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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN POLAND**

-- 2014 --

16-18 June 2015

*This report is submitted by Poland to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 16-18 June 2015.*

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## TABLE OF CONTENTS

1.	Changes to competition laws and policies, proposed or adopted.....	3
1.1	Summary of new legal provisions of competition law and related legislation/Government proposals for new legislation.....	3
2.	Enforcement of competition laws and policies .....	4
2.1	Action against anticompetitive practices, including agreements and abuses of dominant position.....	4
2.2	Mergers and acquisitions .....	7
3.	The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies .....	8
3.1	The creation of a competition network and the reinstatement of the Advisory Council .....	9
4.	Resources of competition authorities .....	10
4.1	Resources overall (current numbers and change over previous year) .....	10
5.	Summaries of or references to new reports and studies on competition policy issues .....	11
5.1	Market Studies.....	11
5.2	Information and educational activities.....	11

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

### ***1.1 Summary of new legal provisions of competition law and related legislation/Government proposals for new legislation***

1. The year 2014 was marked by intensive works on the amended competition and consumer protection law. To bolster cartel detection, the amendment extended the statute of limitations for anticompetitive practices from one to five years.

2. Another measure was the establishment of personal liability of managers who intentionally permit their company to engage in an anti-competitive agreement. The maximum administrative fine was set at two million zlotys (EUR 500 000). Financial liability for individuals was one of the most significant changes to the competition regulation. Until now, managers who were personally responsible for infringing competition law have been able to avoid punishment.

3. The Act extended the scope of the leniency programme by adding a "leniency plus" component addressed to undertakings that cannot be granted full immunity under the regular leniency programme. Under "leniency plus", undertakings can have their fine reduced by 30% in exchange for information and evidence on any other collusion they have participated in. In addition to having their fine reduced for the first agreement, they will receive full immunity for the second case they report. The leniency programme is now addressed not only to undertakings, but also to individuals who have intentionally, by action or omission, permitted a company to engage in an anticompetitive agreement.

4. The amendment also introduced settlements. Undertakings applying for a voluntary settlement can have their fine reduced by 10%. UOKiK will be able to impose both behavioural and structural remedies. Behavioural remedies include offering a copyright license on non-discriminatory terms or changes to a contract. Should these prove insufficient or overly damaging to the undertaking, UOKiK will have the possibility to order a limited array of structural means.

5. Finally, the amendment provides for improvements in merger control through the establishment of a two-stage procedure and the notion of competition concern. Cases which do not raise any doubt as to the potential impediment of competition will be concluded within a month, while a second phase of four months will be opened for more complex cases. The competition concern will be presented by UOKiK before it issues decisions in cases in which it anticipates a significant negative impact on competition, allowing parties to provide additional information or amend the transaction before the final decision is made.

6. Along with the amendment of the law, UOKiK issued a set of three regulations to guide the implementation of the revised provisions. They concern the leniency programme, the notification and submission of documents, and the calculation of undertakings' turnovers within the framework of the merger control procedure.

7. UOKiK will now monitor the impact of the amended law and collect opinions from the business community, academic experts and practitioners with a view to introducing additional modifications in two years' time.

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

**2.1 Action against anticompetitive practices, including agreements and abuses of dominant position**

**2.1.1 Summary of activities of:**

- competition authority;
- courts.

8. In 2014 UOKiK received **414** notifications, launched **324** preliminary proceedings and **64** antitrust proceedings.

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

	<b>Total</b>	<b>Closed in 2014</b>
<b>Antitrust</b> proceedings:	96	68
Antitrust proceedings concerning <b>horizontal</b> agreements	20	14
Including:		
– conducted pursuant to Article 101 TFEU	2	0
Antitrust proceedings concerning <b>vertical</b> agreements	11	6
Including:		
– conducted pursuant to Article 101 TFEU	0	0
Antitrust proceedings concerning abuses of a <b>dominant position</b>	65	48
Including:		
– conducted pursuant to Article 102 TFEU	1	0
<b>Preliminary</b> proceedings:	548	341

**Structure of the decisions issued by UOKiK in 2014**

	<b>Horizontal agreements</b>	<b>Vertical agreements</b>	<b>Abuse of a dominant position</b>
Decisions <b>finding the practice to be competition-restricting and ordering its discontinuation</b>	1	2	9
Decisions <b>finding the practice to be competition-restricting and recognising that it has been discontinued</b>	12	3	11
Commitment decisions	0	0	25
Proceedings <b>discontinued</b> in total, including due to:	1	1	4
finding no competition-restricting practice	1	1	3
other reasons	0	0	1

10. Court decisions in antitrust matters:

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

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

	Court of Competition and Consumer Protection	Court of Appeal	Supreme Court
Number of judgements issued in 2014 in antitrust cases including:	177	60	4
– concerning <b>vertical</b> agreements	16	14	0
– concerning <b>horizontal</b> agreements	10	2	0
– concerning abuses of a <b>dominant position</b>	35	10	2

Conclusions of the judgements of the Court of Competition and Consumer Protection in antitrust cases	Number
Overruling the decision of the President of UOKiK	6
Changing the decision of the President of UOKiK	17
Dismissing the enterprise's appeal	41

### 2.1.2 *New UOKiK structure for an improved enforcement of competition and consumer protection*

13. In order to put economic analysis at the centre of the decision-making process in 2014, the head of the Department of Market Analysis, assumed the post of Chief Economist and joined the new UOKiK leadership team along with the President and two Vice-Presidents. The new design of the Authority determines that one Vice-President supervises consumer protection, while the other Vice-President heads the competition enforcement practice.

14. UOKiK has also put emphasis on collective evaluation of non-standard, high-priority cases, in parallel greater independence to directors both at the head office and branch offices was granted.

### 2.1.3 *Description of significant cases*

- Decision DOK-10/2014: Bid-rigging practices in the railway sector

In 2013, the prosecutor's office informed UOKiK that it was dealing with a criminal case of bid-rigging in a tender organized by the Polish State Railway company (PKP Polskie Linie Kolejowe S.A.) for the design and construction of an integrated system of automatic management of rail traffic along the Warszawa Okęcie-Radom line. The criminal case was ultimately discontinued due to lack of harm caused to the railway company. Using the evidence provided by the prosecutor's office and after conducting its own proceedings, UOKiK established that all four of the undertakings participating in the tender had entered into two separate illegal agreements among one another. The first agreement consisted in submitting a complementary bidding offer, whereas the second one involved an undisclosed subcontracting agreement concluded between tender participants. On 30 December, 2014,

UOKiK declared both practices constituted infringements of competition law and imposed upon the undertakings fines exceeding in total EUR 2 000 000.

- Decision RLU-27/2014: Abuse of a dominant position on the helicopter spare parts market

On 11 December 2014, UOKiK fined the producer of communications equipment for having abused its dominant position on the domestic market of helicopter spare parts for Mi-2 helicopters used by the Polish aviation military. The undertaking had refused to sell spare parts to one of its competitors, restricting the development of competition on the national servicing of Mi-2 helicopters market. A monopolist hindering access to products which are essential to an undertaking's effective operation is an infringement of competition law. In consequence, UOKiK fined the undertaking with a sanction exceeding approximately EUR 74 000.

- Decision RWR-23/2014: Abuse of a dominant position on the funeral services market

UOKiK issued a commitment decision in the case of abuse of a dominant position on a local funeral services market. The municipality in Piława Górna had imposed unfair prices when it issued permits for the construction of tombstones on the municipal cemetery.

- Decision RGD-21/2014: Bid-rigging on the local road maintenance market

In November 2014, UOKiK uncovered bid-rigging practices during a tender for the provision of winter road maintenance services in the Kościerzyna municipality. Two participants of the tender had colluded on the prices provided in their respective offers. As a result, UOKiK issued a decision fining the two undertakings.

- Decision RWR-21/2014: UOKiK's actions on the water supply and sewage removal market

In 2014, UOKiK continued its intensive enforcement measures on the water supply and sewage removal market. A number of decisions sanctioning mostly the abuse of a dominant position by municipalities were issued. For example, the Czernica municipality was fined for imposing burdensome contract terms, which transferred the costs of water supply and sewage removal equipment upon the recipients of the services.

- Judgments of the Court of Competition and Consumer Protection

The Court of Competition and Consumer Protection upheld UOKiK's decision and fine imposed upon PGNiG for its abuse of its dominant position on the wholesale gas supply market, as well as the Authority's decision sanctioning the imposition of fixed prices in franchising agreements. The Court also upheld UOKiK's decision concerning resale price maintenance concluded between a producer of paints and varnishes, but decided to decrease the fine.

## 2.2 *Mergers and acquisitions*

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

15. In 2014, **224** cases concerning merger and acquisition (M&A) control were conducted, of which **190** were closed with the following result:

	<b>Number</b>
<b>Merger cases handled by UOKiK in 2014</b>	<b>224</b>
including:	
– concluded in 2014	<b>190</b>
<b>Types of conclusions reached in merger cases in 2014:</b>	
a. total clearances	<b>169</b>
including:	
– consents to transactions which will substantially lessen competition - <b>waivers of merger prohibition</b> (Article 20 section 2. of the Act of 16 February 2007 on Competition and consumer protection)	<b>0</b>
b. <b>conditional clearances</b>	<b>4</b>
c. <b>prohibitions</b>	<b>0</b>
d. <b>discontinued</b> merger proceedings	<b>0</b>
e. <b>returned</b> merger notifications	<b>12</b>
f. <b>withdrawal</b> of the notification	<b>4</b>
fine for failure to notify transaction	<b>1</b>

16. The statistics of judgements in proceedings concerning merger control:

<b>Court of Competition and Consumer Protection</b>	<b>Court of Appeal</b>	<b>Supreme Court</b>
<b>3</b>	<b>0</b>	<b>1</b>

### 2.2.2 *Summary of significant cases.*

- Decision DKK– 4/2014: Auchan/Real

The transaction between the hypermarkets chains Real and Auchan was subject to conditional approval. While the European Commission had been the first body to look into the case, the part that applied to Poland was referred to UOKiK. The subsequent proceedings revealed that the transaction would restrict competition on eleven local markets. To maintain effective competition, UOKiK required the acquiring company to sell eight of its 57 shops.

- Decision DKK– 11/2014: Conditional clearance on the laundry detergent market

UOKiK also granted conditional consent in February 2014 to a transaction on the laundry detergents market. Henkel, a manufacturer of detergents, household cleaners, personal care products and adhesives, was allowed to take over a part of the assets of entities belonging to the PZ Cussons group, provided it sold the rights to its Rex brand, which included washing powders and gels. UOKiK's conditional

consent was necessary because the proceeding revealed that Henkel's acquisition of the PZ Cussons assets in question would significantly increase its market power on the broader detergents markets.

- Decision DKK-155/2014: Conditional clearance on the pharmaceutical market

The third conditional consent, issued in March 2014, concerned a transaction on the pharmaceuticals trading market between Neuca and ACP Pharma. UOKiK established that because the total market share of the merging companies significantly exceeded their competitors' share, the transaction would restrict competition in the wholesale of pharmaceuticals to pharmacies located within approximately 100 km of ACP Pharma's wholesale store in Bydgoszcz. UOKiK approved the concentration on condition that Neuca divest any and all rights to ACP Pharma's wholesale store in the city of Bydgoszcz.

- Decision DKK-121/2014: Conditional clearance for the transaction on the wholesale tobacco products market

The last transaction that was subject to conditional consent in 2014 concerned the wholesale tobacco products market. The Eurocash capital group sought to purchase 11 wholesale stores owned by the Kolporter company. UOKiK's proceedings showed that the concentration would restrict competition on the local market comprising Kolporter's wholesale store in the city of Sosnowiec. As a result, UOKiK made its consent conditional upon the Sosnowiec site being removed from the transaction. Following negotiations with the acquirer, the company agreed to remove the Sosnowiec site from the transaction. In some concentrations post-approval disposals of assets prove impossible to implement, making the maintenance of competition on a local market difficult. The "pre-emptive" condition imposed in the Kolporter case was intended to prevent just such a situation.

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

17. UOKiK not only enforces competition law but also performs its mission by partaking in legislative procedures concerning effective protection of competition and consumers interests. This task is mainly realized by drafting legal acts and participating in inter-departmental consultations. In 2014 UOKiK was involved in works on over 2 thousand projects and opinions on the acts drafted by the Parliament. The Office's specialists were analyzing the documents trying to identify how the new regulations could possibly influence competition and consumers.

18. In 2014 UOKiK contributed to the law-making process by conducting the legislative works on (i.a):

- the Act amending the Act on competition and consumer protection and the Act amending the Code of civil procedure;
- Regulation of the Council of Ministers [concerning the notification of the intention of concentration of undertakings](#);
- Regulation of the Council of Ministers [concerning the mode of proceeding in cases of enterprises' applications to the President of the Office of Competition and Consumer Protection for immunity from or reduction of fines](#) ("leniency regulation");
- Regulation of the Council of Ministers [concerning the method of calculation of the turnover of undertakings participating in the concentration](#);

- Regulation of the Council of Ministers [on the exemption of certain types of transfer technology agreements from the prohibition on competition restricting agreements](#);

19. Furthermore, UOKiK took part in the legislative process on (i.a):

- the Act on healthcare services financed from public funds
- the Act amending the Act on energy law;
- the Act amending the Act on collective supply of water supply and collective sewage removal.

### ***3.1 The creation of a competition network and the reinstatement of the Advisory Council***

20. In 2014 UOKiK committed to nurture its relationship with consumers, businesses and other public institutions. UOKiK's ambition is to create a results-oriented network for competition and consumer protection, encompassing sectoral regulators, consumer organizations, law enforcement agencies and business organizations. It is UOKiK's view that through close cooperation and exchange of expertise the protection of consumer welfare may be genuinely enhanced.

21. Furthermore, to facilitate dialogue with external stakeholders on competition policy, UOKiK has reinstated an Advisory Council to the UOKiK President, composed of leading experts in economic and competition law. Its task is to advise and comment on consumer and competition policy and enforcement practices (not on specific cases) and give recommendations. The Advisory Council to the President of UOKiK also plays an important role in the process of reviewing UOKiK's performance. For external experts, including academic circles, it constitutes a channel through which they can express their opinion on the Office's performance.

22. In addition, UOKiK has been working on establishing a more transparent and open relationship with businesses in its proceedings. To that end, in 2014 UOKiK began drafting guidelines on the competition authority's contact with enterprises as well as on principles it applies when publishing the results of the market studies it conducts.

#### 4. Resources of competition authorities

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

###### 4.1.1 Annual budget (in your currency and USD):

	2013		2014	
	PLN	USD*	PLN	USD*
Total annual budget:	<b>55.11 mln</b>	18.24 mln	<b>55.40 mln</b>	15.33 mln
Expenditure structure:				
(a) UOKiK	<b>53.33 mln</b>	17.48 mln	<b>53.6 mln</b>	14.86 mln
(b) funding for non-governmental associations carrying out governmental consumer protection tasks	<b>1.77 mln</b>	0.58 mln	<b>1.635 mln</b>	0.42 mln
(c) Tasks connected to national security	<b>0.002 mln</b>	0.0006 mln	<b>0.002 mln</b>	0.0005 mln

\*USD = 3,61 PLN (06/05/2015)

###### 4.1.2 Number of employees (person-years):

	Persons	Posts
<b>1 January 2014</b>	475	461,65
<b>31 December 2014</b>	472	458,45
<b>Average per year</b>	475	461,18

#### 23. Staff turnover in 2014

	Persons	Posts
<b>Employed</b>	45	43,5
<b>Terminated employment</b>	45	43,2

Age of Employees	Lawyers	Economists	Others	Total
Up to 30	39	7	40	86
30-40	101	31	99	231
40-55	25	22	57	104
56 and above	4	13	34	51

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

### 5.1 *Market Studies*

24. Examining the condition of competition on the Polish market has two major objectives: to collect evidence for the investigations conducted by the competition authority and to review the concentration processes taking place in the economy to detect any possible infringements or the risk of their occurrence. 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 involve the participation of experts. In 2014, UOKiK conducted a total of **28** inquiries - **20** concerned the national market and **8** the local market.

25. Selected market research carried out by UOKiK in 2014:

- Developer's market study

Act on the protection of the rights of residential premises or detached house buyers, entered into force in 2012. Its main objective was to reduce the risk borne by consumers when purchasing a house or an apartment in the primary market. After two years of the act's operation, UOKiK conducted a market study whose main purpose was to assess the impact of the new regulation on the market. Nearly 1,000 entities - developers, housing co-operatives and banks - were asked to provide their assessment of the regulations in force, the impact thereof on their business activity, as well as their opinion on the need for and the scope of potential modifications to the Act. Information gathered during the market study was used to prepare the "[Draft information of the Council of Ministers for the Parliament, concerning implications of the Act's application, along with the amendments proposed](#)".

### 5.2 *Information and educational activities*

#### 5.2.1 *Relations with media*

26. Mass media play an extremely important role in conveying UOKiK's message to the general public. Therefore the Office strives to be often present in the media and is involved in active cooperation with the journalists. The following numbers illustrate UOKiK's efforts in that respect: 210 press releases published by the Office (37 on antitrust issues, 34 on merger control); the decisions and verdicts of UOKiK were the subject of 4 948 press articles, 8 264 internet publications. Moreover, the Office's activity was discussed in 246 radio and TV emissions and in 9 589 news in social media.

#### 5.2.2 *Conferences*

27. In 2014 UOKiK continued its practice to organize yearly conferences during which representatives of public administration, law-makers, lawyers-practitioners, academics, entrepreneurs, journalists can discuss the most current and important questions of competition law.

- "Decentralized Lunch Talk" on the Implementation of Regulation 1/2003

On 9 May 2014, UOKiK organized, in partnership with the Global Competition Law Centre (GCLC), a lunch talk entitled: "Taking stock of the implementation of Regulation 1/2003: the Polish perspective".

The event was part of a "*Decentralized Lunch Talks*" series launched by GCLC in cooperation with the French, Italian, Polish and Belgian competition authorities. Its aim was to take stock of 10 years of the enforcement of Regulation 1/2003 from national perspectives of select member states. The key aspect of the Regulation was to decentralize the enforcement of EU competition law – and the idea underpinning

all four conferences was to look at which aspects of the Regulation have been a success and which a failure at the NCAs level and in the courts, and to compare those perspectives across the EU.

The goal of the event held in Warsaw was to provide Polish perspective on the implementation practice of Regulation 1/2003, highlighting its strengths and pointing out areas for improvement. The event was hosted by Mr Adam Jasser, President of UOKiK and Mr Jörg Monar, Rector of the College of Europe.

During the debate, participants discussed the functioning of the Regulation, the European Competition Network and praised the tools of cooperation made available for its members. At the same time, legal practitioners called for more convergence in the Network with regard to procedural provisions. They pointed out that even though the substance of EU competition law is universal across the EU, there are significant differences in procedures and sanctions applied by NCAs. Such discrepancies pose a problem for parties of antitrust proceedings and may endanger effective protection of their rights of defence. The representative of the European Commission concurred with this view, underlining at the same time that the issue of harmonization of procedural provisions cannot be rushed and remains subject to the decisions of NCAs.

### 5.2.3 *Publications and bulletins*

- Guide to promote Compliance with Competition Law in Funeral Services Sector

Over 100 decisions since 2000 and five pending cases have prompted UOKiK to provide guidance on how cemeteries administrators ought to comply with antitrust rules.

For many years now, UOKiK has been carefully monitoring the funeral services sector. All activities related to such services come under UOKiK's scrutiny, which seeks to ensure they are delivered in a competitive environment. At the same time, the market for the provision of cemetery services, covering maintenance and administration of cemetery sites (cleaning of the site, development of the infrastructure), falls outside UOKiK's jurisdiction, as the performance of these services remains in the sole hands of the cemetery administrator (municipalities for communal cemeteries or parishes for religious ones) or of the entity it commissions.

The most common form of infringement in the funeral services sector is abuse by the administrators of the cemeteries of their market position. Administrators prevent other entities providing funeral services from entering the market or limit their freedom to provide funeral services. They also tend to favour selected undertakings, granting them exclusivity rights in various areas.

The consequences of such behaviour are serious, as customers ordering funeral services are denied the opportunity to choose the most competitive offer. At the same time, administrators of cemeteries lack motivation to increase the quality of the funeral services they offer or to lower prices.

UOKiK has concluded that most of these infringements stem from a lack of awareness of the competition provisions. As part of its advocacy initiatives, UOKiK decided to guide the administrators of cemeteries through these provisions and equip them with a set of useful tips on how to comply with antitrust rules.