



Office of Competition and Consumer Protection

RULES FOR CONTACT WITH ENTERPRISES

Warsaw 2015



The aims of this document

UOKiK's key principles include open communication and transparency in its activities. The following guidelines are based on the assumption that these principles can - and should - be implemented not only in the performance of extrajudicial tasks, but also in the course of, or in connection with, UOKiK's enforcement activity, including preliminary proceedings as well as proceedings in cases of competition-restricting practices, merger cases, and violation of collective consumer interests.

The binding procedural regulations laid down primarily in the Act on Competition and Consumer Protection and the Code of Administrative Procedure as well as in the relevant section of the Code of Civil Procedure institute the standards for conduct of administrative proceedings before the UOKiK President. These standards consist of a number of rights and procedural guarantees for the parties involved in the proceedings and a catalogue of duties incumbent upon the President. However, the procedural rules are not complete; they do not regulate in detail, or in some cases at all, the many situations in which direct contact between the Authority and an enterprise might be warranted, in particular in the case of decisions granting room for negotiation (for example, commitment decisions or conditional permission for a merger).

The goal of the UOKiK President is to ensure as completely as possible that the fundamental principles of administrative procedure are applied in each proceeding based on the Act on Competition and Consumer Protection, including the principle of conducting proceedings in a manner which fosters trust in the state and its apparatus (art. 8 of the Code of Administrative Procedure, or CAP), the principle of active participation by the parties to the proceedings (art. 10.1 CAP), and the principle of prompt and straightforward proceedings (art.12 CAP) which involves "all necessary steps to clarify the facts of a case and to resolve it with due heed for the public interest and for the legitimate interests of members of the public" (art. 7 of the CAP). Towards this end, it is the accepted standard that, where warranted by the circumstances at hand and absent legal or factual grounds militating to the contrary, the enterprise should be afforded the opportunity to present its position in a relatively informal setting - directly to a member of the UOKiK staff, outside the framework of the procedure. In like spirit, the enterprise should be assured that it may readily obtain the necessary information relating to the pending proceedings and that - if at all possible - it may receive guidance as to its behaviour.

The aim of this document is to lay out and make a matter of public record the general rules according to which direct contact between UOKiK and an enterprise (or its legal representative) may proceed.

These same rules shall apply to interactions with entities other than enterprises which participate, or may participate, in proceedings before UOKiK regardless of their legal status, particularly with individuals who perform managerial functions as defined in art. 4.3a of the Act on Competition and Consumer Protection and who are empowered to submit notifications on the basis of art. 86.1 or art. 100.1 of the Act.

Communicating by telephone and email

The telephone is the means of communication most frequently chosen by enterprises or their legal representatives to communicate with UOKiK. Enterprises or their counsel may be provided with information and notified of arrangements of a technical or organisational character (confirmation of receipt of a letter, scheduling a meeting to review documents involved in the proceedings). Basic legal information may also be communicated over the telephone. Contact by telephone may be used, specifically, to:

- Clarify doubts as to the scope of information and documents an enterprise is to submit (including as required by summons) to UOKiK;
- Indicate the possible outcomes of preliminary, antitrust, or violation of collective consumer interests proceedings;
- Clarify any legal uncertainty concerning provisions of the law regulating an enterprise's notification to UOKiK of a contemplated merger;
- Provide basic legal information on the nature of charges brought by UOKiK;
- Provide basic information on the documents and other materials included in the case file;
- Define the conditions and procedures for extending the deadline for submitting clarifications;
- Determine the status of proceedings and the anticipated date of their completion.

UOKiK may refuse to provide the above information if there is any doubt as to the identity of the caller. At the request of the UOKiK employee taking the call, the enterprise is required to confirm its request in the official form envisaged for this purpose. An enterprise cannot expect to be provided with information on the conclusions drawn on the basis of evidence gathered in the investigation or on the decision likely to be made in the case. The individual authorised to contact the enterprise (or its legal representative) is the UOKiK staff member handling the case, as named in each letter addressed to the enterprise by UOKiK. Any arrangements or requests made by phone (concerning, for example, reduction of the scope of information and documents sought by UOKiK or extension of a deadline) will be confirmed by UOKiK (by email, fax or by official letter). Information and findings of a technical or organisational nature may be communicated by email.

Direct contact

In many instances, meeting with an enterprise's representatives presents a better means of securing specialized information. In the final stages of analysing evidence, such meetings help UOKiK to understand an enterprise's position in all its details.

The basic criterion for assessing the justification for a meeting with the company (or its legal representative) is whether such a meeting may, reasonably, be expected to move the proceedings forward. Having as they do a purely supplementary role, such meetings cannot be used to accept or to submit evidence. Requests for a meeting must be made in an email setting out a proposed agenda and naming the persons whom the enterprise would like to attend.

There can be a variety of reasons to seek a meeting with UOKiK, including:

- To obtain information about and/or preliminary assessment of a merger filing or a leniency application - before the filing or application has been submitted, or before formal proceedings have been initiated;
- To identify matters of potential doubt and any possible questions or objections on the part of UOKiK (please see the clarifications on the criteria and procedures for notifying the President of UOKiK of the intention to effectuate a merger, as posted on the UOKiK website) before the enterprise submits a merger notification;
- To state the enterprise's position or to settle points disputed in the course of preliminary, antitrust, or violation of collective consumer interests investigations;
- To clarify charges, obtain information, or to agree on the undertaking's commitments in the course of antitrust proceedings or proceedings concerning violation of collective consumer interests.

The UOKiK unit director working in consultation with the staff member in charge of the investigation decides, within five working days following receipt by UOKiK of the request to hold a meeting, whether to hold such a meeting.

A minimum of two UOKiK staff members shall be present at the meeting. An exception may be made only for meetings held before an investigation has begun. To the extent technically possible and justified by the circumstances and object of the meeting, the director of the unit leading the investigation may agree to hold the meeting via videoconference.

An official record specifying the place and date of the meeting and the names and official positions of its participants is kept for every meeting held in the course of an investigation. In exceptional cases, in particular when the subject of the meeting so requires, it may be decided to not draw up a record (at the request of the initiator of the meeting, and provided that none of the participants object to such a solution).

The record is enclosed with the case file. Materials used by the participants during the meeting may be submitted for addition to the file.

Reservations regarding application of the above rules of conduct in practice may be submitted to the President of UOKiK at sp@uokik.gov.pl.