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

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN POLAND

-- 2005 --

This report is submitted by the Polish Delegation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 8-9 June 2006.

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Executive Summary

1. In the year 2005 the Office of Competition and Consumer Protection ('the OCCP', 'the Office') fully applied the community legal framework concerning competition policy, namely Articles 81 and 82 of the Treaty establishing the European Community and the provisions on *Leniency* programme. Moreover, the OCCP gathered experiences by participating in the European Competition Network ('ECN').
2. The year 2005 was also a time of enforcing competition policy under the amended Act of 15th December 2000 on competition and consumer protection ('The Act', 'Act on competition and consumer protection'), which secured a full compliance of the Polish law with the requirements of the EC regulation 1/2003 imposing new competence on the President of the OCCP .
3. The possibility of direct application of Articles 81 and 82 of the Treaty establishing the European Community resulted in seven proceedings held by the President of the OCCP, where both Polish and European laws were used.
4. Besides the above, the OCCP's President received the Competition Commissioner of the European Commission, Mrs. Neelie Kroes. The meeting took place on 23 June 2006 and concerned the reform of the Community competition law and the cooperation within the framework of the European Competition Network. The Commissioner was also informed about the obstacles which occur while implementing and applying competition and state aid rules. Also, on 24 June Mrs Kroes and Mr. Banasiński gave speeches during the conference "Competition Law and the Liberalisation of the Polish Market", organised by the International Chambers of Commerce in Poland.
5. The above-mentioned activities were performed without prejudice to the regular enforcement work of the Office, associated with the implementation of the policies within the scope of its competence. As regards its responsibilities in the area of competition protection, in 2005 the Office carried out numerous proceedings in cases concerning anti-competitive practices as defined in the Act on competition and consumer protection. As in previous years they were mainly focused on the fields of telecommunication, gas and energy markets. Many other successful proceedings were conducted, e.g. local market.
6. In 2005 the President of the OCCP launched 320 proceedings in cases concerning anti-competitive practices, where 144 decisions were issued. In merger cases 329 concentration decisions were made.
7. Moreover, 83 opinions on the compliance of aid schemes and projects of individual aid with the common market of the European Union were issued.
8. In 2005 the OCCP Branch Offices conducted in total 78 market research activities. Moreover, the OCCP's main office conducted a number of other analyses, among others in the field of: broadband Internet connections, mobile telephones, banking services and banking commissions on ATM cash transactions.
9. As in previous years the President of the OCCP participated in the meetings of the Council of Ministers, whenever competition policy was on its agenda. The OCCP's activities helped to strengthen market mechanisms, enhance competitive business environment, eliminate monopolistic behaviours and limit infringements of consumer rights.

10. Besides this, the OCCP gave his legal opinion on 3000 drafts of legal acts, where the consistency of those acts with competition law and state aid law, as well as issues related to protection of consumers' interests was verified.

1. Changes to competition law and policies proposed and adopted

1.1 Summary of new legal provisions of competition law and related legislation and government proposals for new legislation

11. By virtue of Article 26.8 of the Act on competition and consumer protection the President of the OCCP encompasses elaboration and submission to the Council of Ministers of the draft legal acts concerning competition restricting practices, development of the competition or conditions for its emergence, as well as protection of consumer interests. Roughly speaking, the adoption of the legal drafts elaborated by the OCCP is a two-stage process. First, the acts are circulated among the ministries within the system of intra-governmental consultations. Then, they are passed on to the European Committee of the Council of Ministers or/and the Committee of Council of Ministers for approval. The approved texts are submitted before the Council of Ministers.

12. In 2005, the OCCP drafted the act on the transparency of financial relations between public bodies and public undertakings and on financial transparency of certain entrepreneurs. It is intended to implement the Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings (Official Journal L 195, 29/07/1980 P. 0035 – 0037) amended by the Commission Directive 2005/81/EC of 28 November 2005 (Official Journal L 312, 29/11/2005 P. 0047 – 0048).

13. The relevant draft is a result of an intra-ministerial working group. The act imposes an obligation to ensure financial transparency in relations between a State authority and a public undertaking, as well as an obligation to ensure financial transparency by any undertakings which enjoy special or exclusive rights or are entrusted with the operation of service of general economic interest pursuant to Article 86(2) of the Treaty (which receive public service compensation in relation to such service if they also carry out other activities than those vested with special or exclusive rights or other than the entrusted provision of service).

14. The draft act also includes provisions regulating the control of compliance with these obligations and provisions on the obligation to inform the European Commission. The competence in this respect has been entrusted to dominant bodies as well as to the bodies which granted special or exclusive right or entrusted the operation of a service of general economic interest.

15. The draft act will ensure a transparent and open use of public funds and a possibility to benefit of certain privileges granted by the public bodies. The act imposes an obligation to keep documents, materials and information which will allow the European Commission to monitor the financial transparency in the relations between a State authority and a public undertakings as well as the financial transparency of these undertakings that enjoy a special or exclusive right or are entrusted with the operation of a service of general economic interest. The act was adopted by the Council of Ministers in March of 2006.

16. Moreover, in the year 2005, the OCCP also opined certain acts relating to consumer and market surveillance policy.

1.2 Other relevant measures including new guidelines

17. Article 27.3 of the Act on competition and consumer protection equips the President of the Office with an authority to issue guidelines for the entrepreneurs with an aim to explain the most complex notions

of the Polish competition law, thus providing the President of the Office with an extremely effective tool for conducting the advocacy policy. In the year 2005 there were no new guidelines provided by the President of the OCCP. Nevertheless, it ought to be mentioned that the Department of Legal Affairs and European Jurisprudence on daily bases provided many explanations to the queries of the entrepreneurs concerning the interpretation of the provisions of competition law.

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 the activities*

Office of Competition and Consumer Protection

18. In 2005 the OCCP launched **320** proceedings in cases concerning anti-competitive practices. As of 31st December 2005:

- **201** proceedings were closed;
- **153** proceedings were still pending.

19. As a result of the aforementioned proceedings, in 2005 the President of the Office issued **144** decisions concerning the anti-competitive conduct. The below table shows the detailed break-down of the President's decisions issued in cases concerning the three categories of the anti-competitive conduct, i.e. the vertical agreements, the horizontal agreements and the abuse of dominant position.

Structure of the decisions issued by the President of the OCCP in 2005

Type of decisions type of practice	Decisions finding the practice to be in breach with the competition law	Decisions finding the practice to be in compliance with the competition law	Decisions refusing the initiation of the competition proceedings	Decisions discontinuing the antimonopoly investigation	Decisions finding the practice to be desist	Decisions obligating to undertake or desist certain actions	Interim decisions
Horizontal agreements	4	1	5	0	6	0	0
Vertical agreements	2	2	1	2	3	1	0
Abuse of dominant position	41	26	14	10	14	8	4

Court of Competition and Consumer Protection (CCCP)¹

20. In 2005 the Court of Competition and Consumer Protection ('CCCP') issued a total of **47** judgments concerning the appeals from the decisions of the President of the OCCP. The division as to the type of cases is the following:

- | | | |
|----|--|----|
| a) | judgements in cases of practices restricting competition – 45 , out of which: | |
| | – concerning abuse of dominant position | 39 |
| | – concerning horizontal agreements | 3 |
| | – concerning vertical agreements | 3 |
| b) | judgements in merger cases | 2 |

21. With reference to the judgements of the CCCP in **32** cases the appeal from the decision of the President of the OCCP was overruled, in **3** cases the Court upheld the decision and in **12** cases it changed the decision of the President of the OCCP.

Appeal Court

22. In 2005 the Appeal Court in Warsaw issued **14** judgements in cases of appeals from the Court of Competition and Consumer Protection.

Supreme Court

23. In 2005 the Supreme Court did not issue any judgments in respect to the competition cases.

2.1.2 Description of significant cases

Agreements restricting competition

24. On 20th April 2001, upon the complaint from the Polish Organisation of Commerce and Distribution ('POHiD'), the President of the OCCP initiated proceedings against VISA CEMEA-VISA International in Warsaw, Europay International Ltd in Warsaw, Visa Forum Polska in Warsaw, Europay Forum Polska in Warsaw, banks issuing payment cards within the framework of Visa Forum Polska and Europay Forum Polska as well as the Polish Bank Association. POHiD claimed that these entities were using practices restricting competition in the market of general use payment cards on the territory of Poland by:

- concluding a price agreement concerning the joint setting of *interchange fee*, which is charged for every transaction made with payment cards of Visa and MasterCard in Poland;
- coordination of activities aiming at restricting access to the market to entrepreneurs not belonging to the abovementioned associations;
- fixing the conditions of the concluded agreements within the framework of those associations.

25. In the course of the proceedings POHiD argued that the contested agreement affects the trade between the Member States. The President of the OCCP accepted argumentation of the complainant and

¹ The Court of Competition and Consumer Protection hears the appeals from the decisions of the President of the OCCP, as well as those issued by the sectoral regulators.

the scope of the investigation has been broadened to include the assessment of the agreement in the light of the provisions of Article 81 of the EC Treaty. The relevant market in this case has been defined as the market of services associated with settlement of consumer liabilities, resulting from credit and debit card transactions made within the territory of Poland, to merchants. The proceedings are still in progress.

26. Another significant case concerned the Polish publisher and distributor of *"Harry Potter and the order of the Phoenix"*. Fines for a total amount of over 1.6 million zloty were imposed by the President of the OCCP on the publisher and distributor of the Polish version of the book. That was due to the fact that books may not be sold at a price which would differ by more than 10 percent from the price printed on its cover.

27. In November 2003 a meeting of representatives of Harbour Point – the exclusive publisher of “Harry Potter and the Order of the Phoenix” in the Polish language version with wholesale distributors (EMPiK, Wikr, Ogólnopolski System Dystrybucji Wydawnictw-Azymut, Firma Księgarska Jacek Olesiejuk, DiSO and Wkra) took place. All participants signed an agreement that they would not sell the book at a retail price differing by more than 10 percent from the price printed on the cover. For a paperback issue it was 49 zloty and for the hard cover issue – 59 zloty. The signatories declared that they would inform its contractors (bookstores) of the agreement and they would enforce its implementation. At a later date, the contract was also signed by Matras and Bertelsmann Media. The total share of the distributors who entered into the agreement on the sale of the fifth volume of “Harry Potter” exceeded 80 percent.

28. As evidence collected by the OCCP Branch Office in Katowice, participants of the agreement took steps to implement its contents. Harbour Point was informed of instances of sale of “Harry Potter and the Order of the Phoenix” at a lower price than the agreed one. Besides, wholesalers instructed owners of bookstores in writing, or orally to sell the book at a price agreed earlier.

29. In the opinion of the President of the OCCP, the direct effect of measures taken by participants of the agreement was first of all determination of minimum retail prices, which resulted in restricted competition. In effect, consumers were forced to buy the book at a price determined by participants of the agreement (for instance higher by 20 percent than the previous volume – „*Harry Potter and the Goblet of Fire*”). A similar situation would not have occurred in case of undisturbed competition. The consumer would then choose the most favourable market offer.

30. In view of the above, the President of the OCCP considered the activities of Harbour Point and other participants as an agreement restricting competition and ordered to have it discontinued. Fines for a total amount of over 1.6 million zloty (including 590 thousand zloty imposed on Harbour Point) were imposed on the publisher and the distributors. When deciding the amount of the penalties, the preventive and repressive roles were taken into consideration as well as the fact that neither of the enterprises had been punished earlier for infringing upon the competition law.

Abuse of dominant position

31. One of the cases held by the OCCP in 2005 concerning abuse of dominant position referred to the sign “Green Point” marking used by the waste recycling company Rekpol -Organizacja Odzysku. The President of the Office of Competition and Consumer Protection Cezary Banasiński ordered to immediately discontinue the competition restricting practices that it was charged with.

32. The Act on the duties of undertakings on waste management imposes an obligation of waste recycling on those entrepreneurs who are involved in the production or import of goods. This can be done by themselves or by specialised companies. Among many companies operating in the market, only one –

Rekopol-Organizacja Odzysku – holds a right to licence and use in Poland the mark “Green point”, which is a world-recognisable sign associated with care for the natural environment.

33. Since January 2004, at request of Zakład Gospodarki Komunalnej Organizacja Odzysku Biosystem, the OCCP has been conducting an investigation against Rekopol. In the opinion of the applicant, Rekopol breaches market rules since enterprises that want to use the “Green Point” marking are forced to enter into recycling contracts exclusively with that company. If they wished to make use of a competitive offer and be able to lawfully place the “Green Point” mark on packaging, they would have to pay double.

34. The information collected by the Office shows, that Rekopol could have breached the provisions of the antimonopoly law. Making it conditional to use the “Green Point” marking on entrusting the services of waste recycling (with respect to all kinds of packaging), may constitute a restricting competition practice. In the opinion of the OCCP, the practices of Rekopol result in an inferior market situation of the other recycling organisations by loss of their clients or difficulties in obtaining new clients, thus consolidating the dominant position of the company.

35. The provisions of the Act on competition and consumer protection give a right to the President of the OCCP to oblige an undertaking to discontinue specific practices before the antimonopoly proceeding has been completed. Then it is necessary to collect evidence that the law has been breached. Such situation occurred with respect to practices by Rekopol.

36. As continuation of the practices may cause major and difficult to repair hazard to competition, the President of the OCCP ordered Rekopol to immediately discontinue the questioned practices, even before a final decision in the matter has been issued. Pursuant to the decision, the company may not use the practices by 31 December 2006.

37. In accordance with the law, if Rekopol appeals against the decision of the President of the OCCP, it will remain in force. If the company fails to observe the decision issued by the Office, it will be possible to impose on it a fine of 10 thousand EUR for each day of delay.

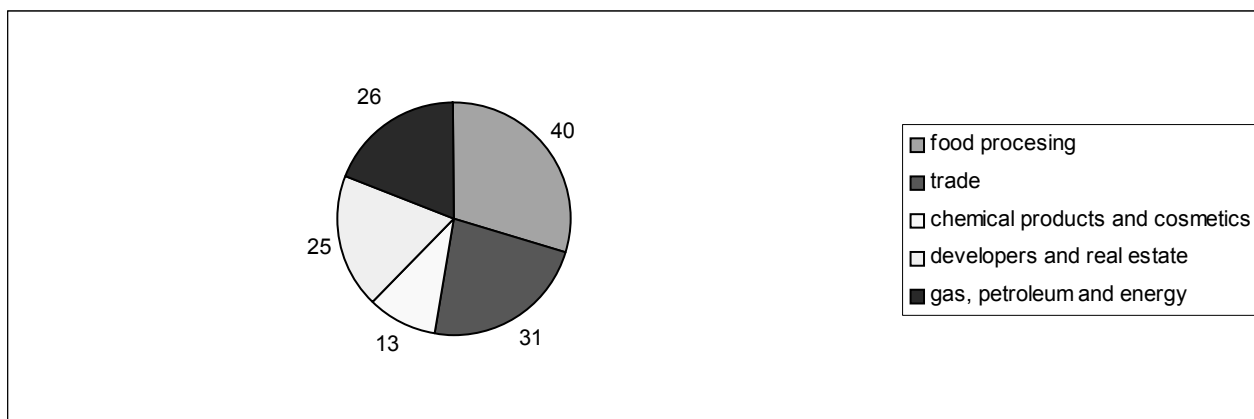
38. 23. Another proceedings were initiated due to suspicion of abuse of dominant position by Telekomunikacja Polska S.A. (Polish incumbent operator), seated in Warsaw. The operator restricts access to its network resulting from delaying the execution of orders for access points in telecommunication networks. This may counteract the establishment of essential mechanisms for the development of competition in the market of the wholesale access to the public stationary telephone network as well as on retail markets e.g. the market of local, inter-zone, F2M and international connections. Thus, it can constitute a practice restricting competition in the meaning of Article 8 item 1 in relation to Article 8 item 2 point 5 of the Act on the competition and consumer protection and Article 82 of the Treaty establishing the European Community. The proceeding is still in progress.

2.2 *Mergers and acquisitions*

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

39. In 2005 the President of the OCCP issued out of a total of **378** merger cases **329** concentration decisions. In **265** cases the President approved the concentration. In case of **2** acquisitions a conditional approval was issued. In 2005 no concentration was forbidden by the President of the OCCP.

Concentration cases closed in 2005 (by sector)



2.2.2 Description of significant cases

40. In 2005 the President of the OCCP decided that Carey Agri International Poland can take control over Polmos Białystok, though the consent is subject to condition, that in the coming three years the company forgoes the exclusivity to distribute the vodka it produces in favour of independent undertakings.

41. On 7 July 2005 Carey Agri International Poland (a part of the Central European Distribution Corporation capital group) filed a motion to the OCCP for approval to take over the direct control of Polmos Białystok through purchase of 61 percent of shares of this company. In relation to the fact that the total turnover of the transaction participants exceeded the amount of EUR 50 million, the acquisition had to be reported and was subject to issuing an opinion by the President of the Office of Competition and Consumer Protection.

42. In the course of the antitrust proceeding, the OCCP emphasised that Carey Agri, being the leading distributor of alcohol beverages in Poland – by taking over Polmos Białystok – is becoming the owner of two out of three largest alcohol producers in the country (in August 2005 the undertaking purchased the Bols company.) Consequently, aiming to eliminate a potential threat consisting in the ability of Carey Agri to limit the access of other undertakings dealing with wholesale distribution of alcohol beverages to its products, the President of the OCCP issued a conditional consent in this case.

43. According to the issued decision, Carey Agri may take over the control of the company, provided the company forgoes the exclusivity to distribute vodkas produced by Bols and Polmos Białystok in favour of undertakings from outside its capital group for the next three years. Within the years 2005 – 2008 (in every year of this period) Carey Agri is obliged to realise a minimum of 35 percent of domestic sales of goods of these producers via independent distributors. This restriction particularly refers to vodkas offered under the Bols, Sopolica, Absolutent and Żubrówka brands, which due to their extensive market significance are offered by each undertaking that deals with wholesale distribution of alcohol beverages. Additionally, the President of the OCCP obliged the undertaking to hand over the information about the implementation method for the imposed condition within the time limits indicated by the Office.

44. Another merger case concerned a concentration on the fuel market. The President of the OCCP dismissed the proceedings in the case of concentration consisting in taking over control over part of Sloznaft Polska S.A. seated in Kraków (Sloznaft Polska) by Lotos Paliwa Sp. z o.o. seated in Gdańsk (Lotos Paliwa) by enabling Lotos Paliwa to initiate cooperation with 10 operators running filling stations under the name of Sloznaft in the franchising system.

45. On 11th October 2005, Lotos Paliwa notified the intention of concentration consisting in taking over control over part of Slovnaft Polska by enabling Lotos Paliwa to initiate cooperation with 10 operators running filling stations under the name of Slovnaft.

46. In the course of proceedings it was established that Lotos Paliwa is an operator which is engaged in activity concerning wholesale and retail sales of fuels and light fuel oil and which manages a chain of filling stations located at the territory of Poland. This entity belongs to the capital group Grupa Lotos S.A., the dominant company of which is Nafta Polska S.A. seated in Warsaw and controlled in 100% by the State Treasury. On the other hand, Slovnaft Polska is a company incorporated under Polish law, directly controlled by Slovnaft a.s. seated in Bratislava, and belonging to MOL capital group, the dominant entity of which is a Hungarian company MOL Magyar Olaj - es Gazipari Rt. - one of the largest entities in the oil and gas sector in the Middle Europe. The main area of the activity of Slovnaft Polska is wholesale of liquid fuels and retail sale of fuels at filling stations within the territory of Poland.

47. As transpired from the information presented in the notification, in 2002-2003 Slovnaft Polska concluded franchising contracts with 10 operators engaged in activity concerning retail sale of fuels. At present, on account of the intention to withdraw from the Polish market in retail sale of fuels, it resigns from the cooperation with its partners belonging to the Slovnaft franchising chain. Since Lotos Paliwa expressed its interest in initiation of trade relations with the partners of Slovnaft Polska, on 28th September 2005 these two companies concluded the Contract on Partner Stations laying down the rules for mutual cooperation aimed to enable Lotos Paliwa to conclude franchising contracts with the operators concerned. According to this contract, Slovnaft Polska, Lotos Paliwa and each of 10 partners of Slovnaft Polska, having agreed on the rules of cooperation, will conclude a trilateral agreement. According to the trilateral agreement, Slovnaft Polska will terminate the franchising contract with its former partner, and Lotos Paliwa and the partner concerned will take on an obligation to conclude a contract of cooperation in the franchising system.

48. This multi-stage transaction will cover neither acquisition of proprietorship, nor perpetual use of land properties, nor the proprietorship of buildings and equipment being part of the filling stations concerned. These rights will remain under control of the operators in question, i.e. the former partners of Slovnaft Polska.

49. The analysis of the schedule of operations between Lotos Paliwa and Slovnaft Polska did not give the President of the OCCP any basis for concluding that at any stage it will lead to direct or indirect taking over of the control over Slovnaft Polska by Lotos Paliwa. The agreement concluded between these operators does not provide for a general transfer of rights following from former contracts concluded between Slovnaft Polska and its partners, but for cooperation aimed to enable Lotos Paliwa to enter into similar contracts.

50. Having taken the above into consideration, it had to be concluded that the intention to perform the operation concerned had not been subject to the notification obligation laid down in Article 12 (1) with respect to Article 12 (2) (2) of the Act on competition and consumer protection, since this operation would not lead to taking over control of part or whole of an operator by one or more other operators. Thus, the proceedings instituted on account of the notification described had to be deemed irrelevant and dismissed.

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

51. The activities carried out by the OCCP with an aim of influencing other policies, might be roughly divided into two categories i.e. Office's opining activities in regard of drafts of the legal acts

prepared by other ministries and participation of the OCCP's employees in the activities of various governmental as well as parliamentary working groups and committees.

52. The procedural mechanisms for drafting legal acts by the Polish governmental institutions provide for an obligation to consult all drafts with any other governmental agency, which activities might be affected by the would-be law.

53. In 2005 the OCCP participated in works on Polish and EU drafts of legislative acts and other documents. Those included, among others:

- draft Guidelines for regional state aid for the years 2007-2010;
- action plan for state aid: Less and better targeted state aid: a roadmap for state aid reform for
- 2005-2009 (Consultation document)(COM(2005)107);
- consultation document on the state aid for innovation (COM(2005)436);
- community guidelines on financing of airports and start-up aid to airlines departing from
- regional airports (2005/C 312/01);
- questionnaire concerning state aid for environment protection.

54. Besides this, in the same year a total of **3000** drafts of legal acts were opined by the OCCP. When making its comments the OCCP puts an emphasis on consistency of those acts with competition law, including the state aid law, as well as the issues related to protection of consumers' interests.

55. As a way of illustration of the opining powers of the President of the OCCP, the following comments were provided in reference to the parliamentary draft act amending the act on forests and the act on the freedom of economic activity.

56. In its Article 58(4) the parliamentary draft act covered the establishment of a forest fund to secure funds for the support of the State Forests organisational units, i.e. forest inspectorates, in emergency situations (natural disasters) and low wood demand conditions.

57. The President of the OCCP proposed to delete the phrase "low wood demand conditions" from article 58(4) so as to prevent the threat of creating a strong post-market price regulating mechanism on the wood market. Support granted to the organisational units of State Forests, i.e. forest inspectorates, from the forest fund to eliminate extraordinary threats to forests related to a low demand for wood could produce an unjustified privilege for the forest inspectorates as compared with other wood trade businesses. Co-financing of the forest inspectorates in case of low demand on the wood market could affect financial situation of these entities and could be a tool affecting the price of wood. It is conceivable that such support would be a state aid in the meaning of Article 87 (1) of the Treaty.

58. Another act to which the President of the OCCP provided comments was the Parliamentary draft act amending the act of 16th July 2004 on Telecommunications law. Article 165 (1) of draft act covered to impose on the operators of public telecommunications network, or suppliers of telecommunications services accessible to the public, who process transmission the subscribers and end users data the obligation of storing these data for 15 years. This would certainly be an additional financial burden for the

operators. Contrary to the justification of the submitted draft act the real costs of storage and processing of data for such a long period created rising doubts.

59. In opinion of the President of the OCCP the costs borne by the operators complying with the new obligation could be used as a justification for maintaining or even raising the telecommunications service prices which are already high. The increase in the cost of operators' activity could indirectly affect the consumers, i.e. users of telecommunications network. The justification for the parliamentary draft act did not provide sufficient arguments in favour of the requirement to storing the data for 15 years by the operators. According to the President of the OCCP a shorter storage period would be required. The proposed 15 years' period would not cover the limitation period for the heaviest offences.

60. Therefore, the President of the OCCP pointed out at the necessity to shorten the storage period of the transmission data concerning the subscribers and end users imposed on the operators of public telecommunications network, or the suppliers of telecommunications services accessible to the public. This solution would minimise the burden for the operators and probably even for the consumers. Eventually, on 29th December 2005 the Parliament adopted the act amending Telecommunications law and the Civil Proceedings Code Act which reduced the storage period from 15 to 2 years.

61. As far as the state aid is concerned on 1st May 2004 there were introduced fundamental changes in the legal regulations. Due to the accession, the act of 27th July 2002 on eligibility terms and supervision of state aid provided to entrepreneurs (Journal of Laws No. 141 item 1177 as amended), which defined the state aid eligibility terms and supervision principles was waived. On 31st May 2004 a new Act of 30th April 2004 on state aid proceedings (Journal of Laws No. 123 item 1291) entered into force regulating proceedings in cases relating to state aid on national level.

62. On the basis of the above-mentioned Act, 8 regulations were issued. They define the main reporting duties of the bodies granting state aid, as well as of the aid beneficiaries. They also describe the information given to the President of the OCCP in order to issue an opinion about a planned state aid and to notify it to the European Commission.

63. From the accession the European Commission is the sole competent authority to determine compliance of granted aid with the Community law. Before the accession this was the responsibility of the President of the OCCP. According to the Act on proceedings in matters relating to state aid the President of the OCCP opines the aid schemes and projects of individual aid before their formal notification to the EC. The President of the OCCP in his opinion expresses position, among others, with reference to the compliance with the proposed aid actions with the internal market and in case of their incompliance proposes certain solutions as to their elimination. The opinion of the President of the OCCP is not binding.

64. As far as 2005 state aid is concerned, the OCCP dealt with the following issues: restructuring of the iron and steel industry, restructuring of the Great Chemical Synthesis Sector, restructuring of the ship building industry, restructuring of coal mining sector, restructuring of the operators within the framework of the act on commercialisation and privatisation of State Enterprises (aid granting body – the Minister of the State Treasure), act on restructuring of certain legal public debts, act on restructuring the enterprises of special importance for labour market (aid granting body – Industrial Development Agency) and within the framework of Tax Code Act, restructuring of long-term contracts, financial support for projects, state aid granted to the operators who carry out their business in special economic areas, state aid granted to the sheltered workshops, state aid granted by the Poviats employment offices, state aid granted to the public radio and TV stations, state aid granted in the area of culture and national heritage protection (cinematography, cultural institutions, historical monuments), state aid granted by the Polish Agency for Enterprise Development, state legal partnership, state aid granted for environmental protection, state aid associated with structural fund expenditure.

65. In January 2005 in Poland there were **37** national state aid programmes which were compliant to the Community law. Simultaneously, **23** further projects of aid scheme and **20** individual aid projects were notified to the European Commission and await EC's decision.

66. In 2005 the OCCP issued **83** opinions: **70** dealt with projects of aid scheme and **13** with individual aid projects.

67. In addition, the Office continued its work in enforcing of the national state aid monitoring system aiming at a greater transparency and better exchange of data for securing a reliable register of the aid granted. The OCCP also elaborated analysis concerning the state aid granted. The most important document was "*Report on state aid granted to entrepreneurs in 2004*", as well as an analysis "*Results of monitoring of the state aid granted to automobile companies conducting economic activity within the Special Economic Zones (State as of 30th June 2005)*".

68. Moreover, in 2005 the works on a computer system SHRiMP aimed at a more precise monitoring and facilitating of the procedures of control of state aid in Poland were continued. The system provides coordination of the activities undertaken by the entities granting aid and others subject to the regulations of the Act of 30th April 2004 on proceedings in matters relating to state aid.

4. Resources of competition authorities

4.1 Annual budget of the OCCP 2005

	2005	
	PLN	EURO
Office of Competition and Consumer Protection of which:		
Income	1.380.000	354.993
Expenditure	42.763.000	11.000.411
OCCP	25.351.000	6.521.325
Trade Inspection	15.212.000	3.913.155
Allocation for NGOs	2.200.000	565.930

4.2 Number of employees

Employment in the OCCP (as of 31st Dec. 2005)

	2005
Total	278
Economists	67
Lawyers	137
Other professions	74

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

5.1 Market analysis

69. In 2005 the OCCP Branch Offices conducted in total **78** market research activities. **49** of them referred to local markets in the narrow sense of the term. The remaining **29** referred to the national market. The branches of the economy researched concerned mainly those where there were signals from the

consumers and entrepreneurs on certain market irregularities. The majority referred to the conducted antimonopoly proceedings.

70. The market analysis conducted by the OCCP's main office have a broader character than those carried out by the OCCP Branch offices. Even though the inspiration to conduct a specific research is normally influenced by the situation in the market, the analysis of the Department are aimed at providing a wider diagnosis of the determined market and the state of competition on it. In the year 2005 the OCCP's main office conducted several analysis on the following markets: broadband Internet connections, fertilisers, pharmaceutical, mobile telephones, banking services, banking commissions on ATM cash transactions, oil and of wholesale trade in liquid fuels.

5.1.1 Banking services market

71. In 2005 the OCCP conducted a detailed banking services market analyses in Poland. The main objective was an analysis of structural changes taking place in the market with reference to, among others, the planned merger between UniCredito (UCI) and HypoVereinsbank (HVB).

72. As a result of the research, the information gathered included, among others, the value of the assets of respective banks, the number of payment and credit cards, as well as the information on the concentration of the retail and corporate banking market (number of accounts, the value of deposits and credits granted). Stockbroker, leasing and factoring services were also subject to the analysis.

73. On a further stage of the research the OCCP focused on products and services for subjects from small and medium enterprises (number of accounts, value of deposits on accounts, number of credits granted) as well as the location of territorial agencies of the banks.

74. The information gathered during the market analysis as well that the conclusions drawn were used in current work of the Office.

5.2 Information and education activities

75. In 2005 the OCCP conducted intense information and educational activities, were focused mainly on raising the consumer awareness as to the binding law regulations and teaching the public critical thinking, so that they could make conscious choices and react to commercial pressure. At the same time numerous projects have been realised, the purpose of which was to increase the awareness of entrepreneurs in the scope of legal provisions on competition.

5.2.1 Educational programme "I have the right to competition", broadcast in the 1st Programme of the Polish Radio

76. The beginning of the broadcasts: November 2005. The assumption of the programme is to popularise the knowledge on the Polish and EC antimonopoly regulations and advantages brought to consumers by competition among all market participants.

77. The broadcasts cycle is aimed at a wide group of recipients. The OCCP's employees as well as economy and law experts present there the advantages of free competition for consumers, and explain in an easily understandable way numerous basic concepts of the antimonopoly regulations, as well as directions in the development of this law in Poland and in the European Union. The following subjects were broadcasted in 2005: Why should the competition in the market be protected? Explanation of basic terms and regulations; Tasks of the Office of Competition and Consumer Protection as the competition authority; What is the importance of competition protection for the consumer?; Agreements restricting the competition – types (price fixing, market division) and forms (agreement, decision, agreed practice); Ban

on agreements restricting the competition. Evidence problem: why is it allowed to copy the prices but not to agree them?; Key witness in antimonopoly regulations (*leniency*).

78. The “I have the right to competition” broadcasts is continued in 2006.

5.2.2 *TV and Radio programme “Consumer”*

79. Due to the OCCP’s initiative the 1st Programme of the Polish Radio also broadcasted a 16-episode series on consumer issues. The subject matters of individual programmes corresponded to those presented on the Channel Two of the Polish Television. The series was accompanied by a hot line operated by the OCCP employees.

5.3 *Brochures and books*

80. The following brochures from the field of competition protection were published in the year 2005:

- competition and consumer protection in Poland and in the European Union (legal and economic studies) edited by Cezary Banasiński;
- the control of the concentration of enterprises – competence of the President of the Office of Competition and Consumer Protection and the European Commission after 1st May 2004;
- collection of legal acts – The control of the concentration of enterprises in the Community law;
- collection of legal acts – Prohibition of practices restricting competition in the Community law;
- competition Protection Law – a collection of legal acts (Polish law);
- on the occasion of the 15th anniversary of the OCCP, a publication comprised articles of Polish experts on competition and consumer protection entitled “Competition and consumer protection in Poland and in the European Union (legal and economic studies)” was issued.

5.4 *The OCCP’s website*

81. In August 2005 a modified Internet service of the Office was launched in the Polish and English language. It includes, *inter alia*, information about: current events and social campaigns, national and Community legal acts concerning competition and consumer protection, selected decisions of the President of OCCP. In addition, the weaker market participants via the OCCP website (www.uokik.gov.pl) get familiarised with the institutions protecting their interests, and entrepreneurs (*leniency* programme).

82. The service in English is mainly used to promote national legislation and the resolutions of the President of the OCCP among consumers, entrepreneurs and foreign institutions. Moreover starting from 2006 it will include periodic reports devoted to the competition policy in Poland prepared for international institutions, e.g. OECD.

83. In December 2005, in the scope of the Webstarfestival competition, the OCCP was awarded the title of the best government administration website for its functionality, content, graphical design, easiness of navigation and innovativeness.