

Unclassified

DAF/COMP/WD(2014)135

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

10-Dec-2014

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

DAF/COMP/WD(2014)135
Unclassified

ROUNDTABLE ON CHANGES IN INSTITUTIONAL DESIGN OF COMPETITION AUTHORITIES

-- Note by Poland --

17-18 December 2014

This document reproduces a written contribution from Poland submitted for Item VIII of the 122nd meeting of the OECD Competition Committee on 17-18 December 2014.

More documents related to this discussion can be found at www.oecd.org/daf/competition/changes-in-competition-institutional-design.htm

JT03368384

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POLAND'S EXPERIENCE OF NEARLY TWO DECADES WITH A "MULTIFUNCTIONAL" COMPETITION AND CONSUMER AGENCY

1. Introduction

1. The broad objective of Poland's competition and consumer policy is to enhance consumer welfare. Markets work well for consumers when competition, information and other conditions combine to empower consumers to exercise real choice in purchasing goods and services. Informed consumer choice drives competition and innovation, which in turn result in economic value added and increased welfare.

2. The model that combined the state's competition and consumer protection functions in one institution was introduced in Poland in 1996 as part of the reform process following the collapse of communism. Even earlier, at the start of market-oriented reforms, the newly created Antimonopoly Office sought as much to curb state monopolies and boost competition as to protect the rights of weaker market participants. Poland's Supreme Court stated in 1991 that, before deciding on the legality of a business practice from the perspective of competition, it would need to see the practice in a wider context, in particular in the context of its impact on consumer interests. The transition of the Antimonopoly Office into the Office of Competition and Consumer Protection (UOKiK) was the logical institutional embodiment of this approach. In practice and in legal terms it meant that consumer protection had attained the status of an independent government policy with a status equal to competition policy.

3. After two decades of this dual operation we believe it has proved effective and we are striving to find further synergies from this approach. UOKiK's mission statement puts consumers firmly at the centre of our concern. This is because the mission today is defined as following three principles seen as essential for successful competition policy in a market economy:

- Freedom of enterprises to compete on a level playing field, protected from anti-competitive behaviour of other firms;
- Equal access to the market and the absence of competition-distorting state intervention other than that justified by an overriding public interest;
- Fairness of competition understood as strict adherence to fair, decent and considerate business practices in dealing with other market participants – competitors, suppliers, corporate customers and particularly consumers.

4. The significance of this third principle has become clearer in recent years as Poland's transition from communism to a well-functioning market economy approaches maturity. Poland avoided a financial sector crisis or recession during the crisis, but its market suffers from an inadequate focus on sound and fair business practices towards consumers in sectors which played a major role in aggravating the crisis. The Polish Competition Authority is convinced that abuse of information asymmetry and aggressive mis-selling will again distort competition and lead to market failures unless held in check by robust self-regulation backed by public enforcement.

2. Synergy in UOKiK's enforcement practice

5. In this context entrusting consumer policy to the antimonopoly authority offered measurable benefits. Combining policies made it easier to develop specialised expertise, limiting the time needed to achieve operational efficiency in consumer protection. First it was the transfer of the legislative and procedural solutions that proved effective in one field to the other. Consumer policy investigations were carried out from the very beginning by experienced teams. It also meant that both policies shared common economic, legal and administrative support. Second, as competition and consumer policies ultimately have the same goal – to make markets work well for consumers and for fair dealing businesses who serve consumers well – having them implemented by a single central institution makes sense. Communication between units which protect competition and those which protect consumers is easier within one administrative body, and on the basis of one legal act. It enables better coordination and consistent implementation of both policies.

6. Cartels, anti-competitive mergers and abuses of monopoly power are detrimental to competition and, in turn, consumer choice. If we take action against these practices and other related anti-competitive conduct, the competition that will result can enhance consumer welfare. How it works in practice is demonstrated by UOKiK's 2010 decision when the Authority took action against a price-fixing agreement between real estate brokers in the city of Elbląg in north-eastern Poland. As part of the illegal agreement on the real estate market, consumers were forced to pay a minimum price resulting from a cartel agreement. Following UOKiK's intervention the price of real estate broker services in the area fell, leading to a clear and direct benefit for consumers.

7. Effective consumer protection can bolster competition. The sector which would benefit from a much closer link between enforcing consumer rights and ensuring fair competition is the financial services market. Asymmetry of information often leads to misleading and deceptive advertising, oppressive marketing methods and mis-selling, which are detrimental to consumers' ability to make free, well-informed choices. The poor redress mechanisms available only compound the problem. Tackling such practices through effective consumer protection enforcement should prevent a "race to the bottom" among financial institutions and result in increased competition. This is also one of the goals of Directive 2008/48/EC on credit agreements for consumers (the "*Consumer Credit Directive*"), which aims to integrate the EU consumer credit market and ensure a high level of consumer protection. It stipulates that consumers be provided with comprehensible information in good time, before a contract is concluded, and also as part of the credit agreement. In order to allow consumers to compare various offers easily and to better understand the information provided, creditors must provide pre-contractual information in a standardised form (Standard European Consumer Credit Information). Moreover, they also need to provide consumers with the Annual Percentage Rate of Charge ("APR"), which is a single figure, harmonised at the EU level, representing the total cost of the credit. To-date UOKiK has issued dozens of decisions, imposing fines for violating collective consumer interest. All of those decisions have obliged financial institutions to provide consumers with transparent and comparable information about products offered to them. This intervention created incentives for competition based mostly on merit – prices and quality of services. We strongly believe that the availability of transparent, up-to-date and comparable information on offers and services is a key element for consumers in competitive markets.

3. Impact on consumers

8. One area which has the potential to benefit from the synergies in consumer and competition protection enforcement is the liberalisation of hitherto closed or monopolised markets. A consumer perspective in competition enforcement is of particular importance in transition economies, where market liberalisation is often, rightly, a key policy objective as a means of creating foundations for long-term growth and consumer welfare. However, short-term impact on consumers cannot be ignored. A liberalised

market must from the start meet consumer expectations with regard to access, choice, price, quality, security and reliability, and must be independently regulated and enforced. From UOKiK's experience, we often see that such liberalisation aimed at long-term benefits for consumers may result in short-term infringement of consumer rights. This is why we believe that impact assessment accompanying legal regulatory changes needs to include a consumer impact forecast for both the short and the long run. A competition and consumer protection agency is well placed to offer government a balanced view in this respect during the legislative process. It is also well positioned to counteract any short-term negative effects of market liberalisation without jeopardising its long-term benefits.

9. A practical example would be the electricity markets. Since the opening of residential retail markets in Poland in July 2007 there have been numerous problems with door-to-door selling. In this case, antitrust law is not the solution. This issue should be addressed through other means such as legislation on commercial practices, trade standards etc. Door-to-door selling became a major source of consumer dissatisfaction shortly after the retail market was fully opened up to competition. The bulk of consumer complaints focused on the fact that they were being misled into signing contracts to switch suppliers when they were under the impression that they were only agreeing to approve a visit from a consultant, obtain information or have their meters read. UOKiK is currently conducting a number of proceedings against the most aggressive suppliers. These cases show that market liberalisation may create incentives for unfair, deceptive and unlawful business practices, against which our consumer protection law is the only defence. Similar problems occurred during the liberalisation of the telecom market in the early 2000's. However, actions undertaken by the telecom regulator as well as the competition authority to create a diverse market along with consumer rights enforcement have led to a substantial improvement in the sector, as demonstrated by today's fierce price and quality competition as well as fewer consumer complaints.

4. Conclusions

10. The above examples show that it may be harder to implement effective competition policy without a strong consumer focus. UOKiK's experience illustrates that competition enforcement must be supported by robust consumer rights enforcement if markets are expected to deliver consumer welfare. From our perspective, that cannot be done in the absence of unified economic support for UOKiK's interventions in the market.

11. In its essence, competition is pro-consumer for the simple reason that rivalry among competing suppliers to serve consumers well is good for consumer choice and value. Hence the importance of fair business practices, which in our view should be more forcefully encompassed in companies' compliance programmes. This would be beneficial to competition and reinforce the strained link between the corporate world and wider society. Unfair practices, abuse of the spirit and letter of laws protecting consumer rights reduces citizens' welfare and lowers their trust in the free market. It distorts competition and consumer choice, often punishing enterprises which seek to conduct ethical business with lower market shares or profits, or inducing a "race to the bottom" in which questionable practices are used by an ever wider number of businesses fearful of losing out. This is why UOKiK sees consumer rights enforcement as complementary to the standard antitrust toolbox.

12. In conclusion, a final observation. The benefits of joining competition and consumer protection in one institution suggest that further synergies for competition and consumer rights enforcement would come from closer cooperation with sector-specific regulators as well as law enforcement agencies. Such "networks for competition and consumer protection" are being tested in some countries, including Poland, in the hope they can result in faster detection of cartel practices, bid rigging and consumer rights abuses. Reflecting UOKiK's reinforced focus on combining competition and consumer protection, from this year on the government strategy on competition and consumer policy will be combined in one document.