to fulfil the specific requirements necessary for granting the consent. In its decision, the Office specified that by 15 January 2011 Unibail-Rodamco will have to divest of all rights to co-control of the Golden Terraces shopping centre or sell those rights to investors independent of its capital group. At the same time, it may retain entitlements similar to those held by minority shareholders, the purpose of which is to protect their financial interests.

- Conditional consent for takeover of Huta Łabęda by Kompania Węglowa - decision of 18 October 2010 (DKK-105/2010)

The second conditional consent issued in 2010 concerned an application by Kompania Węglowa for takeover of Huta Łabęda. This transaction followed from a decision by the Ministry of Finance and was to be based on Kompania Węglowa's acquisition of 93.33 percent of shares of Huta Łabęda. The goal of the concentration was the future sale of shares of Huta Łabęda by

Kompania Węglowa, which was to improve the company's financial situation. This would therefore be a form of state aid for the Polish coal mining sector.

After conducting the antimonopoly proceeding, the President of UOKiK decided that the concentration would have a negative impact on competition on the national market for production and purchase of shoring pavement materials and accessories, due to the risk of closure of the market.

The Office decided that upon fulfilment of specific conditions it would be possible to grant a consent to conduct the transaction. Among other requirements, Kompania Węglowa was obliged to sell shares of Huta Łabęda to an independent investor within a specified time period in an amount causing Kompania to lose control of the company. The undertaking has been obligated to inform the President within 30 days following fulfilment of the conditions indicated in the decision. Should the conditions not be met, the President of UOKiK may punish the undertaking with a fine amounting up to 10,000 euros for each day of delay.

2.3 *Court decisions in antimonopoly matters*

8. Enterprises may lodge appeals against the decisions of the President of UOKiK and complaints about the President's resolutions to the Court of Competition and Consumer Protection (SOKiK). Appeals against decisions of the Court of Competition and Consumer Protection may be heard by the Court of Appeals in Warsaw. It is also possible to file a cassation complaint to the Supreme Court.

9. The statistics of judgements in antitrust proceedings are the following:

	SOKiK	Court of Appeals	Supreme Court
Total number of verdicts reached in antimonopoly cases in 2010, including those involving:	41	21	6
• vertical agreements	11	5	0
• horizontal agreements	4	1	0
• abuse of a dominant position	23	15	6

SOKiK verdicts in antimonopoly cases	Number
Repeal of President of UOKiK's decision	3
Amendment of President of UOKiK's decision	11
Dismissal of undertaking's appeal	27

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

10. UOKiK shapes competition policy not only by conducting administrative proceedings and imposing fines on dishonest businesses. The Office also participates in the law-making process. Last year we issued about 3 000 legal opinions screening legal acts as part of cross-ministerial consultations – taking into account their influence on competition.

11. Furthermore, UOKiK has drawn up two regulatory reports concerning the energy sector: "Directions of Development of Competition and Consumer Protection in the Polish Energy Sector" (March 2010), an updated version of a similar document prepared in 2008, and "Directions of Development of Competition and Consumer Protection on Railway Transport Markets in Poland " (August 2010). Both documents led to debates with experts.

4. Resources of competition authorities

4.1 Resources overall (current numbers and change over previous year)

- Annual budget

	2009		2010	
	PLN	USD*	PLN	USD**
Total annual budget:	49.8 mln		49.913 mln	
Expenditure structure:				
(a) UOKiK	47.865 mln		47.813 mln	
(b) Funding for non-governmental associations carrying out governmental consumer protection tasks	1.928 mln		1.735 mln	
(c) National defence-related activities	7 thousand		4 thousand	

* USD= 2,19 PLN

**USD = 3,3 PLN

- Number of employees

Employment Structure of UOKiK

	Persons	Posts
1 January 2010	440	424,425
31 December 2010	457	442,5
Annual average	446,06	431,47

Age	Lawyers	Economists	Other professions	Total	% of all employees
Up to 30	60	22	67	149	32,6
30-40	73	35	63	171	37,4
40-55	16	20	60	96	21
Above 55	3	14	24	41	9
Total	152	91	214	457	

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

5.1 Studies and analysis of the market

12. In 2010, the Headquarters and Branch Offices of UOKiK jointly conducted **60** studies, of which **36** concerned the national market and **24** - local markets.

13. The results of the largest and - from an economic standpoint - most important market analyses are presented to the public during debates organized by the Office and involving the participation of experts.

5.1.1 Selected market studies conducted by UOKiK in 2010:

- Study of the aviation market

The purpose of this analysis was to study the effects of the liberalization of the airline connection market in Poland. According to the Office's findings, the opening of the airline connection market led to an increase in the number of carriers - from 30 to 46, and consequently to enhancing the competitiveness in this sector. An important effect of liberalization was the appearance of budget carriers, such as Ryanair and Wizz Air. In 2008, around 50 percent of passengers made use of the

services of budget carriers. In the same period, the Polish national carrier PLL LOT declined in popularity. This led to a decrease in ticket prices, which at present are in many cases not much more expensive than train tickets, thus opening up this means of transportation to a broader segment of society.

- Study of the market for railway carriers

The results of UOKiK's study of the market was published in 2010 in a report entitled "Directions of Development of Competition and Consumer Protection on Railway Transport Markets in Poland". The goal of the analysis was to study the situation on the railway market in Poland and to present recommendations for changes needed to open the market to competition and effectively protect the consumer. The report indicated that in order to achieve these goals, activities undertaken *ex post* by the antimonopoly authority are not sufficient. Therefore, the changes suggested by the Office primarily applied to ensuring the possibility of competition between all rail carriers and opening the market to new entities. Furthermore, UOKiK drew attention to the necessity to make changes in the method of organization of passenger rail transport supported by public money. Moreover, in the Office's opinion, it is essential that the role of the market regulator be strengthened and that passenger rights be protected more effectively.

6. Information and education activities

14. The year 2010 has passed under the motto of the jubilee celebrations of the twentieth anniversary of UOKiK, when the Office undertook a lot of activities and initiatives designed to remind the businesses and consumers about the significance of antitrust laws in today's economy. Information and educational activities of the Office conducted at that time aimed to raise legal and financial awareness of all market participants.

15. To celebrate the twentieth anniversary of the Office, a series of conferences, debates and meetings with entrepreneurs were organised. They were aimed at drawing the attention of professional entities to key issues related to enforcement of antitrust law.

6.1 Conferences

6.1.1 *Anniversary conference at the Royal Palace on "Current problems of competition policy" (Warsaw, 27 May 2010)*

16. It was the most important event summarizing 20 years of operation of modern antitrust legislation in Poland. The subject of discussion involved the challenges faced by the European institutions protecting competition. The effectiveness of antitrust policy tools, such as the leniency program and merger control have also been assessed. Also issues related to the role of competition policy in facilitating market access for small and medium enterprises were discussed. The conference was opened by Alexander Italianer, Director General for Competition in the European Commission. Moreover, among the speakers and invited guests there were the heads of antitrust authorities from around the world, judges, lawyers and representatives of academia and organizations representing the business community.

6.2 Regional conferences

6.2.1 *Anniversary conference "Liberalization, deregulation, competition in the markets" (Gdańsk, 29 March 2010)*

17. During the first of anniversary regional conferences topics related to liberalization and deregulation of markets and the creation of facilities for access to infrastructure were discussed. Also

issues such as breaking barriers, e.g. in the sector of postal, transportation and municipal services were addressed.

6.2.2 *Anniversary conference, "Preserving competition in the markets of new technologies" (Krakow, 13 September 2010)*

18. Krakow meeting was devoted to issues related to intellectual property protection, the role of competition policy in view of the development of new technologies and their impact on the development of businesses and regions.

6.2.3 *Anniversary conference "Competition law - for or against the entrepreneur?" (Poznań, 5 November 2010)*

19. Conference in Poznań completed a series of regional meetings. During the conference the issues concerning the participation of entrepreneurs in antitrust proceedings, standards of evidence and tools for their acquisition were discussed.

20. In addition, during the last year **four debates** were organized, which contributed to the popularization of knowledge about the legal aspects of the market and its participants protection, and served the purpose of presentation of actions taken by the Office in this regard.

6.3 Organising contests

6.3.1 *"Libertas et Auxilium" (Warsaw, 8 July 2010)*

21. Already for the fifth time, the Libertas et Auxilium Awards were granted to journalists. The aim of the initiative is to honor the best articles and radio and TV broadcasts dealing with competition and consumer protection. This time the awards went to journalists from "Polityka" weekly and "Express Reporterów". Additionally, the President of UOKiK granted the jubilee award to Konrad Niklewicz, the journalist of "Gazeta Wyborcza", for his longtime contribution to the dissemination of knowledge on competition and consumer protection. The Office organized the competition in cooperation with the Adam Smith Centre and the Association of Polish Journalists. The solemn award ceremony was accompanied by a debate "20 years of competition and free market economy in Poland".

6.3.2 *Competition for the best Master's thesis*

22. The main goal of the second edition of the contest was to draw attention of academic students to issues of competition and to encourage them to deepen their knowledge in this field. The selection of the winning work was made by the jury chaired by the President of UOKiK.

6.4 Publications

23. The informational and educational activity of the Office also includes extensive publishing work. In 2010 **4** new titles were released and **7** reprints of the previous years were published, which have attracted the biggest interest. Particularly noteworthy is the jubilee publication delivered on the occasion of the twentieth anniversary of UOKiK: "Changes in competition policy over the last two decades" - devoted to the changes that occurred in recent years, the competition policy and the evolution of antitrust authorities around the world. Prominent experts were invited to its co-creation, both from Poland and abroad.

24. All publications were distributed for free to all interested entities. The publications are available in electronic version at the Office's website www.uokik.gov.pl.