



Office of Competition and Consumer Protection

Report on UOKiK activities in 2019



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Office of Competition and Consumer Protection

Warsaw 2020

TABLE OF CONTENTS



UOKIK

KEY INFORMATION 4

INTRODUCTION 8

**CALENDAR
OF EVENTS 10**



COMPETITION PROTECTION

- 1.1** Competition-restricting practices 16
- 1.2** Contractual advantage 28
- 1.3** Concentration control 31
- 1.4** State aid 36
- 1.5** Court judgements in competition protection cases 42



02

CONSUMER PROTECTION

- 2.1** Practices violating collective consumer interests and prohibited clauses in model contracts 48
- 2.2** Supervision over the Trade Inspection 62
- 2.3** Product safety and market surveillance 65
- 2.4** Laboratories 69
- 2.5** Fuel quality control system 70
- 2.6** Out-of-court consumer dispute resolution system 72
- 2.7** Cooperation with consumer ombudsmen and consumer organisations 74
- 2.8** European Consumer Centre 76
- 2.9** Court judgements in consumer protection cases 78

03



LEGISLATIVE WORK

- 3.1.1** National legislation 86
- 3.1.2** International legislation 92
- 3.1.3** References for a preliminary ruling 95

SOCIAL SURVEYS AND MARKET ANALYSES 100

INFORMATION AND EDUCATIONAL ACTIVITIES 104

INTERNATIONAL COOPERATION 108

CONCLUSION 114

UOKiK – key information

Who are we?

The President of the Office of Competition and Consumer Protection (UOKiK) is a central government administration authority responsible for the protection of competition and consumers via the Office. The powers of the President of UOKiK are laid down in the Act on Competition and Consumer Protection of 16 February 2007¹. The activities of UOKiK are financed from the state budget.

Our mission

is to raise the level of consumer welfare through effective protection of consumers' interests and supporting the development of competition. We respect the principles of openness and dialogue in relations with market participants.

UOKiK's tasks include

1.
preventing irregularities in the functioning and development of competition and eliminating them

2.
protecting the collective consumer interests

3.
controlling mergers and acquisitions

4.
monitoring state aid

5.
ensuring product safety and supervising the market of non-food products, agricultural products and foodstuffs with regard to quality

6.
participating in the legislative process with a view to create a legal environment which promotes the development of competition that ensures the effective protection of consumer interests.

Management

President of UOKiK

Marek Niechciał (performed the function until 26 January 2020)

Vice President of UOKiK

(competition protection)
Michał Holeksa

Vice President of UOKiK

(consumer protection)
Tomasz Chróstny (performed the function from 26 August 2019 to 26 January 2020)²

Dorota Karczewska (performed the function until 10 June 2019)

Director General

Maciej Jabłoński (performed the function until 8 December 2019)

¹ The Act on Competition and Consumer Protection of 16 February 2007 (Dz. U. [Polish Journal of Laws]

2020, items 1076 and 1086), hereinafter referred to as the "UOKiK act".

² Tomasz Chróstny was appointed as President of UOKiK on 27 January 2020.

UOKiK in numbers – 2019

78.5

PLN mn – BUDGET

498

EMPLOYEES

952

DECISIONS, including:

287

related to
competition protection

665

related to
consumer protection

424.9

**PLN mn – FINANCIAL PENALTIES imposed
on entrepreneurs, including:**

PLN 5.2 mn for competition-restricting practices

PLN 189.1 mn for practices that violate collective
consumer interests

PLN 49.3 mn in relation to the recognition of model
contract clauses as prohibited

PLN 0.1 mn for failure to report the intention to
implement a concentration or for implementing a
concentration without obtaining the required consent
from the President of UOKiK

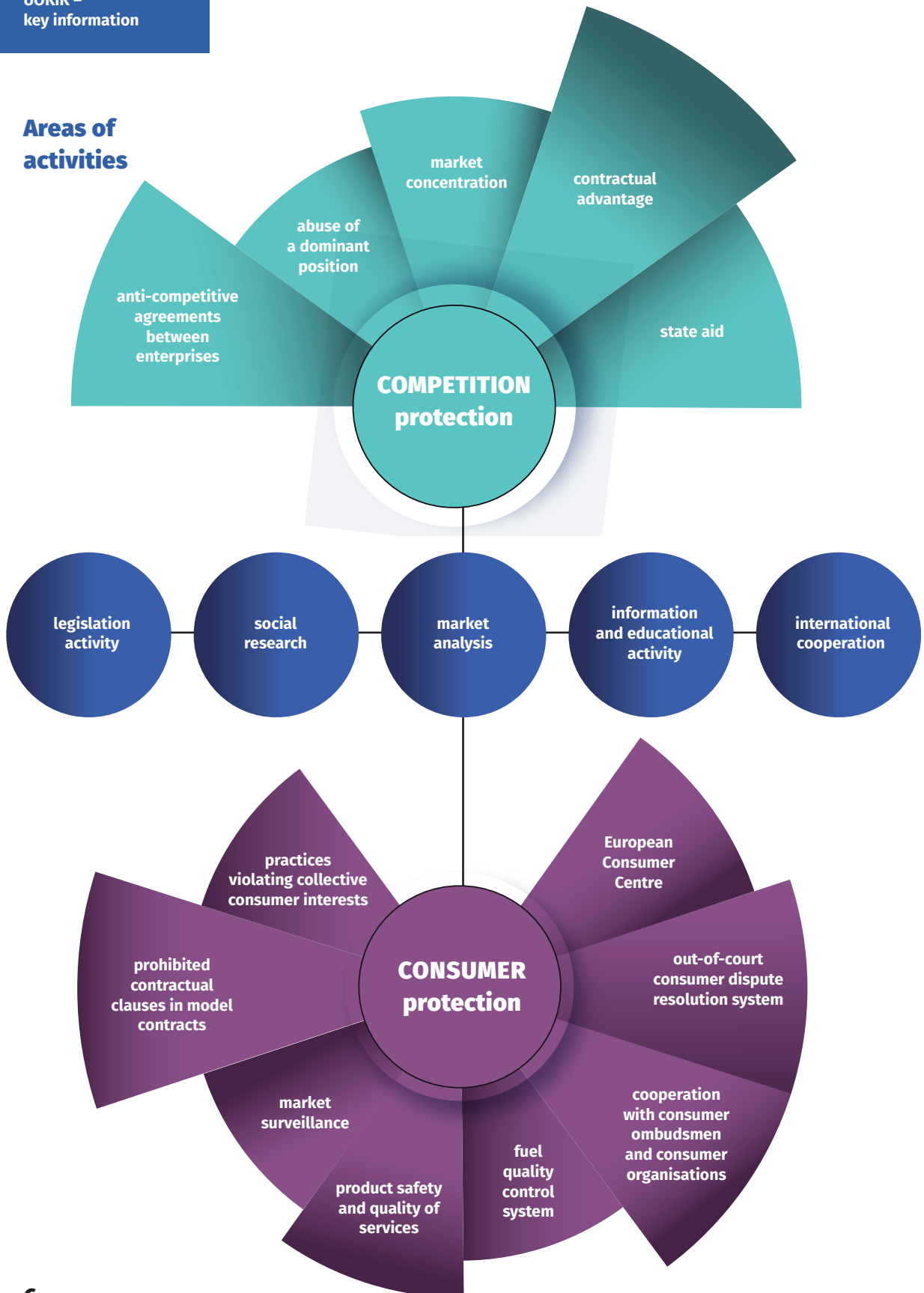
PLN 172 mn for failure to provide information in the
course of concentration control proceedings

PLN 8.3 mn for unfair use of contractual advantage

PLN 0.6 mn for violations in connection with the Act on
Conformity Assessment and Market Surveillance Systems

PLN 0.2 mn in relation to the general product safety

Areas of activities



Organisational structure and division of responsibilities (as at 31 December 2019)

President

Executive Office
Press Office
Department for Protection of Collective Consumer Interests
Laboratories Department
Branch Offices

Vice President (competition protection)

Department of Competition Protection
Department of Concentration Control
Legal Department
Department of Market Analyses
Department of State Aid Monitoring

Vice President (consumer protection)

Department of Trade Inspection
Department of Market Surveillance

Director General

Office of HR, Training, and Organisational Affairs
Office of Budget and Administration
Independent Position for Protection of Classified Information
Independent Position for Protection of Personal Data

UOKiK's Head Office in Warsaw and 9 Branch Offices³:

Branch Office in Bydgoszcz
Branch Office in Gdańsk
Branch Office in Katowice
Branch Office in Kraków
Branch Office in Lublin
Branch Office in Łódź
Branch Office in Poznań
Branch Office in Warsaw
Branch Office in Wrocław

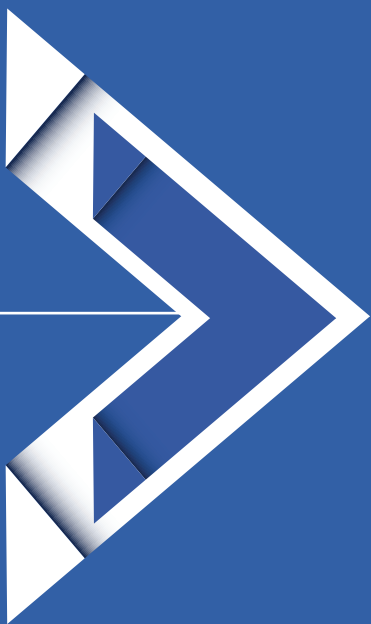
³ Regulation No. 272 of the Prime Minister of 20 December 2019 on the charter of UOKiK (Polish Gazette

[Monitor Polski] of 2019, item 1198), under which there are 8 branch offices operating within the structure of

UOKiK, as the branch office in Warsaw has been decommissioned, entered into force on 3 January 2020.

Introduction

In 2019, the activities of UOKiK were focused on combating bid rigging agreements on a nationwide and local scale. In regard to consumer protection, UOKiK eliminated irregularities primarily on the financial and telecommunications markets, including prohibited contractual clauses used by enterprises.



In 2019, in the area of competition protection, UOKiK continued to prioritise **improving the detectability of illegal agreements between enterprises**. For this purpose, UOKiK launched a platform for whistleblowers that allows them to anonymously report any irregularities, including bid rigging agreements. An international conference organised by UOKiK on the World Competition Day was devoted to the issue of effectively eliminating competition-restricting agreements.

An important aspect of conducted antitrust proceedings is the **ability of the President of UOKiK to file charges against management staff** – in 2019 this was the case for 3 proceedings. Managers responsible for entering into an anti-competitive agreement may be subject to a fine in the amount of up to PLN 2 mn.

In 2019, there was **yet another increase in the number of cases related to concentration**. UOKiK issued 266 concentration consents. In over 96% of the cases, the decision was made in the first phase of the proceedings. As regards contractual advantage, there were 5 decisions regarding irregularities in relations between farmers and processors or commercial chains. Furthermore, UOKiK was also involved in works on the amendment to the Act on Procedural Issues Concerning State Aid, the purpose of which is to adapt the Act to current EU regulations.

In the area of consumer protection, the activities of UOKiK in 2019 were focused on **eliminating prohibited practices on the financial services market**. The conducted proceedings examined, in particular, offers and sales methods of the so-called alternative investments. The President of UOKiK issued 3 consumer warnings concerning pyramid schemes.

In the past year, the constantly recurring issue in decisions issued by the President were **prohibited contractual clauses concerning the method used by banks to determine exchange rates in model agreements for foreign currency mortgage loans**. The judgement of the Court of Justice of the European Union (case C-260/18 Dziubak) of October 2019 proved to be relevant to consumer protection and case law practice of the President of UOKiK. This judgement applies to each agreement containing prohibited clauses, which is why it may be of key importance to borrowers when seeking claims against banks before common courts. Significant views, regularly issued by the President of UOKiK in court ca-

ses, also constitute tangible help for consumers. In 2019, there were 809 such opinions issued.

UOKiK also responded to **violations emerging on the telecommunications services market**. They consisted, *inter alia*, in an unauthorised amendment of the terms and conditions of agreements concluded with subscribers, obstructing access to services and providing unreliable information about the actual price of services in advertising materials. UOKiK also conducted proceedings concerning the use of prohibited contractual clauses by operators in the terms of service and model agreements in dealings with consumers.

Similarly as in the previous years, much attention was paid to the protection of **vulnerable consumer groups**. Seniors continue to be the target of unfair market practices used by enterprises organising sales presentations. Hiding the true purpose of these meetings, providing misleading information about health condition and limiting the right to cancel the agreement are some of the most frequent charges made by UOKiK.

UOKiK continuously **cooperated with institutions dealing with consumer protection**. In 2019, during the conference organised on the World Consumer Rights Day, the institution of consumer ombudsman celebrated the 20th anniversary of its existence in Poland. The topic of this event were also challenges facing the consumer protection system in Poland and directions for the reform of the national market surveillance system.

As regards product safety, on 1 July 2019 the Trade Inspection gained a new competency in the form of **control over the quality of solid fuels offered to consumers**. This applies to fuels intended to be used in households or combustion installations with a rated thermal input lower than 1 MW, including bituminous coal or coke, for example.

As every year, UOKiK was involved in the **national and international legislative process**. Amendments to the Act on Competition and Consumer Protection concerning new competencies of UOKiK as regards enforcing the ban on geoblocking and access to fiscal confidentiality, adopted in the summer, entered into force on 17 September 2019. Other amendments, e.g. those related to the internal structure of UOKiK, will become effective in January 2020.



MARCH

13.03

Conference to celebrate the World Consumer Rights Day

The annual conference of UOKiK was held under the name “Consumer protection system in Poland – challenges”. The discussion was devoted to the future of the consumer protection system and reform of the market surveillance system in Poland. It was preceded by the official portion of the conference related to the 20th anniversary of the existence of the institution of consumer ombudsman.



APRIL

15-16.04

UOKiK's workshops and conference on state aid

UOKiK organised a two-day meeting concerning services of general economic interest (SGEI), attended by representatives of the EC and the Polish local governments. The discussion concerned, *inter alia*, the terms and conditions for granting compensation for SGEI and Polish experience in implementing the SGEI package.



MAY

15.05

First of a number of decisions issued by UOKiK concerning sales presentations in 2019

A company operating under the name Vitaldream was punished for misleading consumers as to the healing properties and promotional price of a product called “*Aplikator Pola Magnetycznego*” (Magnetic Field Applicator). It was the first out of seven decisions issued by the President of UOKiK in 2019 concerning unfair practices at sales presentations.

16.05

Poland wins against the EC in a case before the Court of the European Union concerning retail sales tax

The Court of the European Union issued a judgement in joined cases T-836/16 and T-624/17, deciding that the new retail sales tax introduced in Poland cannot be considered as state aid incompatible with the internal market. Therefore, the Court ruled in favour of the complaint filed by Poland and invalidated the previous decision of the EC in that regard.



JUNE

05.06

UOKiK organises 6th workshop from the Economy of Competition Law series

The meeting was devoted to vertical agreements – in the context of the latest case law practice of the European Commission and UOKiK as well as economic aspects of an assessment of this type of agreements. The discussion also touched on the evaluation of guidelines concerning vertical restrictions and Regulation 330/210. Workshops were organised in cooperation with Positive Competition and the Competition Law Association.



JULY

01.07

Trade Inspection begins solid fuel quality controls

According to the amended Act on the Fuel Quality Monitoring and Control System, the Trade Inspection is also responsible for controlling solid fuels in terms of compliance with quality standards. This applies to fuels intended to be used in households or combustion installations with a rated thermal input lower than 1 MW, including bituminous coal or coke, for example.

17.07

The highest penalty in the history of UOKiK for using prohibited clauses

UOKiK imposed a penalty in the total amount of nearly PLN 33 mn on UPC for 6 violations consisting in the use of prohibited contractual clauses. They concerned, inter alia, the ability to unilaterally raise the subscription fee for cable television and amend material terms and conditions in on-going telecommunications agreements.

19.07

Decision of the European Commission concerning state aid for the Polish coal sector

The European Commission approved the amended aid scheme for the Polish hard coal mining sector in the years 2015-2023. The need to modify the terms and conditions for granting state aid was related to the on-going transformation process of the hard coal mining sector and the dynamic situation on the national coal market.



AUGUST

28.08

Presentation of UOKiK's report from the Poland-wide municipal waste market research

UOKiK, in cooperation with the Institute of Environmental Protection, conducted municipal waste market research in all 302 municipalities in Poland. The purpose of this analysis was to diagnose the reasons for raising waste collection fees charged on residents in the years 2014-2019.



SEPTEMBER

11.09

Judgement of the CJEU in case C-383/18 Lexitor

In the judgement, the Court of Justice of the European Union referred to the issue of early repayment of a consumer credit or loan. It explained that a proportionate amount of fees borne by the consumer for entering into an agreement, e.g. commissions, upfront fees, is subject to reimbursement.



OCTOBER

01.10

First penalty for unfair use of contractual advantage

UOKiK imposed a penalty in the amount of over PLN 8.3 mn on T.B. Fruit Polska, the owner of a processing plant, for unfair use of contractual advantage against farmers. The maximum penalty was imposed due to the fact that the enterprise did not cooperate with UOKiK, did not cease to use prohibited practices and their commercial practices (long and persistent delays in payments) had an adverse impact on suppliers.

03.10

Judgement of the CJEU in case C-260/18 Dziubak

The Court of Justice of the European Union issued a judgement concerning the effects of including prohibited clauses in contracts. It was the result of a preliminary ruling concerning a dispute between consumers and Raiffeisen bank regarding the conversion of loan balance from the Polish currency into the Swiss franc. The judgement of the CJEU constitutes tangible help for consumers in pursuing their claims against banks and an important message for courts.

24.10

Favourable judgement of the Court of EU for Poland in the case concerning Autostrada Wielkopolska S.A.

The Court of the EU dismissed the complaint of Autostrada Wielkopolska S.A. and upheld the favourable – for Poland's interests – decision of the European Commission stating that the company received excessive compensation from the state that constituted aid incompatible with the internal market.

29.10

Conference on toy safety

UOKiK and the Toy and Children's Products Industry Association organised a conference under the name "Non-compliant toys – assessment of the situation on the Polish market". Topics discussed during the meeting included market surveillance reform, toy safety in light of results of studies conducted by UOKiK laboratories in the years 2016-2019, and the results of controls conducted by the Trade Inspection regarding toy safety in previous years.



NOVEMBER

07.11

A penalty in the amount of PLN 172 mn for failure to provide information in proceedings concerning Nord Stream 2

UOKiK imposed a penalty on Engie Energy from Switzerland in proceedings against Gazprom and five international entities responsible for financing the Nord Stream 2 pipeline. The company refused to provide UOKiK vital information to clarify the issue of establishing a joint enterprise without UOKiK's consent.



DECEMBER

06.12

Proceedings initiated against Allegro

UOKiK initiated antitrust proceedings in connection with the suspected abuse by the company of its dominant position on the national market of online sales intermediation services. Allegro could give preference to the sales activity of its own Official Allegro Store to the detriment of other entities conducting sales on its platform.

10.12

Official launch of a new platform for whistleblowers

UOKiK launched a special platform for whistleblowers to enable people to report any anti-competitive agreements. Using this system, UOKiK plans to obtain information not available to the public, e.g. notes from meetings or e-mail correspondence. The platform guarantees anonymity to the whistleblower and making a report is easy and safe.

18.12

Highest penalty for anti-competitive practice in 2019

UOKiK issued a decision concerning the bid rigging agreement between six enterprises participating in the procurement procedure for an airdrop of vaccines for foxes. The financial penalty amounted to nearly PLN 2.8 mn. The decision became final with respect to one of the parties to the anti-competitive agreement. The said party was fined nearly PLN 1.9 mn. The others have lodged an appeal to the Court of Competition and Consumer Protection.

19.12

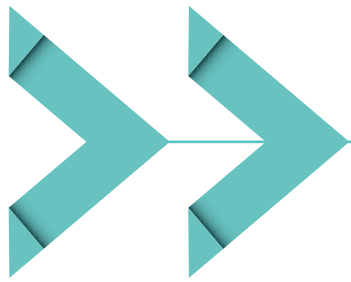
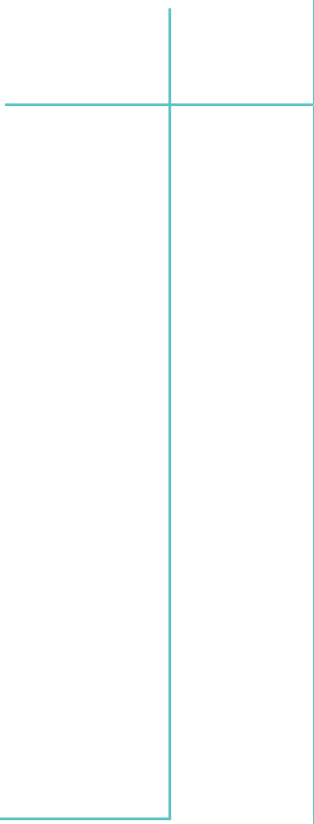
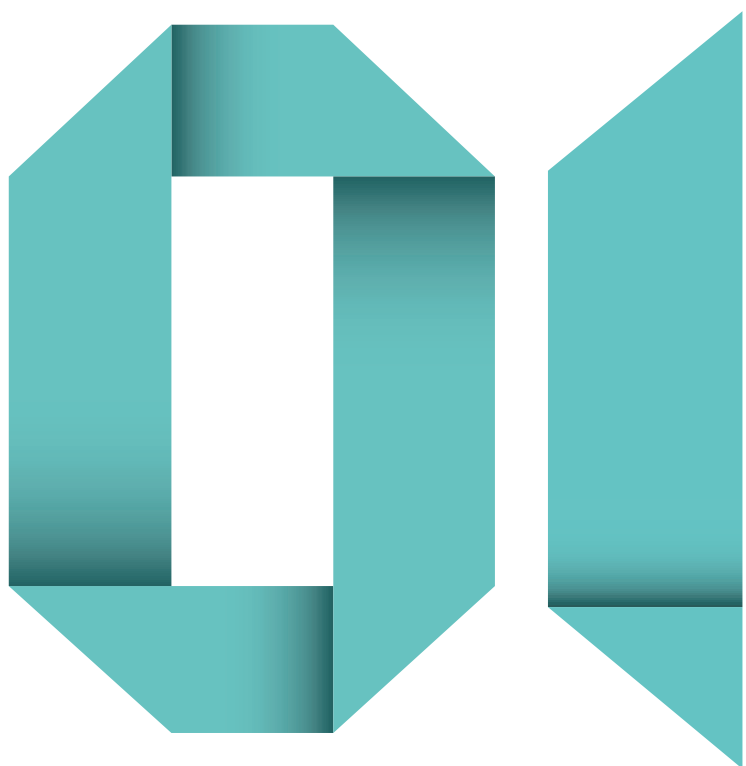
Penalty for obstructing access to free football match broadcasts

UOKiK imposed a penalty in the total amount of nearly PLN 35 mn on Cyfrowy Polsat for obstructing subscribers' access to channels with a free broadcast of football matches during Euro 2016. Furthermore, the company provided incomplete and inaccurate information to consumers regarding introduced changes. In the opinion of UOKiK, this was intended to encourage consumers to use paid services offered by the company.

31.12

The highest penalty in the history of UOKiK for violation of collective consumer interests

Over PLN 50.6 mn – this was the total amount of the penalty imposed by the President of UOKiK on Polkomtel. Consumers who purchased access to the Internet had to pay extra to view multimedia content or listen to the radio online. In the same decision (DOZIK-13/2019), the company was additionally fined for providing incorrect information about additional charges on the invoice.



CHAPTER 1.

Competition protection

The existence of competition on individual markets contributes to the development of the entire economy. It also contributes to the growth of entrepreneurship and productivity as well as brings benefits to consumers and enterprises.

The primary duty of the President of the Office for Competition and Consumer Protection is to counteract any practices that are incompatible with competition rules.

Activities in this regard are focused on:

- combating anti-competitive practices used by enterprises, which include prohibited agreements and abuse of a dominant position,
- eliminating practices involving the unfair use of contractual advantage,
- controlling the concentration of enterprises,
- monitoring aid awarded by the state.

1.1

Competition-restricting practices

Competition-restricting practices include anti-competitive agreements and the abuse of a dominant position.

Competition-restricting agreements include any arrangements between independent traders, the purpose or effect of which is to eliminate, restrict or distort competition. The Antitrust Act contains a model list of prohibited agreements¹, which include but are not limited to: price fixing, bid rigging agreements, market or consumer group allocation schemes, restriction of market access for enterprises not covered by the agreement or elimination of those enterprises from the market.

There are several **exceptions** from the general ban on anti-competitive agreements:

- the so-called agreements of minor importance – where parties to the agreement are businesses with a small market share;
- individual and group exemptions provided that they meet the statutory prerequisites*.

* Articles 7 and 8 of the UOKiK Act.

Anti-competitive agreements may be:

- horizontal – if they are made by competitors, i.e. traders who operate at a similar level of trade, e.g. manufacturer – manufacturer;
- vertical – if they are made by traders who operate at different levels of trade and do not compete with each other, e.g. manufacturer – retailer.

IT IS IMPORTANT!

It is prohibited to set **minimum prices**, i.e. prices below which a particular product cannot be sold, or **fixed prices** (with a set fixed value).

It may be permitted to **set maximum prices** (i.e. prices above which a particular product cannot be sold). This happens, for instance, when the manufacturer's and supplier's share in the relevant market does not exceed 30%. In such case, the agreement is covered by a group exemption from the ban on competition-restricting agreements.

Similarly, it is also permitted to **suggest resale prices**, provided that such suggestion is actually a non-binding recommendation, i.e. the trading partner can make the decision whether to apply that price on their own.

Under horizontal agreements, the most severe violations of competition law are **cartels**, i.e. price fixing or market allocation schemes (according to the geographical or subjective criterion, for instance).

The second kind of competition-restricting practices is the **abuse of a dominant position**. It consists in the disruption of competition on the market by a business with

¹ Article 6.1 of the Act of 16 February 2007 on Competition and Consumer

Protection (Polish Journal of Laws of 2020, items 1076 and 1086), hereinafter

referred to as the "UOKiK act".

substantial market power, which allows that business to not be afraid of competition from other entities. It may consist, for instance, in imposing less favourable terms and conditions of cooperation on trading partners than would be possible under conditions of effective competition, as well as in the elimination of competitors or blocking of new entrants².

Proceedings before the President of UOKiK

Antitrust law stipulates that the dominant position of a business is determined by its **higher than 40% share in the relevant market**. In practice, each case is examined individually and in specific cases such share in the market does not allow to have a dominant position, whereas in other cases – e.g. in the conditions of fragmented competition – a lower market share may be enough to have a dominant position.

The primary tool used by the President of UOKiK to combat anti-competitive practices are **administrative proceedings**. Two kinds of proceedings may be initiated in connection with a suspected violation of competition law:

→ **explanatory proceedings** – they are conducted with regard to a specific matter, not against any specific entities. There are no parties to the proceedings, businesses do not have access to case files. UOKiK may call upon businesses to provide information and documents, modify or cease unfair behaviour³, and conduct an audit or a search of its registered office and assets. Explanatory proceedings may result in charges filed against a specific entity and

the initiation of antitrust proceedings against that entity or the case being closed.

→ **antitrust proceedings concerning competition-restricting practices** – they are conducted against specific businesses and, in specific cases, also against management staff. They may, but do not have to, be preceded by explanatory proceedings. An entity against whom the proceedings are conducted is a party to those proceedings, which means that it has the right to access the case files, present evidence relevant to the case, and present its own position. Where it is determined that businesses have entered into an anti-competitive agreement or abuse their dominant position, the President of UOKiK issues a **decision** deeming such practice as a competition-restricting practice. At this point, UOKiK may order the business to cease using this practice or determine that the business has already ceased using it. UOKiK may also decide to impose a **financial penalty** on the entity.

Since 2004, the President of UOKiK has the ability to conduct proceedings directly on the basis of Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU)⁴, if the practice concerned may affect the trade between EU Member States. In such case, the provisions of Polish and EU competition law are applied in parallel. In 2019, UOKiK initiated 6 proceedings in which it applied both Polish and EU provisions, and issued one decision on the basis of Article 101 of TFEU.

² Examples of practices constituting an abuse of a dominant position are specified in Article 9.2 of the UOKiK Act.

³ These are so-called soft measures taken by the President of UOKiK as part of pending proceedings or independently of them. They often allow to more

effectively and quickly eliminate prohibited practices than possible in the case of formal proceedings.

⁴ The Treaty on the Functioning of the European Union (TFEU) (OJ C 326/47).

It is possible to **settle the case** against a business or an executive amicably, if the proceedings are initiated in connection with the violation of competition rules. In such circumstances, the case ends without imposing any financial penalty or with imposing a lower penalty.

The Antitrust Act provides for two amicable solutions:

- voluntary submission to penalty* – at the request of the party or UOKiK, the entity against whom proceedings are conducted is granted a 10% reduction in the amount of penalty, provided that it submits a statement on voluntary submission to penalty, confirms its amount and the fact that it has been informed about the charges by the President of UOKiK;
- issue of a commitment decision by UOKiK** – this occurs on the initiative of the enterprise which presents UOKiK with a proposal of specific actions leading to cessation of the violation and removal of its negative effects on the market. This allows the trader to avoid a financial penalty and other costs related to the proceedings. In addition, the commitment decision does not contain a statement on the use of a prohibited practice by the trader, which would be unfavourable to them. UOKiK does not apply this solution in the event of more severe violations of competition law. In such circumstances, the parties are offered participation in a leniency programme.

* Article 89a of the UOKiK Act.

** Article 12 of the UOKiK Act.



Proceedings conducted by UOKiK in 2019

56

explanatory proceedings

1

review of a decision's implementation

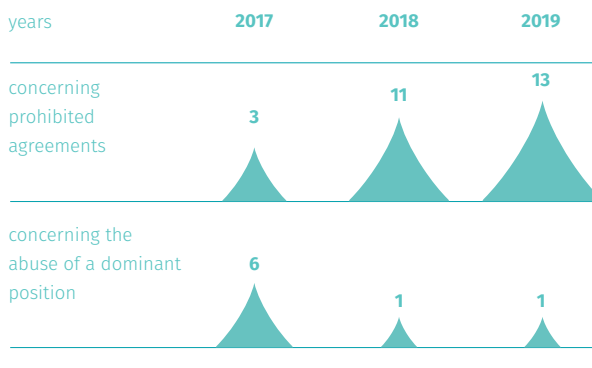
14

antitrust proceedings concerning competition-restricting practices, including:
horizontal agreements – **9**
vertical agreements – **4**
abuse of a dominant position – **1**
initiated on the basis of Articles 101 and 102 of TFEU – **6**

1

concerning the imposition of a penalty for failure to provide information or for providing false or misleading information

Antitrust proceedings initiated in the years 2017-2019



Decisions issued in 2019

12

decisions in cases concerning competition-restricting practices, of which: **11** concerning horizontal agreements – finding the existence of bid rigging agreements; **1** concerning vertical agreements

2

decisions providing for the application of the **leniency procedure**

1

decision concerning the imposition of a penalty for failure to provide information or for providing false or misleading information

1

concerning **the application of national and EU provisions**

In 2019, the President of UOKiK imposed penalties for using competition-restricting practices in the total amount of

PLN 52 mn

of which:

PLN 1,9 mn

Airbus Poland S.A. with its registered office in Warsaw

PLN 1,4 mn

Brother Central & Eastern Europe GmbH in Vienna

PLN 0,42 mn

Areoklub Ziemi Lubuskiej with its registered office in Zielona Góra

Penalties for businesses

The President of UOKiK may impose a financial penalty on a business for using competition-restricting practices. Its maximum amount cannot exceed 10% of revenue earned by the entity in the financial year preceding the year of issue of the decision.

There are legislatively defined prerequisites which are taken into consideration when determining the amount of the penalty, separately for each type of violation, including **a catalogue of attenuating and aggravating circumstances**. They are taken into consideration individually for each case and for the specific business. Attenuating circumstances that can lead to a reduction in the amount of the penalty include, for instance, acting under coercion, cooperating with UOKiK in the course of proceedings, and voluntarily removing the effects of the violation. On the other hand, aggravating circumstances for the business include, for example, exerting pressure on other entities, previous commitment of similar violations, acting as the leader or instigator of an anti-competitive agreement.

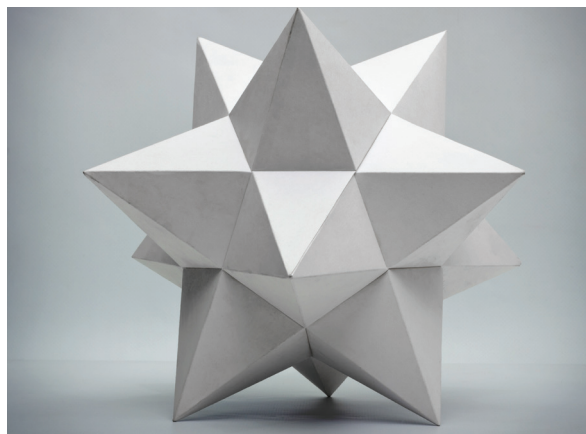
Liability of business executives

Liability for the violation of competition rules rests not only on businesses, but also on **natural persons who are executives in those businesses**, provided that they have led to the conclusion of prohibited agreements through their action or omission. Such persons usually hold the highest positions within the organisational structure of a business and have a tangible impact on its market behaviour. This applies to both current and former employees.

Proceedings against natural persons are conducted as part of the antitrust proceedings against a business. Where it is found that the executive has violated the ban on anti-competitive agreements, UOKiK may impose a financial penalty in the amount of up to **PLN 2 mn** on that executive. Irrespective of the penalty imposed on the executive, a penalty is imposed on the business as well.

The latest "Clarifications concerning the method for imposing financial penalties on executives" where the issue of determining the amount of penalty has been addressed are available at https://www.uokik.gov.pl/wyjasnienia_i_wytyczne.php.

The executive may apply for total or partial immunity from the penalty by participating in the **leniency programme** and providing UOKiK with valuable information regarding the illegal practice in which they were involved.



The following can be considered **business executives**:

- persons performing management functions – who have been entrusted with managing the business, but are not members of a managing body, e.g. division director;
- members of a managing body, e.g. a member of the management board of a limited company, limited liability partnership or a cooperative, who in practice are managing the business;
- other persons managing the business, i.e. persons who actually set the plan of action for a business, but are not members of its managing bodies and do not perform management functions.

The managing bodies of local government units – heads of municipalities/communes, mayor, district governors, marshalls of the voivodeship – can also be considered as executives. The municipality/commune, district or voivodeship, as entities providing public services, are businesses according to the broad definition adopted in the competition law.

Whether a specific natural person is recognised as a business executive is determined on a case-by-case basis, based on individual circumstances of the case.

The leniency programme

A business which entered into a competition-restricting agreement may seek **total of partial immunity from penalty**, if they plead guilty of participating in the agreement and present UOKiK with information on and evidence of the prohibited practice. The Antitrust Act does not

provide for the right to use the leniency programme in the event of a violation of the ban on abuse of a dominant position.

In order for a business to be able to apply for total immunity from a financial penalty or its reduction, it must meet **all of the following conditions**:

- report to UOKiK on its own and present evidence that materially contributes to the initiation of antitrust proceedings or the issue of a decision concerning a competition-restricting agreement, if the proceedings were already pending at the moment of filing the application and provided that such evidence was not already in the possession of UOKiK;
- cease to participate in the anti-competitive agreements prior to filing the application or immediately upon filing it;
- be the first of the participants in the agreement to provide information and evidence to UOKiK – in the event of applying for immunity from penalty;
- not encourage other businesses to participate in the agreement.

Total immunity from financial penalty may be granted only to the first applicant. Subsequent entities may, however, apply for its reduction, with the stipulation that the amount of such reduction depends on the order of submitted applications and the quality of cooperation with UOKiK.

An application submitted by a business also protects its executives. If a business is granted immunity from a financial penalty or its amount is reduced, executives enjoy the same benefits.

Importantly, an executive may submit an application for leniency on their own, i.e. independently of the business for which they are or were employed.

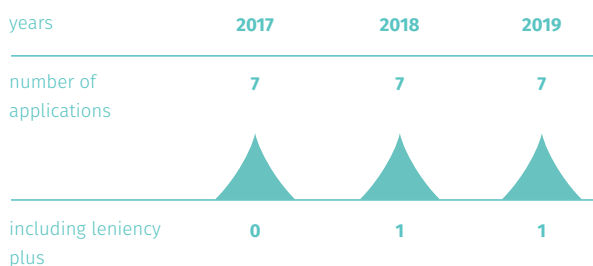
The website at konkurencja.uokik.gov.pl is a comprehensive source of the most important information on the competencies of the President of UOKiK as regards competition protection. It also contains practical materials (explanations, forms, legal acts, etc.) for use in day-to-day business activity.

Topics addressed include, among others:

- the leniency programme, including “Clarifications concerning the leniency programme” and a model complete leniency application;
- rules for reporting possible competition rules violations to UOKiK;
- the Whistleblower programme, including an address of the anonymous report form;
- advice on how to report bid rigging agreements to UOKiK.

Both businesses and executives applying for penalty reduction may participate in the so-called **leniency plus** programme. It consists in the submission of a new leniency application for another agreement, previously unknown to the President of UOKiK. In such case, the penalty may be reduced by an additional 30%.

Leniency applications 2017-2019



Market information

The President of UOKiK initiates antitrust proceedings *ex officio*, but an extremely important source of information on competition-restricting practices on the market are **reports made directly by businesses and consumers**. Prohibited practices are very difficult to detect due to their secret nature and the activities of businesses taken in an attempt to hide them. It is possible to notify UOKiK of possible violations in a formal or anonymous way.

A **formal notification** may be submitted, among other options, by means of a special template available at the website of UOKiK. It must include, *inter alia*, the details of a business suspected of using anti-competitive practices, a description of the facts, details of the party making the notification and a substantiation of the violation of provisions laid down in the UOKiK Act and TFEU.

An **anonymous notification** is often reported, if the party making the notification is an employee of the business or a business and the information pertains to a supervisor or trading partner. UOKiK guarantees that the notification will be fully anonymous and secure. Since December 2019, whistleblowers, i.e. persons who provide UOKiK with information not available publicly, may use a special online form by which they may notify UOKiK of any anti-competitive practices. By using an encrypted connection, the website guarantees that the whistleblower will remain anonymous and safe.

UOKiK finds information on arrangements made within a business to be of particular value – notes from meetings, information from a calendar with planned meetings and correspondence (e-mail, regular mail, via online messengers and text messages). These can also be hints as to where such evidence of a violation may be found by searching the relevant business. **The subject of the notification may be:** illegal agreements (e.g. price fixing agreements) between competitors, bid rigging agreements between participants of public procurement procedures, vertical agreements, e.g. between a manufacturer and distributor, cases of abuse of a dominant position by businesses.

In 2019, UOKiK received 485 formal notifications concerning anti-competitive practices and 1,714 anonymous whistleblower reports from the market, of which 1,531 under the whistleblower programme.

Other activities

485

formal notifications concerning
antitrust practices

1714

whistleblower reports from the market, including under
the Whistleblower programme

82

new soft calls
to businesses

8

searches⁵ conducted at the
registered office of 23 businesses

6

conducted controls

9

detailed justifications
of charges filed in antitrust
proceedings

Searches conducted by UOKiK

Searches are an incredibly effective tool for obtaining evidence of competition law violations. By using the surprise effect, they prevent the hiding or destruction of valuable evidence of illegal practices. **They may be conducted only after UOKiK obtains approval from the court.** During the search, the business is under an obligation to grant UOKiK's employees access to its registered office as well as all documents and data carriers. A search is usually conducted in the presence of police officers.

In recent years, the number of searches conducted by UOKiK has been gradually increasing. In 2019, **8 searches were conducted at 23 businesses** all over the country. They covered different sectors of the economy: IT, pharmaceuticals, distribution of office equipment, cosmetic products, sale of trucks, road renovations, and cable production.

Overview of activities – competition-restricting agreements

Bid rigging agreements

Bid rigging agreements are in most cases agreements between participants of procurement proceedings consisting in the agreement of the terms specified in submitted bids, the scope of work or price. It is one of the most severe violations of competition law. For many years, UOKiK has been focusing on detecting such agreements by conducting proceedings and based on open-source intelligence⁶. In 2019, **UOKiK audited 549 procurement procedures**, conducted 46 proceedings to determine whether a bid rigging agreement has been made and issued **11 decisions** in that regard.

In December 2019, antitrust proceedings conducted by UOKiK against 6 businesses who provided a service con-



⁵ Indicates the number of proceedings in which a search was conducted.

⁶ Open-source intelligence is a form of legal business intelligence consisting

in the collection of information from generally available sources.

sisting in an **airdrop of rabies vaccines for free-living foxes**. The decision⁷ states that a **bid rigging agreement** has been made between Airbus Poland, Adriana Aviation, Aeroklub Podhalański, Aeroklub Ziemi Lubuskiej, Blue Star, and Gwiazda PPHU Krzysztof Bilarzewski. The companies agreed that they will not compete against each other and will submit joint bids in procurement procedures concerning the airdrop of vaccines organised by Province Veterinary Inspectorates (PVI) An agreement made by these **entities continued in the years 2014-2015**⁸. 6 businesses participated in that agreement in its first year, with 4 parties continuing the agreement in its second year. In order to submit a bid independently or together with an entity from outside the group of parties to the agreement, it was necessary to obtain the consent of other businesses. Acting in breach of the arrangements was punishable by a high contractual penalty in the amount of up to PLN 1 mn. In addition, as part of the cooperation profits were distributed between the parties even before individual procurement procedures were completed. Joint bids were submitted under a **consortium and subcontracting agreements**. Competition law permits such forms of cooperation, however in this case UOKiK found that the parties to the procedure acted with the intention to formally hide the bid rigging agreement and therefore, engaged in an anti-competitive agreement due to the nature and scope of their arrangements. For engaging in a bid rigging agreement, the President of UOKiK imposed financial penalties on all 6 entities, in the total amount of nearly PLN 2.8 mn. Five of those businesses lodged an appeal to the Court of Competition and Consumer Protection, whereas with regard to Airbus Poland the decision became final and the company paid a penalty of nearly PLN 1.9 mn.

An example of another decision of the President of UOKiK finding that a **bid rigging agreement** has been made was the decision⁹ from December 2019 concerning **the logistical and technical organisation of events** related to the 19th session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC COP 19), **their creative design and visualisation of conference space**. The procurement procedure for this undertaking was held in November

2013 in Warsaw, organised by the Ministry of the Environment and divided into two stages. The first stage involved an assessment of applications for participation in procurement procedure, whereas the second stage involved a bidding process between five contractors with the highest score. The findings of UOKiK indicate that the purpose of arrangements was primarily for parties to such arrangement to obtain potential necessary to obtain the highest possible score for meeting the conditions for participation in the procedure during the first stage of the COP 19 Procurement Procedure. This was intended to enable them to completely or at least partially eliminate third party contractors from the next stage of the procedure and prevent other businesses that qualified for the second stage – except for the Easylog Consortium – from submitting a bid. The President of UOKiK found that all these activities were intended to ensure victory by the Easylog Consortium or at least make it easier for the Consortium to win by reducing competitive pressure from other contractors. For this purpose, parties to the agreement communicated with each other at each stage of the procedure as well as agreed on issues related to the acquisition of necessary potential and terms of bids to be submitted. Businesses that qualified for the second stage of the procedure **opted not to submit competitive bids against the Easylog Consortium**, as per the arrangements made. The following entities were involved in that scheme: BOOM, Power and Vision House. As a result, only the Consortium and a contractor who was not party to the agreement submitted a bid, therefore the choice of the Contracting Party was limited to two bids instead of five. The decision of the President of UOKiK is not final, the parties to the proceedings have lodged an appeal to the Court of Competition and Consumer Protection.

The most common form of bid rigging is the **bid submission and retraction mechanism**. If the bids submitted by parties to the bid rigging agreement are the most favourable, they opt not to sign the contract, so that the contracting party is forced to choose a more expensive bid submitted by another party to the prohibited agreement. According to the provisions of competition law, businesses participating in procurement procedures

⁷ Decision DOK-2/2019.

⁸ In 2014, parties participating in bid rigging eliminated competition between

each other in all 12 procurement procedures organised by WVIs in the territory of the entire country, in 2015 – they sub-

mitted joint bids in 9 out of 10 procurement procedures.

⁹ Decision DOK-3/2019.

must prepare their bid independently. This also applies to entities with **family ties**. In 2019, UOKiK initiated two proceedings with regard to procurement procedures organised by Poczta Polska (Polish Post) for subcontractors who were to deliver mail and courier parcels. One of them concerned entrepreneurs with family ties from Konin, who applied for a contract in Wielkopolskie Province – Aneta Kubiacyk AK Trans and Kubiacyk Jacek Przedsiębiorstwo Usługowe. The first entity submitted the most favourable bid, but due to failure to correctly fill out tender documentation it could not sign the contract for services. The proceedings conducted by UOKiK showed that the purpose of such action was for the contract to be awarded to the second entity, whose bid was approx. PLN 50 thous. more expensive. UOKiK imposed a penalty on parties to the agreement, in the total amount of approx. PLN 13 thous¹⁰. Both businesses complied with the decision and paid the penalties to the state budget.

A bid rigging agreement also takes place when **businesses intentionally and in collusion with each other cause – through their actions – the procurement procedure to be invalidated and for the contract to be signed under a “single-source procurement procedure”**. In its decision, UOKiK contested the practices of two businesses that participated in the procurement procedure organised by Katowicki Holding Węglowy (KHW) for the transport of materials on the premises of one of the Silesian mines (including bulk materials, mining equipment, coal dust). Soltur from Mysłowice and Trans-Jan from Katowice submitted identical bids during an electronic auction, and then identical additional bids, which ultimately made it impossible to complete the procurement procedure. In such case, KHW was forced to sign emergency contracts with previous contractors, i.e. a consortium of Soltur and Trans-Jan, that allowed it to maintain necessary services. For being a party to a bid rigging agreement, the President of UOKiK imposed financial penalties on the companies – nearly PLN 147 thous. on Trans-Jan and nearly PLN 17.5 thous. on Soltur¹¹. The decision is not final and the companies have lodged an appeal to the court.

Collusion on the heat sales market in Warsaw

In March 2019, the President of UOKiK initiated antitrust proceedings **against 4 businesses which engage in the production, supply and trading of heat**: PGNiG Termika, PGNiG, Veolia Energia Warszawa and Veolia Energia Polska and against two executives. It is suspected that they entered into a market allocation scheme, a bid rigging agreement and price fixing agreement related to heat sales prices.

The President of UOKiK filed charges against executives **for the very first time** in 2018 (in proceedings against six managers of companies on the fitness market). In 2019, this trend continued – **three** antitrust proceedings also covered natural persons who managed the businesses.

PGNiG Termika and Veolia Energia Warszawa pursue activity consisting in the sale of heat to end users, e.g. housing cooperatives, housing communities, industrial plants, schools, government offices, etc. PGNiG Termika produces heat in its combined heat and power plants, whereas Veolia Warszawa supplies and sells heat to end users via its own heat network. The heat sales contract could have been concluded with both companies, however in practice until 2013 PGNiG Termika conducted sales activity on a small scale. In 2013, Veolia Warszawa has taken measures with the intention to build a new combined heat and power plant in the Warsaw district of Ursus. Should those plan have come to fruition, both entities would become competitors in regard to heat production. At the same time, since 2013 PGNiG Termika intensified its activity consisting in the sale of heat to end users. The companies started to fight for customers and the competition could have increased even more following the completion of the investment by Veolia. However, this did not happen, as a year prior businesses established cooperation which, in the opinion of UOKiK, may impede competition through market allocation. At the end of 2014, the companies signed an **Energy Partnership Agreement**, as a result of which Veolia Warszawa withdrew from its plans to build a new combined heat and power plant, whereas PGNiG

10 Decision RPZ-8/2019.

11 Decision RKT-1/2019.

Termika limited and intended to withdraw from the sale of heat to end users, including by withdrawing from participation in procurement procedures. Therefore, **entities agreed that they will not compete with each other and will focus on their core activities**, i.e. PGNiG Termika on producing heat, whereas Veolia Warszawa on its supply and sale. Furthermore, both businesses undertook to cooperate as regards setting prices specified in tariff applications submitted for approval to the President of the Energy Regulatory Office. The companies may be fined in the amount of up to 10% of their revenue.

Charges were also filed against two managers who perform or performed management functions at Veolia Warszawa and PGNiG Termika. UOKiK has evidence that they actively participated in the contested agreements. In this case, the maximum penalty is up to PLN 2 mn.

Agreement on the truck distribution market

In connection with the suspected existence of collusion between a group of DAF truck dealers, in April 2019 proceedings were initiated **against 5 businesses**: DBK from Olsztyn, ESA Trucks Polska from Komorniki, TB Truck & Trailer Serwis from Wolnica, WTC from Długotłęka and Van Tilburg-Bastianen Groep from Breda, the Netherlands. The President of UOKiK also **filed charges against 9 senior executives** who work or worked for those companies. According to the findings of UOKiK, the entities might have entered into price fixing agreements and market allocation schemes. The proceedings are examining the sale of vehicles and the participation of dealers in public procurement procedures. Victims in the case might have been primarily businesses purchasing trucks, including small and medium-sized businesses using those trucks for their business activity, public entities, and consumers. Thanks to searches conducted in 2018, UOKiK obtained new evidence proving that illegal agreements might have been entered into as early as in 2011. At the time, DBK and WTC together with ESA Trucks agreed that each of them will sell DAF trucks in a specific territory and will not compete for customers in other parts of the country. This also applied to participation in procurement procedures for the supply of vehicles. In 2016 at the latest, TB Truck & Trailer Serwis might have joined the agreement with the consent and knowledge of its parent entity, i.e. Van Tilburg-Bastianen Groep. As a result of ter-

ritorial agreements, potential customers might have lost the ability to purchase a vehicle from a selected entity or at a lower price. Due to the fact that the practice used by dealers could have had affected trade between EU Member States, UOKiK conducted proceedings against the companies and their executives in connection with the violation of both Polish and EU regulations.

Independently of the proceedings concerning dealers of DAF vehicles, in 2019 the President of UOKiK also initiated an examination into the sale of Iveco motor vehicles. Three dealers of Iveco vehicles and the Polish office of the manufacturer itself were searched in that regard. These explanatory proceedings also pertained to the suspected entry into prohibited agreements which might have had an impact on the functioning of Polish businesses from the transport sector and all entities using trucks and light goods vehicles in their business activity. These efforts were continued in 2020.

Restriction of competition on the food supplement market

Yet another antitrust proceedings in which **charges were filed against executives** concerned the food supplement market and Solgar Polska, a national distributor of vitamins, herbs and microelements produced by an American company. They are sold both in physical stores, especially pharmacies, and online shops. In April 2019, the President of UOKiK initiated the proceeding in connection with the suspected entry into a prohibited agreement by Solgar Polska and businesses pursuing retail sales of food supplements. The agreement consisted in the fixing of minimum resale prices. As a result, there might have been a situation where consumers were unable to purchase food supplements at a price lower than the fixed price. Solgar Polska was potentially able to monitor the application of these prices and intervene, if products were to be sold at a lower price. Initially, company representatives could send notice to change the prices, then revoke the ability to order supplements on preferential terms, and ultimately even terminate the cooperation agreement. UOKiK conducted a search of the registered office of the company and obtained the necessary evidence, including e-mail correspondence. Due to the fact that the practice could have had affected trade between EU Member States, UOKiK conducted pro-

The leniency programme in practice

A company under the name Brother imposed minimum printer sale prices on online shops. At the same time, it monitored prices and intervened if a seller offered printers at lower prices. In such case, they were penalised by being offered worse trading terms or limited supply. Keeping retail prices at a fixed level was beneficial to Brother, because it allowed online shops to achieve higher margins, which made them more willing to offer this company's equipment.

UOKiK imposed a penalty amounting to over PLN 1.4 mn* on the company. The sanction was about 40 percent lower** than originally foreseen because **Brother took advantage of the leniency programme and voluntarily submitted to the penalty**. The company cooperated with UOKiK in the course of the proceedings and presented evidence confirming illegal activities.

* Decision RKR-10/2019.

** The penalty was reduced by 30%, the

additional 10% reduction resulted from the procedure of voluntary submission

to penalty. This was the first time that this procedure was applied in this type

of case.

ceedings in connection with the violation of both Polish and EU regulations.

SAR

Stowarzyszenie Komunikacji Marketingowej SAR (SAR Marketing Communication Association) is a trade association with more than 130 members pursuing a variety of marketing services. **Concerns raised by UOKiK regarded arrangements made between SAR and branding agencies** concerning their participation in competitions (called procurement procedures). Information available to UOKiK and obtained during searches conducted at the registered office of businesses indicates that the Association was persuading its members not to engage in procurement procedures which do not offer a rejection fee. In principle, agencies have a right to request a fee for their participation in the procurement procedure due to labour necessary to prepare a bid. However, this decision should be made individually by each business, rather than as a result of mutual arrangements. In this case, agencies boycotting certain procurement procedures might have had restricted competition between SAR members.

The second charge made against the Association concerned the way of organising a **prohibited exchange of information** between entities associated in SAR. A special tool was created, i.e. an electronic platform on which agencies provided information in which procurement procedures they intend to participate. If several members expressed the desire to participate in the same procedure, the association gave them access to a joint "procurement procedure room". This action could have been an expression of mutual and agreed attempt to

limit uncertainty as to the future behaviour of SAR members on the market. UOKiK initiated antitrust proceedings against SAR in December 2019. The alleged practice used by the Association could have had an impact on trade between EU Member States, which is why UOKiK analysed the case in connection with the violation of provisions laid down in both Polish and EU competition law.

Distribution of bicycles under scrutiny by UOKiK

Antitrust law prohibits not only price fixing agreements between businesses operating at different levels of trade – e.g. a manufacturer, sole distributor and retailers, but also agreements that consist in the prohibition or restriction of online sales conducted by trading partners.

UOKiK initiated five explanatory proceedings intended to determine whether such practices were used by manufacturers and distributors of bicycles and bicycle accessories. The first proceedings concerned AMP Polska, a distributor of many brands of bicycle accessories. Information collected by UOKiK indicates that there might have existed the so-called **dual pricing**, i.e. a practice requiring online sellers to pay more for products than traditional sellers. The company might have used a separate, less favourable discount system for trading partners who conduct only online sales. Furthermore, it might have prohibited them from selling products on auction sites.

Another business whose activity is being verified by UOKiK is Merida Polska, the sole distributor of bicycles manufactured under the Merida brand. **The company may have affected prices applied by retailers in Polish stores in a prohibited way** and may have refused to co-

operate with entities who sell bicycles online at a lower price than the price suggested by the company.

In the next three proceedings, UOKiK analysed practices used by Trek Bicycle Corporation, Cossack and Aspire Sports. The companies are suspected of **restricting on-line sales** of distributors who were running a physical and online store at the same time. Therefore, consumers may have lost the ability to purchase bicycles on terms more preferential to them and at a more attractive price.

In 2019, the evidence was collected in all explanatory proceedings.

Overview of activities – abuse of a dominant position

Preferential treatment of own shop on an online platform

In December 2019, the President of UOKiK initiated anti-trust proceedings against Allegro.pl – the owner of the largest and most popular online shopping platform in Poland. Many of the sellers on the Allegro.pl platform filed complaints to UOKiK claiming **unequal terms of competition**. This is due to the fact that Allegro.pl plays a dual role in regard to sellers on its platform: it is a trading partner offering online sales intermediation services and a competitor independently selling products, especially via the so-called Official Allegro Store. In the opinion of UOKiK, this entity may have a dominant position on the national market of online sales intermediation services offered to sellers on e-commerce platforms. The company has been **charged with the abuse of a dominant position** consisting in giving preferential treatment to its own sales activity compared to other sellers present on its e-commerce platform. Firstly, Allegro may have used information on how the platform operates, including information concerning its relevance algorithm, unavailable to other sellers, to better position and display its own offers in search results sorted by relevance. Secondly, certain sales or promotional functions were available only to the Official Allegro Store, e.g. search prompts. The platform owner was also able to exclusively use special promotional banners, which allowed Allegro.pl to increase its sales on the platform. Such actions taken by the company may have had a neg-

ative impact on the competitive situation of independent online shops whose products may have been less visible on the platform compared to the offers of Allegro.pl and, therefore, chosen less frequently by buyers. The practice concerned may have had an impact on trade between EU countries, therefore the President of UOKiK conducts proceedings **on the basis of Polish and EU competition law**. Similar cases, intended to clarify the dual role of e-commerce platform owners are being conducted by the European Commission and other antitrust authorities in EU Member States.

Cooperation between UOKiK and regulatory authorities

The development of competition in regulated sectors is possible through the effective performance of duties of both the competition protection authority and sector-specific regulatory authorities, e.g. the President of the Office of Electronic Communications, the President of the Energy Regulatory Office or the President of the Office of Rail Transport.

In 2019, the President of UOKiK intensively cooperated with the President of the Office of Electronic Communications, i.e. the regulatory authority in charge of the telecommunications and postal services market. Joint actions concerned matters related to the observance of the rights of entities using postal and telecommunication services, to preventing competition-restricting practices and anti-competitive concentrations of postal operators, telecommunications enterprises and associations thereof.

As part of the cooperation, UOKiK took part in issuing assessments on the deregulation of Internet access service markets (BSA and LLU) carried out by the President of the Office of Electronic Communications. The President of UOKiK issued 204 decisions concerning regulatory decisions of the President of the Office of Electronic Communications concerning markets of wholesale call termination services in public telephone networks in a fixed location.

1.2 Contractual advantage

Contractual advantage occurs whenever there is a significant disproportion between the economic potential (this criterion is based primarily on revenue) between the supplier and buyer of agricultural or food products.

A business is prohibited from abusing its contractual advantage, i.e. from acting contrary to good practices and in a way that threatens the vital interests of the other parties or infringes upon such interests.

Pursuant to the **Act on Counteracting the Abuse of Contractual Advantage in the Trade in Agricultural and Food Products**¹² an example of the unfair use of contractual advantage may be:

- unjustified termination of a contract or threat of its termination;
- arrangements whereby only one of the parties is entitled to terminate a contract with or without notice or rescind such contract;
- making the conclusion of a contract contingent upon the acceptance or fulfilment by the other party of other consideration, having neither substantive nor customary relation to the subject of such contract;
- unjustified extension of payment due dates.

Regulations refer to relations between businesses pursuing activity related to the **production, processing and distribution of agricultural and food products**.

Who can notify UOKiK?

Anyone who has information about practices using contractual advantage unfairly may notify UOKiK about their existence. This may be a buyer or supplier of agricultural and food products, but also any other person or entity who noticed a violation of law or became aware of such violation indirectly. **UOKiK guarantees total anonymity** to the person making the notification.

The President of UOKiK may intervene in each case of unfair use of contractual advantage, regardless of the volume of trade between businesses. Proceedings conducted by UOKiK serve to **protect public interest**, i.e. economic interests of potentially many businesses operating on a specific market. Therefore, the primary purpose of decisions made by UOKiK is to eliminate commercial practices that have a negative impact on competition and consumers from economic trade. A decision ordering the end of unfair practices helps all current and future trading partners of the party to the proceedings protect their interests. Individual claims against such businesses should, on the other hand, be sought in court or through arbitration.

A written notification concerning suspected use of unfair practices involving the unfair use of contractual advantage should be reported to the Branch Office of UOKiK in Bydgoszcz or to the Contractual Advantage Department at the head office of UOKiK:

- **by e-mail:** przewaga@uokik.gov.pl,
- **in writing:** Delegatura UOKiK w Bydgoszczy (Branch Office of UOKiK in Bydgoszcz), Pl. Kościeleckich 3, 85-033 Bydgoszcz or Departament Przewagi Kontraktowej UOKiK (Contractual Advantage Department at UOKiK), Plac Powstańców Warszawy 1, 00-950 Warsaw,
- **by phone:** 52 345 56 44 or 22 556 05 10.

¹² The Act of 15 December 2016 on Counteracting the Unfair Use of Contractual

Advantage in the Trade in Agricultural and Food Products (Polish Journal of

Laws of 2020, item 1213).

Types of decisions made by the President of UOKiK

UOKiK may consider a specific practice as abusing contractual advantage, order its discontinuation and impose on the business a financial penalty in the amount of up to 3% of revenue earned by that business in the year preceding the issue of the decision. UOKiK may also decide not to punish the business, if it undertakes to discontinue prohibited practices and remedy its effects.

UOKiK's activities in regard to contractual advantage¹³

5

decisions concerning the unfair use of contractual advantage

19

explanatory proceedings

1

initiated proceeding on practices of unfair use of contractual advantage

1

control as part of proceedings concerning contractual advantage

58

notifications from businesses

40

soft calls to businesses¹⁴

Overview of activities

Pilot study of the chain of vegetable and fruit prices

At the turn of 2019, UOKiK examined factors affecting the prices of vegetables and fruit that we see on store shelves. It was decided to check how much food producers, intermediaries and retail chains earn on these products. An impulse for the study was a control conducted with regard to the prices of vegetables and fruit, including at wholesale purchasing centres and in stores,

conducted by the Trade Inspection in 2018. The inspectors' attention was drawn to the disparity between rates received by farmers and prices in retail chains.

The Trade Inspection verified data on the "trace back" basis – first it verified the prices of a selected product batch in the store, then – based on invoices – the amounts received by intermediaries and farmers. The analysis pertained to the prices of onions, potatoes, apples, cherries and raspberries in five stores owned by the following retail chains: Auchan, Biedronka, Carrefour, Lidl and Tesco. The study examined one batch of a specific product.

The pilot study showed that in the majority of cases there are several intermediaries between a farmer and a store, which has a significant impact on the final price of vegetables and fruit in stores. In the case of apples, for example, the profit made by intermediaries varied from 10 to 77 percent, whereas the profit made by stores varied from 9 to 27 percent. In the worst case scenario, a fruit-grower could earn only 14 percent of the final price of apples.

Proceedings and decisions

In 2019, the President of UOKiK initiated 19 explanatory proceedings and one proceeding concerning practices unfairly using the contractual advantage. Their purpose was to determine whether there are any irregularities in relations between farmers and processors or retail chains, e.g. excessively late payments, penalties imposed on suppliers affected by force majeure, inability of the supplier to participate in the quality control of supplier goods. **Five decisions have been issued** against the following companies: T.B. Fruit Polska¹⁵, Rauch Polska¹⁶, Südzucker Polska¹⁷, Döhler¹⁸, Real¹⁹. In 40 cases, UOKiK requested that businesses provide clarifications or issued a notice to discontinue the unfair use of contractual advantage against farmers. This concerned excessively long payment due dates, failure to meet payment due dates or unclear price determination methods. In the majority of cases, businesses have responded positively to the intervention of UOKiK and decided to cooper-

¹³ Proceedings concerning contractual advantage are conducted by the Branch Office of UOKiK in Bydgoszcz.

¹⁴ Pursuant to Article 12 of the Act of 15 December 2016 on Counteracting the Unfair Use of Contractual Advantage in the Trade in Agricultural and Food Pro-

ducts (Polish Journal of Laws of 2020, item 1213).

¹⁵ Decision RBG-15/2019.

¹⁶ Decision a RBG-14/2019.

¹⁷ Decision RBG-7/2019.

¹⁸ Decision RBG-9/2019.

¹⁹ Decision RBG-11/2019.

ate with the Office towards the payment of outstanding amounts. In 2019, in response to the notice issued by UOKiK, **companies buying fruit and vegetables paid almost PLN 2 mn in outstanding amounts and interest to agricultural producers.**

This was not the case for T.B. Fruit Polska, one of the largest companies that purchase fruit and produce apple concentrate in Poland. The company did not declare willingness to change its unfair practices and was punished with the **first and, at the same time, maximum penalty** for the unfair use of contractual advantage against farmers. Proceedings conducted by UOKiK found that the company did not meet payment due dates set by itself. According to the agreement, farmers should have received payment within 30 days, but in reality T.B. Fruit Polska was on average over 100 days late with the payment of amounts due. Pursuant to the Act on Counteracting Excessive Delays in Commercial Transactions²⁰, the parties may specify a period for the payment of amounts due longer than 30 days, but in any case not longer than 60 days from the date of delivery of an invoice or receipt to the debtor. A financial penalty in the amount of PLN 8.3 mn was imposed on the company, i.e. approx. 3% of its revenue from the previous year. The decision is not final and the company has lodged an appeal to the Court of Competition and Consumer Protection.

If a **business voluntarily declares its commitment to change** practices contested by UOKiK, which it uses with respect to its trading partners, such **commitment** may be accepted and the decision may be issued without imposing any penalty. Proceedings conducted by UOKiK found that Rauch Polska, owned by one of the largest corporations producing fruit juices, may have set prices at which it purchased fruit from suppliers in an unclear way. It made the price contingent on, for example, the quality of agricultural products, delivery date or the volume of demand and supply. In effect, the company's trading partners was not able to even roughly estimate the amount they would receive for their products. The second practice that may have constituted an unfair use of contractual advantage was delaying payment by up to even 40 days. Rauch Polska cooperated with UOKiK in the

course of the proceedings and undertook to change its unfair practices. New agreements will specify minimum prices for the purchase of fruit and fixed rates for vegetables. The company declared that it would pay farmers without undue delay, but in any case within 14 days. It will also conduct an audit of all agreements concluded from July 2017 to the time of the decision issued by UOKiK and settle all outstanding amounts and statutory interest for late payment.

The other three proceedings also resulted in commitments to change practices abusive to farmers from Döhler, Real and Südzucker Polska. They primarily concern shorter payment deadlines, the settlement of outstanding amounts along with any accrued interest due to fruit producers, and the change of price determination rules.

UOKiK also continued its **activities towards major retail chains**. An audit of Jeronimo Martins Polska (JMP) conducted in 2019 resulted in the initiation of proceedings against JMP in connection with the suspected unfair use of contractual advantage. In the opinion of UOKiK, practices used by the owner of Biedronka, consisting in forcing discounts from the suppliers of fruit and vegetables, may have constituted a violation of good practices. Collected information indicates that two types of rebates were being obtained without offering any services in exchange. The first type of discount was specified as a percentage in the agreement and applied upon exceeding a pre-defined value of sales to Biedronka stores. The other discount raised the concern of UOKiK, as even the suppliers themselves did not know its amount. They were informed of it at the end of the month, after the deliveries have been made. If suppliers refused to grant a discount, they were subject to a financial penalty. JMP may be fined in the amount of up to 3% of its annual revenue.

More information about key issues related to the topic of contractual advantage in the trade in agricultural and food products can be found at the following website: przewagakontraktowa.uokik.gov.pl.

²⁰ The Act of 8 March 2013 on Counteracting Excessive Delays in Com-

mercial Transactions (Polish Journal of Laws of 2013, item 403). In force under

this name as of 1 January 2020, previously in force under the name: the Act

on Payment Deadlines in Commercial Transactions.

1.3

Concentration control

Only concentrations which have or may have an impact in the territory of Poland are subject to control by the President of UOKiK. It is intended to counteract the excessive consolidation of businesses, especially by gaining or strengthening a dominant position.

Pursuant to the Act on Competition and Consumer Protection, businesses **planning a concentration** by way of a merger, acquisition of control, establishment of a new business and acquisition of a part of the assets of another business **are under an obligation to report such intention** to the President of UOKiK. A transaction needs to be notified to UOKiK, if it involves undertakings whose aggregate revenue in the previous year exceeded the equivalent of **EUR 1 bn worldwide or EUR 50 mn in Poland**.

The following decisions may be issued upon the completion of proceedings conducted by the President of UOKiK:

- **consent to concentration** – if the concentration will not significantly restrict competition on the market (the so-called standard consent) or if the concentration will contribute to economic development, technological progress or will have a positive impact on national economy (the so-called special consent),
- **conditional consent** – if concentration meets specific conditions and will not result in a significant restriction of competition,
- **prohibition of concentration** – if the transaction will significantly restrict competition on the market.

If businesses implement concentration without obtaining prior consent from UOKiK or fail to provide information in the course of the proceedings, they may be punished financially. Two decisions imposing a financial penalty for failure to report intended concentration and one decision imposing a financial penalty for failure to

provide information when requested by the President of UOKiK were issued in 2019.

The basis for the analysis conducted by UOKiK under proceedings concerning concentration is information provided by businesses in the application and the results of market research performed on the initiative of UOKiK. The key issue in that regard is to determine **the relevant market** on which transaction participants operate and compete. This allows to gain an accurate understanding of their market environment and determine what segment of the economy will be affected by the concentration.

The analysis of concentration applications may be a **two-stage** process. The majority of concentration applications which do not cause market problems is handled during the 1st stage of the procedure. Only more complex cases which require, for instance, market research are covered by the 2nd stage of the procedure. In such case, the time limit to conclude the procedure is extended by additional 4 months.

In 2019, over 96% of decisions were issued after the 1st stage of the procedure. In 12 cases, UOKiK decided to extend the concentration procedure and issued 9 decisions concluding the procedure at the 2nd stage.

25 concentration applications were returned back to the applying businesses (including due to formal defects).

Apart from handling cases concerning the Polish market, UOKiK also **issues opinions on applications provided by the European Commission** in terms of the impact of concentration on the Polish market – in 2019, UOKiK issued assessments in 368 such cases.

UOKiK's activities in relation to the control of concentrations

In 2019, UOKiK handled a record-high number of cases related to the control of concentration. UOKiK conducted 298 new proceedings, which resulted in **266 decisions**

issued – 261 standard approvals and 5 conditional approvals. None of the concentrations were prohibited.

UOKiK's activities in relation to the control of concentrations in 2019

New concentration control proceedings	298	Other data	
Decisions issued in total, including:	266	discontinuation of proceedings by way of a decision	0
– decisions concluding proceedings at the 1 st stage	257	returned notifications on the intended concentration	25
– decisions concluding proceedings at the 2 nd stage	9	proceedings moved to the 2 nd stage	12
consent to concentration	261	average duration of proceedings in the 1 st stage	32 days ²¹
conditional consent	5	average duration of proceedings in the 2 nd stage	282 days ²²
financial penalty for failure to report the intention to concentrate	2	cases examined in terms of the impact of concentration on the Polish market in connection with proceedings before the EC	368
financial penalty for failure to provide information	1	explanatory proceedings initiated in 2019 ²³	3

Approvals for concentration in the years 2017-2019

years	2017	2018	2019
consents to concentration	205	228	261
conditional consents	1	0	5

²¹ The actual case settlement period, taking into account the dates subject to exclusion under Article 96.2 of the

UOKiK Act.

²² The actual case settlement period, taking into account the dates subject

to exclusion under Article 96a.8 of the UOKiK Act.

²³ This pertains to the level of con-

centration in the economy and determination whether it is mandatory to notify the intended concentration.

Overview of activities

Financial penalty for failure to provide information in the course of proceedings conducted by UOKiK against 6 companies building the Nord Stream 2 pipeline

The case concerning the construction of the Nord Stream 2 pipeline dates back to December 2015, when 6 international entities responsible for financing the project filed an application to UOKiK seeking consent to establish a joint enterprise – Nord Stream 2 AG with its registered office in Switzerland. During antitrust proceedings, UOKiK found that the planned concentration between Gazprom and 5 other companies could lead to the restriction of competition and provided consortium members with reservations to the transaction. The companies withdrew their application, which in practice meant that they were prohibited from performing the merger.

The case continued in 2017 when the President of UOKiK initiated explanatory proceedings after information surfaced in the media that the would-be participants of the concentration signed an agreement to finance the construction of the pipeline. A year later, the 6 companies were charged with finalising the transaction despite failure to obtain consent from the Polish antitrust authority. Those are companies which belong to international groups. Gazprom from Russia, Engie established in Switzerland and four entities established in the Netherlands: Uniper, OMV, Shell and Wintershall. In the opinion of UOKiK, activities of the consortium members may have been an attempt to circumvent the law by jointly establishing a company to finance the construction of the Nord Stream 2 pipeline.

In 2019, UOKiK issued a decision concerning one of the 6 entities – Engie Energy from Switzerland²⁴. The company notoriously and intentionally refused to provide documents and information related to agreements concluded with Gazprom requested by UOKiK, which lead to substantial delays in the antitrust proceedings concerning the financing of Nord Stream 2. For failure to cooperate with UOKiK, Engie Energy Management Holding Switzerland was punished with a financial penalty in the amount of PLN 172 mn.

In 2019, UOKiK continued to analyse evidence obtained from other companies in the conducted antitrust proceedings.

Examples of proceedings conducted in the 2nd stage

Concentration on the cinema market under certain conditions

UOKiK issued conditional consent for the acquisition of Cinema 3D S.A. by Multikino S.A.²⁵ Both companies are multiplex cinema chain operators with venues all over Poland. Multikino had 32 cinemas in 27 cities, whereas Cinema 3D owned 12 cinemas in 12 locations. The transaction was reported to UOKiK in July 2018 and following an analysis it was decided to move the proceedings to the 2nd stage. As part of the 2nd stage, UOKiK performed research on the film-screening market and cinema advertisement market in Warsaw and Tricity, where activity pursued by both businesses overlapped. Research showed that the concentration may lead to a significant restriction of competition on the market of screening films in multiplex cinemas in Gdańsk. As a result of the transaction, Multikino would significantly increase its share in that market, thus strengthening its dominant position. In response to the reservations to the transaction made by UOKiK, Multikino presented terms upon the satisfaction of which the concentration could be effected. The President of UOKiK accepted those terms and issued the final concentration consent in May 2019. Multikino was obligated to sell a Cinema 3D cinema in the Morena Gallery in Gdańsk to an independent investor and submit a report on the performance of this obligation.

Conditional consent for a transaction on the retail market of liquid fuel sales

BP Europa SE established in Hamburg was granted conditional consent to acquire a part of the assets of two companies from Kraków – Arge Paliwa Sp. z o.o. and Arge Nieruchomości²⁶. Arge Paliwa deals in wholesale and retail sale of fuels, whereas Arge Nieruchomości manages, leases and sells own real estate. Concentration proceedings were moved to the 2nd stage in 2018, as

²⁴ Decision DKK-217/2019.

²⁵ Decision DKK-104/2019.

²⁶ Decision DKK-103/2019.

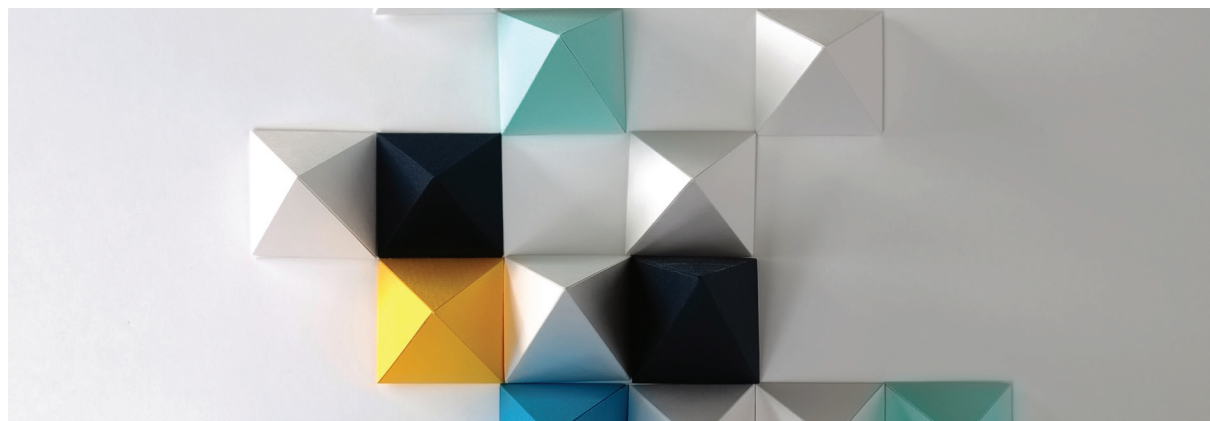
UOKiK deemed it necessary to perform market research and verify data presented by BP Europa in the application for consent to the transaction. It proved necessary to conduct a survey among 100 businesses competing with concentration participants regarding the acquisition, volume of own sales and territorial scope of their activity. The conducted analysis showed that the transaction may restrict competition on the local retail fuel sales market, as BP Europe SE would gain a dominant position in the area of Cieszyn as a result of the acquisition of petrol stations owned by Arge Paliwa. Therefore, UOKiK decided to issue reservations to the concentration. In response to the charges, the company proposed to add a condition. According to that condition, BP Europa SE had to sell two petrol stations in the area of Cieszyn to an independent investor. Implementing the proposal allowed to eliminate negative effects of the transaction on competition.

Concentrations on the pharmaceutical market

DOZ S.A. and Medix Sp. z o.o. operate on the pharmaceutical market. DOZ manages pharmacies operating under the name “DOZ Apteki dbam o zdrowie”, whereas Medix is a franchisee of several locations of that chain. In March 2019, UOKiK received an application for the acquisition of Medix from DOZ. After analysing the case, it was decided to move the proceedings to the 2nd stage and perform market research. It showed that the trans-

action will lead to the restriction of competition in the area of Tczew. According to the current case law, UOKiK found that pharmacies compete with each other within an area of 1 kilometre, as it is the maximum distance that consumers are willing to travel to buy medications. In response to the reservations raised by UOKiK as to the concentration, DOZ presented a solution which led to UOKiK issuing a conditional consent²⁷. As per the imposed condition, Medix will sell one of the pharmacies in Tczew to an independent investor, which will allow to prevent the negative effects of the transaction on competition.

Proceedings concerning the acquisition of Dolnośląska Grupa Apteczna S.A. (DGA) by Panathea Sp. z o.o. progressed in a similar fashion. Panathea belongs to the Dalferon capital group and is the owner of a chain of pharmacies and dispensaries in 8 provinces. DGA operates 17 pharmacies and one dispensary in 4 provinces. The planned transaction raised the reservations of UOKiK, as it restricted competition in certain locations in Dolnośląskie and Opolskie Provinces, where the estimated share of both companies in the market exceeded 40%. However, thanks to the solution proposed by Panathea, it became possible to issue conditional consent²⁸. The business was obligated to sell two pharmacies located in Brzeg and one located in Legnica to an independent investor.

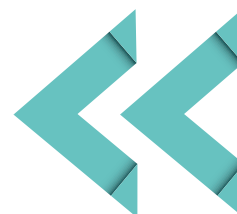


²⁷ Decision DKK-263/2019.

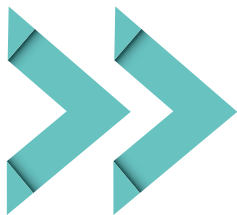
²⁸ Decision DKK-230/2019.

Examples of decisions issued by UOKiK in relation to concentration control in 2019

In 2019, decisions related to concentration control most often concerned the real estate market, financial services and trade.



Industry	Number of cases	Examples of decisions		
real estate (including the real estate developer market and residential housing sales market, rental market)	38	DKK-6/2019 Consent for PG Dutch Holding I B.V. in the Netherlands and Marvipol Logistics S.A. in Warsaw to establish a joint enterprise under the name PDC Industrial Center 108 sp. z o.o. in Warsaw	DKK-65/2019 Consent for Fundusz Sektora Mieszkań dla Rozwoju FIZAN in Warsaw and Zakliczyn municipality to establish a joint enterprise under the name MDR Zakliczyn sp. z o.o. with its registered office in Warsaw	DKK-47/2019 Consent for YIT Development sp. z o.o. in Warsaw and i2 Development S.A. in Wrocław to establish a joint enterprise
financial services (including banking services, investment fund activity, payments)	23	DKK-112/2019 Consent for the acquisition of ULTIMO Niestandaryzowany Sekurytyzacyjny FIZ in Warsaw by FORUM TFI S.A. in Kraków	DKK-108/2019 Consent for the acquisition of City Living Polska FIZAN in Warsaw by IPOPEMA TFI S.A. in Warsaw	DKK- 28/2019 Consent for the acquisition of SKOK "Jaworzno" by Alior Bank S.A. in Warsaw
trade	21	DKK-123/2019 Consent for the acquisition of Auto Wimar sp. z o.o. by Polbis Auto sp. z o.o.	DKK-224/2019 Consent for the acquisition of a part of assets of Snowfinch 19 sp. z o.o. II sp. k. with its registered office in Warsaw and Zodiac S.à.r.l. with its registered office in Luxembourg by Kaufland Polska Markety sp. z o.o. sp. k. with its registered office in Wrocław	DKK-231/2019 Consent for the acquisition of Frisco S.A. by Eurocash S.A.



1.4 State aid

In principle, the state should not interfere in market processes. However, sometimes it becomes advisable or even necessary to actively affect economic processes. A business receives an allowance that brings it benefits which it could not achieve by pursuing normal business activity. An example of this can be aid granted to businesses from poorer regions or for pro-development investments.

Therefore, the prohibition on state aid is not absolute. The European Union permits the use of aid from public funds, i.e. selective state aid granted to certain businesses. It was necessary to regulate this matter due to the need to ensure equal rules for competition and effective functioning on the internal market in the EU. Therefore, there is a general obligation to report any plans to grant or change support from public funds to the European Commission. The exception is aid granted under block exemptions²⁹ or under the *de minimis*³⁰ principle.

Aid provided by the state is considered as state aid, if it meets all of the following conditions:

- it is granted by the state or originates from state funds,
- it is granted on terms more beneficial than those offered on the market,
- it is selective in nature (it favours select entities or the production of specific goods),
- it threatens to disrupt or disrupts competition and affects trade between EU Member States.

The President of UOKiK plays a key role in the process of reporting state aid. Above all, the President issues opinions on projects providing for aid for businesses in terms of their compatibility with the internal market and the obligation to report aid to the European Commission. Aid schemes and cases of individual aid are subject to a preliminary assessment in that regard³¹. **In 2019, UOKiK issued 19 opinions regarding state and government aid projects, including 9 opinions concerning aid schemes and 10 opinions concerning individual aid.**

Next, UOKiK notifies the EC of each intention to grant aid to an enterprise by a Polish administration authority or any other public or private entity operating under state authorisation. The European Commission decides whether the notified aid is compliant with community law and the Member State is under an obligation to withhold from granting such aid until the Commission makes its decision. In 2019, UOKiK notified the EC about **19 projects that provide for awarding state aid.**

Since 2009, it is also possible to **pre-notify** the European Commission about planned state aid. As part of a confidential procedure, the EC and a Member State analyse legal and economic aspects concerning the aid project. This allows to better prepare the future notification and make the process of its verification much more efficient. In 2019, UOKiK made 6 pre-notifications of aid projects to the Commission.

An important competence of the President of UOKiK is also to **monitor aid granted to Polish enterprises** based

²⁹ The European Commission may issue regulations based on which certain categories of aid are considered as consistent with the single market rules and do not need require prior notification to and approval by the Commission.

For more information about block exemptions and *de minimis* aid, please visit https://www.uokik.gov.pl/pomoc_de_minimis_i_wylaczenia_grupowe.php.

³⁰ It is aid which cannot exceed the equivalent of EUR 200 thous. gross per

beneficiary within a period of 3 calendar years, whereas in the case of the road freight transport sector – EUR 100 thous.

³¹ UOKiK does not deal with matters related to state aid in agriculture and

fishery. The competencies of UOKiK are regulated by the Act of 30 April 2004 on Procedural Issues Concerning State Aid (Polish Journal of Laws of 2018, item 362).

on reports received from institutions granting aid. All data is provided and communicated via a special system – SHRIMP.

Overview of activities

State aid reports

UOKiK prepares reports and analyses on state aid, including:

- an annual report on state aid granted to Polish businesses,
- an annual report on *de minimis* aid granted to businesses,
- an annual report for the European Commission on state aid granted in Poland,
- periodical results from the monitoring of state aid granted to automotive sector companies operating in the territory of special economic zones.

Data collection systems

- The Aid Scheduling, Registration and Monitoring System (SHRIMP) – is used to prepare reports on granted state aid and information on cases in which aid was not granted. In 2019, UOKiK continued work on developing a new system – SHRIMP ver. 2. The procurement procedure was completed and SHRIMP2 prototype testing stage was initiated
- The System of Access to Data on State Aid (SUDOP) – an application containing information on all aid funds and their beneficiaries; collected data originate from the reports of entities granting aid, provided to UOKiK via the SHRIMP application
- The Electronic Reporting System (SARI) – allows to prepare and provide reports to the European Commission

State aid in Poland is monitored by:

- managing SHRIMP and SUDOP applications as regards aid funds;
- granting access to the SHRIMP app and managing users;
- verifying reports provided to UOKiK via the SHRIMP app;
- sending reports on granted state aid to the EC;
- providing information about state aid reported via the SHRIMP app at the request of other entities (e.g. the Central Bureau of Investigation, the General Public Prosecutor's Office).

The most important cases

Pre-notification concerning amendment of the Act on Real Estate Management

In 2019, as part of pre-notification proceedings, the Polish side presented the Commission with the new proposed wording of Article 69 of the Act on Real Estate Management regarding payments for the acquisition of land rights by a perpetual user. It is consistent with already applicable provisions concerning the enfranchisement of residential land. It is the continuation of previous correspondence with the European Commission.

Pre-notification and notification of an aid project concerning instruments planned to be used as part of the compulsory debt restructuring of Bank Y

In April 2019, UOKiK pre-notified a project of individual aid as part of the compulsory debt restructuring procedure applied with respect to Bank Y. This procedure could not be implemented under the existing aid scheme due to the size of Bank Y, as only commercial banks whose value of assets does not exceed EUR 3 bn are eligible for aid under that scheme. Due to the threat of insolvency by Bank Y and the need to initiate the compulsory debt restructuring procedure, it became necessary to obtain an individual decision of the EC confirming compatibility of the planned project with the internal market. As a result of the discussion with the EC, the project was adapted to the recommendations

and the preliminary opinion of the EC was obtained. However, decision in this case was not made due to failure to meet the prerequisites to initiate compulsory debt restructuring with regard to the Bank.

Notification of an aid scheme project concerning compensations for indirect emission costs in Poland

In July 2019, UOKiK notified the European Commission about an aid scheme concerning compensations for energy-intensive undertakings in connection with indirect emission costs in Poland. The notification was preceded by a pre-notification in March 2019. The need to purchase emission allowances by energy producers results in higher variable costs, which is reflected in a higher price of electricity on the wholesale market. This dependence is particularly visible in Poland and Polish energy-intensive undertakings are exposed to significant risk of carbon leakage, i.e. the transfer of production to other countries with less strict provisions on emission reduction. In order to prevent this phenomenon and equalise their market opportunities, it is necessary to compensate a portion of indirect emission costs. The Commission approved the notified measure and issued a positive decision in August 2019.

Notification of 3 individual aid projects under IPCEI (Important Projects of Common European Interest) in the battery sector

In December 2019, the European Commission approved state aid for 3 Polish projects reported under the Important Projects of Common European Interest (IPCEI) initiative. It is an important project reported by Belgium, Finland, France, Germany, Italy, Poland and Sweden in order to support research and innovation in the battery sector, which is a common European priority area. UOKiK pre-notified a project of individual aid for companies: Eneris, Elemental and Umicore in June 2019 and, following a preliminary assessment process, notified it formally in October 2019. Both proceedings involved frequent cor-

respondence with the EC and states participating in IPCEI, work meetings, teleconferences and workshops during which participating states edited joint documents, such as *chapeau*, and developed the monitoring and withdrawal mechanism. UOKiK cooperated to this extent with the Ministry of Entrepreneurship and Technology, the Polish Development Fund, the Ministry of Science and Higher Education, and the Ministry of Investments and Development (currently known as the Ministry of Funds and Regional Policy).

Inter-ministerial cooperation

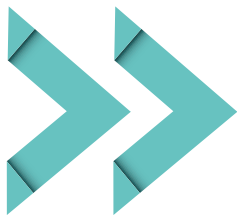
UOKiK actively cooperated with other ministries on the following matters:

- the development of Poland's position regarding the proposal of the European Commission concerning basic horizontal and thematic conditions related to the future financial perspective of EU funds for the years 2021-2027 – cooperation with the Ministry of Investments and Development (currently known as the Ministry of Funds and Regional Policy);
- the resolution of problems related to the implementation of the rules of eligibility of state aid for B+R+I activity, especially for funding research infrastructure – cooperation with the Ministry of Investments and Development (currently known as the Ministry of Funds and Regional Policy);
- the return of unlawful state aid by Autostrada Wielkopolska S.A. – cooperation with the Ministry of Infrastructure, the Ministry of Finance, the General Counsel to the Republic of Poland, and the General Directorate of National Roads and Motorways;
- the purchase or acquisition by the State Treasury of shares from funds of the Reprivatisation Fund – by preparing an opinion for the Chancellery of the Prime Minister.

UOKiK's activities in 2019

Issuing opinions on public aid projects and government projects	Number	Notification proceedings before the European Commission	Number
Opinions issued by UOKiK, including:	19	Notified to the EC via UOKiK, including:	19
– opinions concerning aid schemes	9	– aid scheme projects	8
– opinions concerning individual aid	10	– individual aid projects (including for debt restructuring)	11
– opinions concerning individual aid for debt restructuring	0		
Received and analysed applications for the interpretation of provisions on state aid	502	Projects accepted by the EC	15
		Projects withdrawn*	3
Analysed notifications of <i>de minimis</i> aid schemes	965	Projects analysed by the EC under the so-called preliminary investigation procedure*	30
		Projects covered by the formal explanatory proceedings*	9
Draft government documents analysed in terms of whether relevant support can be considered state aid	499	Projects submitted to the EC via UOKiK under block exemptions, including:	114
		– aid scheme projects	9
		– individual aid projects	105

* Statistics include cases reported in previous years.



Examples of aid scheme projects and individual aid projects assessed or notified in 2019

- Project for changing state aid for the Polish coal industry in the years 2015-2023
- Aid project involving aid for the implementation of projects related to the reduction of noise emitted by freight cars within the framework of OPIE 2014-2020
- Aid project involving aid to be granted to PKP LHS Sp. z o.o. in order to construct a transshipment terminal at the LHS Wola Baranowska station
- Aid project concerning an aid scheme included in the Act on the Promotion of Energy from High-efficiency Cogeneration
- Aid project involving a compensation scheme for energy-intensive sectors and subsectors

Examples of proceedings before the European Commission with pre-notified or notified aid

- Individual aid project involving individual aid for LG Chem Wrocław Energy Sp. z o.o. – 2nd stage
- Individual aid project involving individual aid for Polish companies participating in the European Battery Alliance
- Aid project involving the “Flat-rate tax on the value of production sold in the shipbuilding industry” aid scheme included in the Act on the Activation of the Shipbuilding Industry and Complementary Industries
- Extension of the “Guarantee Scheme for Polish Banks” aid scheme
- Project involving the modernisation of heat networks in Ustrzyki Dolne, Dębica, Lesko, Ropczyce, Tarnobrzeg

Examples of proceedings before the European Commission concerning complaints submitted to the EC (alleged aid)

- Aid project for MCAA Sp. z o.o.
- Aid project for Sferia S.A.
- Aid project for Ruch S.A. under restructuring

Works on draft national legal acts

UOKiK's area of competence

- Work on the **Act of 12 April 2019 amending the Act on Procedural Affairs Concerning State Aid (Polish Journal of Laws of 2019, item 1063)** – the purpose of the amendment was to adapt regulations to the current provisions of EU law, introduce changes regarding information to be provided by entities applying for state aid, change the method for delivering reports to the President of UOKiK by entities applying for state aid and repeal chapter 5 on proceedings concerning state aid conducted before the Court of Justice of the European Union. The Act entered into force on 22 June 2019.
- Work on the **regulation of 23 December 2019 on the method for granting access to the SHRIMP application (Polish Journal of Laws of 2019, item 2520)** – in connection with the amendment of the Act on Procedural Affairs Concerning State Aid, it became necessary to issue a new regulation that would regulate the matter of granting access to the SHRIMP application by UOKiK and the Ministry of Finance.

Legal acts initiated by other ministries – providing comments and opinions

- Draft Act – Public Procurement Law and provisions implementing the Public Procurement Law
- Draft Act amending certain acts in connection with the promotion of healthy consumer choices
- Draft Act amending the Act on Renewable Energy Sources and Certain Other Acts
- Draft regulation of the Minister of Energy concerning detailed conditions for granting and settling support awarded to natural persons not conducting business activity
- Draft regulation of the Minister of Energy concerning detailed conditions for granting and settling support from the funds of the Low-carbon Transport Fund
- Draft regulation of the Minister of Energy concerning the method for calculating the amount of price difference, financial compensation and the method for determining reference prices
- Draft Act on the Compensation Scheme for Energy-intensive Sectors and Subsectors
- Draft Act amending the Act on Support for Thermal Modernisation and Renovations

Consultations of draft legal acts of the European Commission

- Consultations of the EC concerning the assessment of principles adopted as part of the modernisation of provisions on state aid – they were carried out in the form of a fitness check, UOKiK was responsible for performing these consultations and preparing the Polish contribution to studies on draft legal acts of the European Commission
- Commission Communication “Notification concerning recovery of aid incompatible with the law and the internal market” – this draft explains principles and procedures regulating the recovery of state aid and the way in which the Commission cooperates with Member States in order to ensure compliance with their obligations
- Amendment of the GBER³² (the so-called General Block Exemption Regulation) related to Multi-annual Financial Framework – its purpose is to ensure a fluid combination of national and EU funds under the new multi-annual financial framework without infringing on competition on the internal market
- Extension of the effective period of GBER³³ and the Regulation concerning *de minimis* aid³⁴, which expire as of the end of 2020



³² Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of

Articles 107 and 108 of the Treaty (OJ L 187, 26.06.2014).

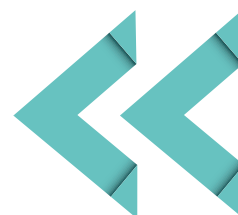
³³ As above.

³⁴ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of

the European Union to *de minimis* aid (OJ L 352/1, 24.12.2013).

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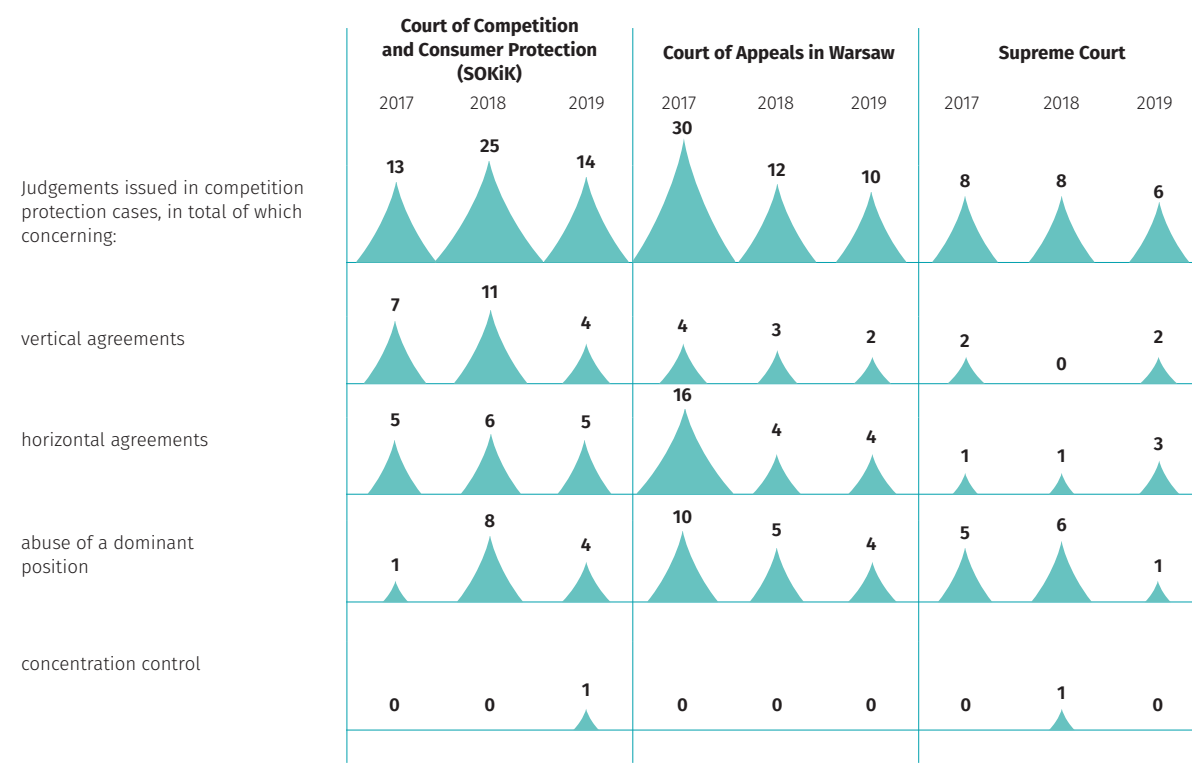
Court judgements in competition protection cases



Businesses may lodge appeals against decisions issued by UOKiK and lodge complaints against its decisions before the Court of Competition and Consumer Protection (SOKiK) in Warsaw. The judgements of the Court of

Competition and Consumer Protection may be appealed to the Court of Appeals in Warsaw (CA in Warsaw) Finally, in certain cases it is possible to file a cassation appeal to the Supreme Court (SC).

Court judgements in competition protection cases – years 2017-2019³⁵



³⁵ Database of judgements issued by the Court of Competition and Consumer

Protection, the Court of Appeals in Warsaw and the Supreme Court concerning

decisions of the President of UOKiK can be found at: <https://www.uokik.gov.pl/>

baza_wyrokow.php.

Overview of judgements in cases concerning competition-restricting practices and concentration control

SOKiK – judgement of 10 October 2019 in the case of PGNiG³⁶

The case referred to the decision of UOKiK from 2012 concerning the abuse of a dominant position by Polskie Górnictwo Naftowe i Górniczo-Węglowe (PGNiG) on the domestic market for wholesale of natural gas. UOKiK found that the business baselessly refused to sign a comprehensive agreement for the supply of gas with NowyGaz. The refusal to conclude a contract prevented that entity from entering the market for retail sale of gas and, therefore, undertaking competition against PGNiG at that level of gas trade. For restricting competition and preventing consumers the ability to choose the supplier of gas, a financial penalty in the amount of over PLN 60 mn was imposed on PGNiG. PGNiG lodged an appeal to the Court of Competition and Consumer Protection. The court shared the position of UOKiK regarding practices used by PGNiG, but significantly lowered the financial penalty imposed on the entity down to approx. PLN 5.5 mn.

Supreme Court – judgement of 9 October 2019 in the case of Sfinks³⁷

The case referred to the decision of UOKiK from 2013, which found that Sfinks Polska S.A. entered into a prohibited agreement consisting in the determination of fixed prices for the sale of products with businesses running restaurants under the Sfinks brand as franchises. UOKiK imposed a financial penalty in the amount exceeding PLN 464,000 on Sfinks Polska S.A. The decision was upheld by the Court of Competition and Consumer Protection, which dismissed the company's appeal in its entirety. The Court of Appeals amended

the judgement of the Court of Competition and Consumer Protection, decreasing the penalty amount to PLN 50,000 due to the low degree of negative impact caused by the concluded agreement. The Supreme Court also shared the position of the President of UOKiK, finding that the application of fixed sales prices is not necessary under franchise agreements.

Team Supreme Court – judgement of 15 February 2019 in the case of Anyro³⁸

Supreme Court – judgement of 15 February 2019 in the case of Jubiler³⁹

Supreme Court – judgement of 5 December 2019 in the case of Ski Team⁴⁰

All of the above judgements concern decisions issued by the President of UOKiK in 2013 and 2014⁴¹, where they found that businesses imposed minimum retail sale prices on their trading partners, which constituted a competition-restricting practice.

When handling cassation appeals, the Supreme Court shared the position of UOKiK in three judgements. It pointed out that an agreement consisting in the setting of minimum resale prices is prohibited due to its purpose and in this context the President of UOKiK does not have to examine the market effects of such practice. The Supreme Court also confirmed that in this type of agreements it is not necessary to specify market shares of individual parties to the agreement and to determine the identity of all businesses and analyse their behaviours. In this regard, it is sufficient to perform a detailed and personalised assessment of behaviours of the organiser of an anti-competitive agreement itself. The Supreme Court found that the requirement to establish all parties to the agreement in practice would limit the effectiveness of activities pursued by antitrust authorities and would go against the purpose of public enforcement of competition law.

³⁶ File reference number XVII Ama 43/17.

³⁷ File reference number I NSK 89/18.

³⁸ File reference number I NSK 10/18.

³⁹ File reference number I NSK 11/18.

⁴⁰ File reference number I NSK 1/19.

⁴¹ Decision DOK-5/2013 (PHU Jubiler), DOK-6/2013 (Anyro&Co), DOK-7/2014.



Supreme Court – judgement of 10 September 2019 in the case of T-Mobile (Polska Telefonia Cyfrowa S.A.)⁴²

In 2009, UOKiK initiated explanatory proceedings to determine whether an anti-competitive agreement concerning mobile TV services has been concluded. Polska Telefonia Cyfrowa S.A. obstructed the performance of an audit with a search by UOKiK, for which it was sanctioned financially in the amount of over PLN 123 mn. In the judgement, the Court of Competition and Consumer Protection confirmed that PTC refused to cooperate during the audit, but significantly lowered the financial penalty imposed by UOKiK to PLN 1.23 mn. The Court of Appeals also upheld such argumentation. The Supreme Court upheld the judgements of courts of lower instance confirming the company's refusal to cooperate during the audit, but to a much narrower extent than determined in the decision of UOKiK, and lowered the amount of penalty imposed by the President of UOKiK.

Supreme Court – judgement of 19 November 2019 in the case of INTEGRIT⁴³

In 2013, the President of UOKiK found by way of a decision that 6 businesses from Wrocław entered into a bid rigging agreement consisting in the joint determination of the terms of bids in a public procurement procedure for the supply of computer equipment for schools and libraries. For participating in a competition-restricting agreement, the parties to that agreement were sanctioned with a penalty in the total amount of nearly PLN 2 mn. One of the sanctioned entities was INTEGRIT, which similarly to other companies first appealed against this decision to the Court of Competition and Consumer Protection, which dismissed the appeal, and then lodged an appeal to the Court of Appeals. Finally, in 2019, the Supreme Court upheld the judgement of the Court of Appeals, which confirmed the validity of findings made by the President of UOKiK and the Court of Competition and Consumer Protection, i.e. that a bid rigging agreement has been made, despite

⁴² File reference number I NSK 46/18.

⁴³ File reference number I NSK 84/18.

the absence of tangible evidence in the case. In its decision, the Supreme Court addressed two universal matters which may be of importance for proceedings pending before the President of UOKiK. First of all, it pointed out that the date of issue of a decision on the initiation of proceedings is to be considered as the date of initiation thereof. Furthermore, it confirmed that the court of the second instance had the right to change the definition of a relevant market as specified in the decision, despite the fact that neither of the parties in the case requested such change.

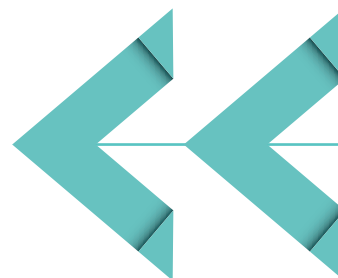
Supreme Court – judgement of 24 October 2019 in the case of PZU na Życie S.A.⁴⁴

The Supreme Court dismissed the cassation complaint lodged by PZU na Życie S.A., as a result of which the decision issued by the President of UOKiK in 2007 (DOK-96/2007) became final.

In this decision, UOKiK found that PZU na Życie abused its dominant position on the domestic market of group employee life insurance policies by preventing the forming of conditions necessary to establish or develop competition. The practice used by the company consisted in hindering policyholders (employers) from changing insurers by introducing a requirement by which employees had to express consent to the termination of the group insurance agreement, despite the fact that employees are not a party to the agreement, extending insurance cover of an employee after they withdraw from insurance and charging the policyholder (employer) with premiums for the employee during the insurance agreement termination period.

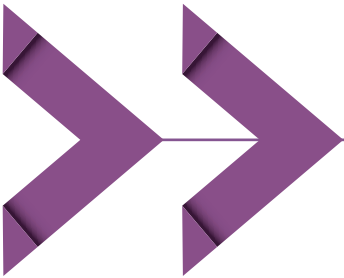
The company abused its dominant position also by transferring financial risk connected with insured employees withdrawing from group employee life insurance onto the policyholder (employer). At the same time, the President of UOKiK found that the activities of PZU na Życie constitute a practice incompatible with the single market and violate the prohibition mentioned in Article 82 of the Treaty establishing the European Community (currently Article 102 of TFEU) and ordered their discontinuation. The company was sanctioned with a financial penalty in the amount of over PLN 50 mn for violating national and EU law.

When handling the cassation appeal lodged by PZU na Życie, the Supreme Court submitted a reference for a preliminary ruling to the Court of Justice of the European Union (CJEU). The Supreme Court had doubts whether the decision of the President of UOKiK adopted the correct method for calculating the financial penalty. In April 2019, the CJEU issued a judgement in which it found that the national competition protection authority has the right to apply EU and national competition law in parallel and sanction a business with two fines in a single decision. In such circumstances, it should make sure, however, that the total amount of fines is proportionate to the nature of the violation. Therefore, CJEU confirmed the methodology adopted by the President of UOKiK for the purposes of Decision DOK-96/2007.



⁴⁴ File reference number I NSK 12/19.

02



CHAPTER 2.

Consumer protection

UOKiK is responsible for implementing the government's consumer protection policy. Its activities are horizontal in nature and cover various market sectors. They consist, primarily, in eliminating irregularities and violations of law that originate from illegal practices used by businesses. This is done through proceedings conducted by UOKiK – concerning the violation of collective consumer interests and the recognition of model contractual clauses as prohibited.

In addition, consumers are protected by UOKiK's supervision over the safety of products and services, cooperation with consumer institutions, monitoring of the out-of-court resolution of disputes with businesses (ADR) in Poland, and the advisory in cross-border cases provided within the framework of the European Consumer Centre.

2.1 Practices violating collective consumer interests and prohibited clauses in model contracts

The primary duty of the President of UOKiK is to protect consumers against **practices violating collective consumer interests**, i.e. unlawful activities of businesses that may affect an unlimited number of people. As a result, potentially anyone may be the victim of such practices. In particular, they may include unfair market practices, unfair competition practices or failure to provide true and accurate information, and the so-called misselling¹.

The most important tool used by UOKiK to eliminate practices violating collective consumer interests are **administrative proceedings**. They result in decisions in which the President of UOKiK may prohibit the use of illegal practices and sanction a business with a financial penalty in the amount of up to 10% of its revenue. It is also possible for businesses to **voluntarily commit to change their behaviour** and submit to UOKiK proposed measures to really eliminate prohibited practices aimed at consumers from the market and remove their lasting effects. If UOKiK accepts such a solution, it issues a commitment decision.

UOKiK is also interested in **the use of prohibited clauses in model contracts with all consumers**, which shape the rights and obligations of consumers in a way inconsistent with good practices or grossly violate their interests. Such clauses cannot be individually negotiated, as they are present in model contracts, which means

that consumers are forced to either sign the contract or reject it in its entirety. This applies to general terms and conditions of contracts or terms of service used, for instance, by banks, telephone operators, developers, travel agencies, gas and power suppliers, insurance companies. Since 2016, the President of UOKiK has been **controlling model contracts** concluded with consumers in terms of prohibited clauses used by businesses. As a result of conducted proceedings, UOKiK may consider a particular clause as prohibited, prohibit its continued use and impose a financial penalty on the company. In issued decisions, the President of UOKiK may also specify measures to remove the lasting effects of an unlawful practice or accept the commitment to change the practice made by the company.

Prior to 17 April 2016, the decision to declare contractual clauses as prohibited was made by the Court of Competition and Consumer Protection. Clauses deemed prohibited by way of a final judgement were entered into the register kept by UOKiK and made available at its website: www.uokik.gov.pl. At present, only contractual clauses concerning cases in which actions were filed prior to 17.04.2016 are entered into that register.

An impulse to initiate proceedings, both concerning practices violating collective consumer interests and the recognition of model contractual clauses as prohibited, may be the **monitoring of behaviours of busi-**

¹ Misselling means proposing financial services to consumers where such services do not correspond to the ne-

eds of those consumers determined using all information on the characteristics thereof available to the business,

or proposing such services in a manner inconsistent with the nature of the services in question.

nesses by UOKiK or **market signals**, especially consumer complaints.

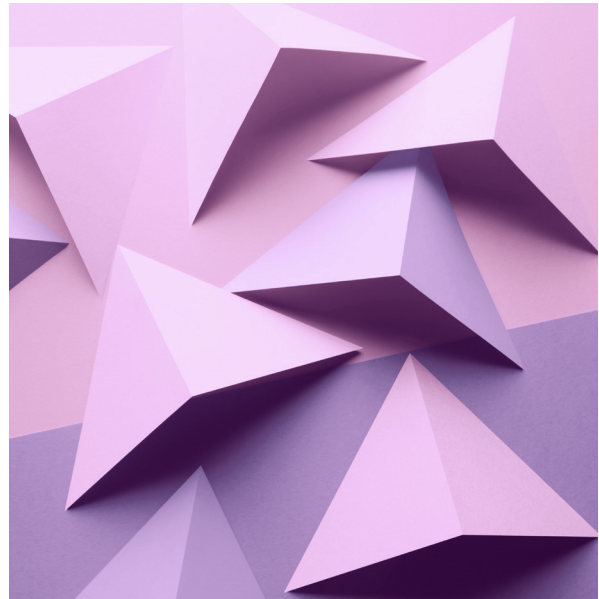
With each passing year, **the number of notifications and signals** received by UOKiK from consumers and consumer institutions **keeps growing**. In 2019, they numbered 6,566. Only approx. 15% of them represent information of a general nature, not related in substance to consumer issues. Therefore, the vast majority of signals represent a valuable source of information for UOKiK on market phenomena that require intervention².

In the course of the proceedings, the President of UOKiK uses various tools to more effectively obtain evidence in the case:

- standard controls carried out at the registered office of a business,
- controls conducted using the mystery shopper method³ – this procedure consists in UOKiK employees pretending to be consumers looking for a specific product or service and visiting the business being subjected to a control directly. This allows to identify violations quickly and continuously, e.g. during the sale of goods or entry into a contract.

Quite often, UOKiK also sends the so-called **soft calls**⁴, to businesses, e.g. to change an unlawful practice or discontinue the use of an prohibited contractual clause. Such notice does not require initiating formal proceedings, therefore it allows to more quickly eliminate irregularities from the market. In response, the business has an option to address the case within the time limit specified by UOKiK. In 2019, UOKiK issued 546 soft calls to businesses.

In certain cases, in the course of proceedings it becomes apparent that there is a particularly justified suspicion that the relevant business uses practices violating collective consumer interests that may expose a large



number of consumers to substantial financial losses or other unfavourable effects. Then, the President of UOKiK issues a **consumer warning**, in which it notifies the public of anti-consumer behaviour of the business and its probable consequences. Warnings are published on its website at www.uokik.gov.pl and announced in public radio and television for free.

In 2019, UOKiK used the mystery shopper method in the course of 5 controls. Four of them were conducted by representatives from the branch office of UOKiK in Poznań during the presentation of medical products, e.g. a water revitaliser/regenerator, massage mats, small household appliances. This way, representatives of UOKiK were able to participate in commercial meetings as observers and see for themselves how products are presented and contracts are concluded with consumers away from business premises.

² The most frequent consumer signals concerned contracts concluded in a traditional way (i.e. at a physical location) and the main subject of complaints were unfair market practices and legal

transaction defects. The most frequently reported industries include: financial services, telecommunications, energy and water industry, and the sale of household appliances.

³ The mystery shopper method has been regulated in Article 105ia of the UOKiK Act.

⁴ UOKiK issues soft calls to businesses pursuant to Article 49a of the UOKiK

Act. On the other hand, Article 50.3 of the UOKiK Act constitutes grounds for the business to submit explanations at its own initiative.

2.1 Practices violating collective consumer interests ...

2.2 Supervision over the Trade Inspection

2.3 Product safety and market surveillance

2.4 Laboratories

2.5 Fuel quality control system

In 2019, UOKiK issued three consumer warnings – all of them concerned pyramid schemes.

Two warnings pertain to websites which operate similar pyramid schemes. They offer consumers special remuneration in exchange for convincing new participants to join the scheme. In the opinion of UOKiK, these practices may have threatened the interests of a wide range of consumers who not only committed large amounts of own funds, but encouraged others to participate in the investment:

22 March 2019

BCU Trading LLC from Dubai and FutureNet Ukraine from Lviv

These enterprises are founders and administrators of websites – FutureNet social media site and FutureAdPro advertising platform.

19 November 2019

Nautilus Investment from the United Arab Emirates

This enterprise operates the Omega online advertising platform.

15 April 2019

CL Singapore from Singapore

CL Singapore introduced the DasCoin cryptocurrency to the market and has been building its own sales network under the name Net Leaders. The company offers licenses the cost of which ranges from EUR 100 to EUR 25 thous. For their payment, the licensee receives a specific value of cycles for which they may purchase CL services or the DasCoin currency. In reality, these are only promises, as the majority of products available under the license does not exist. The scheme promoted by CL Singapore may be a pyramid scheme, as this entity offers profits primarily in exchange for encouraging others to deposit funds.

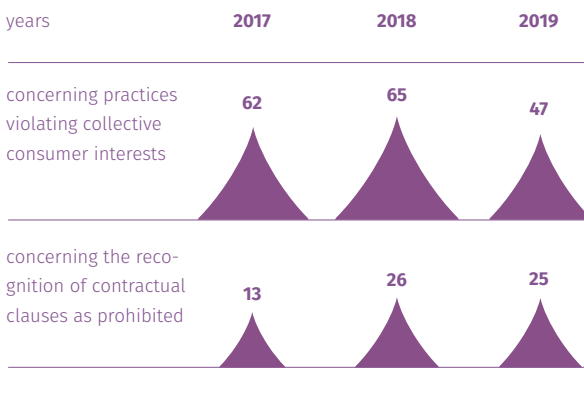
If it is justified by the public interest, the President of the UOKiK may issue **significant views in a court case** concerning consumer protection. Its purpose is to provide assistance to a common court in comprehensively examining the case, taking into consideration arguments and opinions which may not have been presented by the parties in the proceedings. Due to its specialised knowledge, UOKiK is able to view consumer issues in a wider perspective, while at the same time not acting on behalf of any of the parties to the dispute and without

Significant views in court cases in the years 2017-2019

In the last three years (2017-2019), the number of significant views issued by the President of UOKiK in court cases grew nearly threefold:



Proceedings initiated in the years 2017-2019



New proceedings in 2019



⁵ Proceedings concerning a financial penalty for non-compliance with or late

enforcement of a decision, for failure to provide requested information to UOKiK

or for providing untrue or misleading information, or for failure to cooperate

in the course of an inspection.

2.6
Out-of-court
consumer dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men and consumer
organisations

2.8
European Consumer
Centre

2.9
Court judgements
in consumer
protection cases

siding with any of them. The application for significant views to be issued in a case may be filed by any person whose case is pending before a court.

In 2019, the President of UOKiK issued **809** significant views in court cases. Similarly as in previous years, they pertained primarily to prohibited clauses used by banks in agreements for mortgage loans denominated in Swiss francs (CHF), including clauses referring to rules for determining the amount of loan instalments based on foreign exchange rates and provisions regulating the issue of low own contribution insurance included in loan agreements. Numerous significant views were also issued with regard to unit-linked life insurance agreements, including with regard to termination fees charged by insurance companies in connection with early termination of the agreement.

Overview of activities

Unauthorised amendment of terms and conditions of a telecommunications agreement

One of the most frequent violations on the market of telecommunications services is **unauthorised amendment of the terms and conditions of an agreement concluded with subscribers by the operator**. Vectra S.A., a nationwide telecommunications company providing Internet, television and fixed telephony services decided to unilaterally amend the terms and conditions of an agreement for the supply of telecommunications services during its term, despite the fact that the agreement did not provide such option. Where a subscriber did not terminate the agreement if they did not accept

Decisions issued in 2019

69

decisions on practices violating collective consumer interests, including:

189

PLN mn – penalties in the total amount

17

accepted commitments from businesses

17

decisions in cases concerning the recognition of contractual clauses as prohibited, including:

49,3

PLN mn – penalties in the total amount

1

accepted commitment

6

decisions on the imposition of a financial penalty⁶

Other activities in 2019

6 566

signals received from the market

546

new soft calls issued to businesses

8

controls carried out in businesses

13

detailed justifications of the allegations under proceedings concerning the violation of collective consumer interests and prohibited contractual clauses

1

detailed justification of the allegation under proceedings concerning the imposition of a financial penalty

809

significant views issued in court cases

3

issued consumer warnings

⁶ As above.

**2.1
Practices violating
collective consumer
interests ...**

2.2
Supervision over
the Trade Inspection

2.3
Product safety
and market
surveillance

2.4
Laboratories

2.5
Fuel quality
control system

Decisions with the highest total amount of penalties imposed on a business in 2019 for using practices violating collective consumer interests

penalties in the total amount of
PLN 189 mn

DOZIK-13/2019:

PLN 50.6 mn

(2 penalties)

Polkomtel Sp. z o.o. with its registered office in Warsaw – for the inclusion of additional fees for the so-called video streaming in the agreement, despite the fact that subscribers purchased specified Internet bundles or an additional unlimited Internet service, and for the misleading presentation of additional fees on invoices

DOZIK-6/2019:

PLN 49.7 mn

(4 penalties)

Yetico S.A. with its registered office in Olsztyn (4 penalties) –for providing misleading information as to the durability and thermal insulation parameters of styrofoam panels

DOZIK-2/2019:

PLN 39.5 mn

(9 penalties)

Polkomtel Sp. z o.o. with its registered office in Warsaw – for collecting fees exceeding the amount of subscription fee for nine automatically activated services without the consumer's consent

PLN 49,2 mn

other penalties in total

Decisions with the highest total amount of penalties imposed on a business in 2019 in relation to the recognition of model contractual clauses as prohibited

49.3

PLN mn

penalties in the total
amount

RBG-10/2019:

PLN 32.9 mn – (6 penalties) – UPC Polska sp. z o.o. with its registered office in Warsaw

DOZIK-15/2019:

PLN 13.4 mn – (1 penalty) – Getin Noble Bank S.A. with its registered office in Warsaw

RBG-2/2019:

PLN 2.1 mn – (1 penalty) – Polski Dom Maklerski S.A. with its registered office in Warsaw

the amendments, the operator raised the subscription fee for television services and access to the Internet. Furthermore, changes were made to the list of television channels in such a way that guaranteed channels became non-guaranteed channels. Vectra informed its customers that the reason for all changes are recommendations received from UOKiK, although in reality they were never the subject of mutual arrangements. The President of UOKiK contested the company's activities and issued a commitment decision in the case⁷.

The company committed to provide public compensation to customers affected by such practices. The compensation consisted in granting a discount on monthly fees, benefits in the form of a GSM card, access to a television channel or reimbursement of the collected amount, for instance. The company was also bound to inform consumers about the possibility of receiving compensation, including by publishing information on its website and by text message and e-mail.

⁷ Decision DOZIK-9/2019.

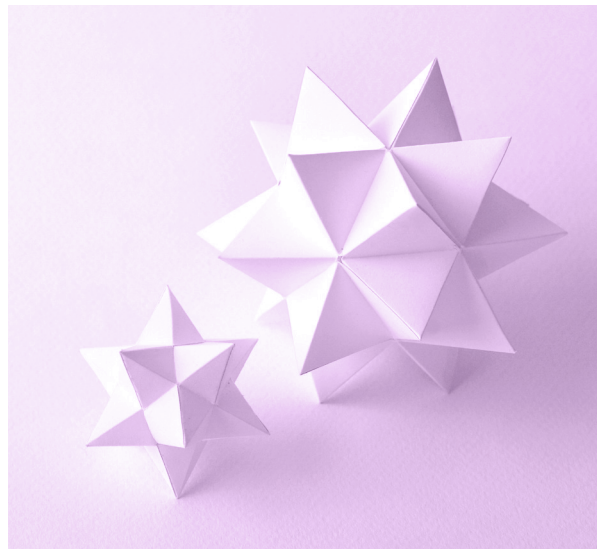
When issuing decisions concerning violations of collective consumer interests, UOKiK may apply **public compensation**, i.e. impose measures to eliminate the on-going effects of the violation. Since it does not apply to a single harmed consumer but all consumers collectively, compensation may take different forms, such as cash benefits paid to consumers or non-cash consumer benefits.

In the case of UPC Polska, **the option to unilaterally amend material terms and conditions of the telecommunications agreement was provided for in contractual clauses**. The President of UOKiK, in response to numerous consumer complaints, analysed the terms of service and model contracts and issued a decision⁸, in which it found clauses used by the company to be prohibited. UPC Polska granted itself the right to freely and arbitrarily change channels or even remove them from a bundle during the term of the agreement. At the same time, the operator stipulated that the removal of specific channels does not constitute an amendment of the agreement. In effect, consumers with agreements for a definite period of time were unable to opt out of UPC services without being charged an additional fee. On the other hand, in the case of agreements for an indefinite period, UPC Polska raised the subscription fee without any specific reasons, granting itself the right to do so in contractual clauses. Another contested decision concerned the overly general description of grounds for the termination of an agreement with the customer. A financial penalty for the use of prohibited clauses amounted to nearly PLN 33 mn. The President of UOKiK ordered the company to inform consumers about the decision, return unjustly charged fees and restore the access of customers to removed channels, if they are still available. The decision is not yet final.

Obstructing access to a free service under the subscription

In 2016, the European Football Championship was held in France. Fans could watch certain matches for free, while

others were available only upon logging in to platforms with paid access, including Polsat Sport 2 and Polsat Sport 3. Matches were also broadcast by generally available German channels – ZDF and Das Erste, which could be accessed provided that you had a satellite television box. The subscribers of Cyfrowy Polsat were also able to access those channels by selecting them from an automatic list of channels. On the seventh day of the tournament, the company removed both German channels from that list without providing any prior information about the change being made. Furthermore, consumers who sent complaints regarding the introduced modifications to Cyfrowy Polsat did not receive detailed information. In effect, consumers may have been unaware that they were still able to access match broadcasts by setting ZDF and Das Erste channels manually. The President of UOKiK found that **the company intentionally obstructed access to the broadcasts to encourage customers to use its paid access channels**. In addition, UOKiK contested the practice used by the company, which consisted in providing incomplete and inaccurate information in replies to consumer complaints. For using practices violating collective consumer interests, UOKiK imposed a financial penalty in the total amount of nearly PLN 35 mn on the company⁹. The decision is not final and the company has lodged an appeal to the Court of Competition and Consumer Protection.



⁸ Decision RBG-10-2019.

⁹ Decision DOZiK-8/2019.

Telemarketing

A telemarketing company calling a consumer for direct marketing purposes must have their **clear, prior consent** for such contact¹⁰. On multiple occasions in 2019, UOKiK verified whether businesses are complying with those obligations. Findings made by UOKiK indicate that both telemarketers employed by Arstele and those making the calls for Smak i Zdrowie (formerly known as Filipiak i Zdrowie) contacted consumers by phone and invited them to participate in studies and sales presentations without obtaining their prior consent to communicate marketing information. The President of UOKiK deemed the practices used by both entities as violating collective consumer interests and sanctioned them with financial penalties – nearly PLN 70 thous. on Arstele¹¹ and nearly PLN 35 thous. on Smak i Zdrowie¹². The companies have appealed against the decision issued by UOKiK.

A similar anti-consumer practice was contested by UOKiK in the case of Netia S.A. Representatives of the company phoned consumers who were not its subscribers with a proposal to enter into a contract, despite the fact that they did not have their consent to contact them for marketing purposes. The operator tried to obtain consent during the phone call, but this is incompliant with the law. Netia avoided a financial penalty, as it **committed to award compensation to consumers aggrieved by the practice**, in the form of one of the benefits – the option to terminate the contract without any financial consequences, the option to enter into a new contract on preferential terms, free annual access to antivirus software or 6-month access to a television channel. Furthermore, Netia declared that in the case of a decision to re-establish cooperation, it will bind partners from whom it purchased consumer data for marketing purposes to obtain their consent in compliance with the law. It will also establish conditions for a properly granted consent, so that in the future consumer knows who may be calling them and for what purpose.

Additional fees for video streaming

The principle of the so-called open internet access states that all consumers should be able to use all of its resources on equal and non-discriminatory terms. Therefore, a purchased internet bundle should include various types of data transmission for which users will not be charged with additional fees. In such case, a permitted restriction may be a limit on data usage specified in the agreement, e.g. 5 GB, 20 GB. In 2019, UOKiK contested the activities of Polkomtel which violated the right of consumers to freely use online resources as part of purchased bundles or the additional unlimited LTE Internet service. In response to consumer complaints, UOKiK analysed contracts for the provision of access to the Internet using the LTE technology, concluded by the company with subscribers. It turned out that Polkomtel stipulated additional fees for data transmission using streaming technology (the so-called video streaming) in agreements, e.g. when listening to online radio, watching movies online. Consumers could not freely access all websites as part of the purchased bundles. Furthermore, additional fees for data transmission services using video streaming were not separately specified on invoices and were included under other items, such as “domestic connections and text messages”, which was misleading to consumers. This practice lasted for 4 years and was discontinued in 2017. The President of UOKiK found that Polkomtel violated collective consumer interests and imposed a penalty in the total amount of over PLN 50.6 mn¹³. The company was additionally required to make a statement in the wording agreed with UOKiK and publish in on its website and social media. The decision is not yet final.

¹⁰ This is referred to in Article 172 of the Act of 16 July 2004 – Telecommuni-

cations Law (Polish Journal of Laws of 2004, No. 171, item 1800).

¹¹ Decision RPZ 9/2019.

¹² Decision DOZiK 1/2019.

¹³ Decision DOZiK 13/2019.



Pricing project

Proceedings and decisions concerning the market of telecommunications services are not the only tools used to eliminate irregularities. The President of UOKiK may also initiate measures oriented towards the entire industry or select businesses, if its analyses indicate that they are using similar practices towards consumers.

In connection with received signals from consumers, in October 2019 the President of UOKiK called on 10 telecommunications companies to provide accurate information about the actual price of services in advertising materials, on websites and in sales conversations¹⁴. It became a common practice **to present understated prices, i.e. prices including a discount, as standard prices in marketing communication**. Only upon closer examination of the particulars of the offer, it becomes apparent that these are not standard prices, but rather prices including a discount for granting specific consents, i.e. for telemarketing and/or to receive an e-invoice. In the opinion of UOKiK, such activities of companies may be misleading for consumers. Therefore, companies were called on to change how they present their prices. They were informed that failure to comply with the recommendations issued by UOKiK will result in the initiation of proceedings concerning practices violating collective consumer interests. UOKiK monitors marketing communications on an on-going basis and its efforts resulted in a noticeable decline in signals from consumers concerning inaccurate presentation of prices in those communications.

Additional fees for services without the express consent of the consumer – conclusion of the proceeding

In 2019, another proceedings initiated by UOKiK against Polkomtel, the operator of Plus network, were concluded. They pertained to the **collection of fees by the operator for nine different services automatically activated upon signing the contract without obtaining the express consent of consumers for these payments**. Additional payments concerned services that were not covered by the subscription fee. The President of UOKiK found the activities pursued by the company to be practices violating collective consumer interests and ordered their discontinuation¹⁵. The telecommunications company was sanctioned with nine financial penalties, one for each of the contested violations. Their total value amounted to nearly PLN 39.5 mn. After the decision becomes final, Polkomtel will be under an obligation to inform consumers about the decision issued by UOKiK on its website, in two nationwide newspapers and in registered mail sent to each consumer who was forced to pay for any of the automatically activated services at least once. The decision is not final, as the company has appealed against it to the Court of Competition and Consumer Protection.

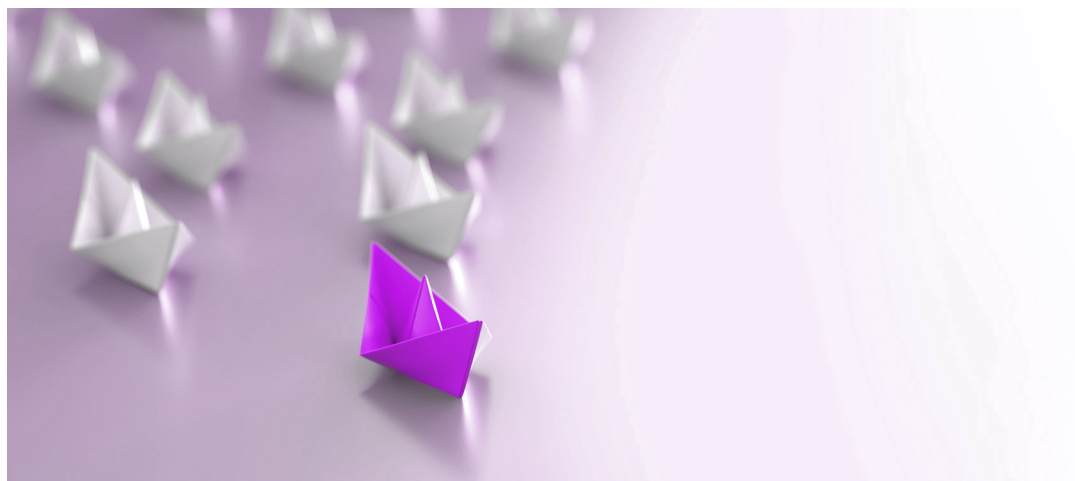
Misleading consumers as to the properties of products

One of the types of unfair market practices is misleading consumers as to the properties of offered products.

Yetico from Olsztyn is a manufacturer of construction products, mainly styrofoam panels used for building insulation. Controls conducted in the years 2014-2016 by construction supervision authorities showed that a part of the products had worse performance than declared by the company. This applied, in particular, to 4 types of styrofoam panels. UOKiK decided to initiate proceedings against Yetico due to the scale of identified violations and the fact that the company introduced additional products with understated parameters to the market. False information could have exposed consumers to

¹⁴ The position of UOKiK can be found here: <https://www.uokik.gov.pl/download.php?plik=23785>.

¹⁵ Decision DOZiK 2/2019.



substantial losses. Buyers could find it on styrofoam panel packaging, on the manufacturer's website and in advertising materials. The President of UOKiK imposed a penalty of nearly PLN 50 mn on Yetico for the use of unfair market practices¹⁶. This was the highest sanction in the history of UOKiK for the violation of collective consumer interests. The decision is not final and the company appealed against it to the Court of Competition and Consumer Protection.

Sales during sales presentations

Sales presentations are riddled with violations of collective consumer interests, which primarily affect seniors. UOKiK receives numerous complaints from misled consumers who receive invites for sales presentations under the pretext of free examinations. Based on unreliable examinations, seniors are encouraged to purchase very expensive products which allegedly have healing properties. Organisers then restrict their right to withdraw from the contract concluded during the demonstration.

Such activities were taken with regard to consumers by CMSE Sp. z o.o., operating under several trade names, including Centrum Medyczne św. Franciszka (St. Francis Medical Centre). UOKiK received information about numerous manipulations committed by the company's

representatives during sales presentations. In the course of the proceedings, UOKiK used the mystery shopper method to personally experience meetings organised by CMSE. Furthermore, it publicly warned consumers against accepting invitations for free examinations organised by that company. Ultimately, five practices violating collective consumer interests were identified: **unwanted telemarketing, concealing the commercial purpose of the demonstration, providing misleading information about health condition, exerting intolerable pressure and limiting the right to withdraw from the agreement**¹⁷. UOKiK ordered their discontinuation and in the case of 4 of these practices the decision was enforceable immediately. This meant that CMSE must discontinue them even if the appeal to the court.

A second decision¹⁸, was also issued with respect to CMSE, where UOKiK found that the company uses prohibited clauses in its contracts. They concerned: unilateral amendment of the terms and conditions of a contract, its automatic extension without the option to terminate and penalties for early termination.

In both decisions, UOKiK imposed financial penalties on the company in the total amount of over PLN 1.1 mn. The company appealed against them to the Court of Competition and Consumer Protection.

¹⁶ Decision DOZiK 6/2019.

¹⁷ Decision RWR 5/2019.

¹⁸ Decision RWR 4/2019.

2.6
Out-of-court
consumer dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men and consumer
organisations

2.8
European Consumer
Centre

2.9
Court judgements
in consumer
protection cases

Decision issued by UOKiK concerning sales presentations in 2019

Company decision No.	Contested action	Outcome/penalty
Vitaldream Decision RPZ-2/2019	- misleading consumers as to the promotional price and healing properties of a product called "Aplikator Pola Magnetycznego" (Magnetic Field Applicator).	PLN 40 812 order to discontinue unfair practices immediately enforceable
R.A.M. Polska Decision RPZ-3/2019	- misleading consumers as to the promotional price and healing properties of a product called "Aplikator Pola Magnetycznego" (Magnetic Field Applicator).	PLN 37 878 order to discontinue unfair practices immediately enforceable
VGET POLSKA Decision RPZ-4/2019	- non-disclosure of the commercial purpose of sales presentations (free examinations were to be conducted as part of the "Akademia Zdrowia" (Health Academy) or "Zdrowa Polska (Healthy Poland) campaigns) - misleading consumers as to their health condition in order to encourage them to purchase products which are not medical products (e.g. Vitronmed device for healing illnesses) - misleading consumers as to the promotional price and healing properties of products	PLN 2 723 917 order to discontinue unfair practices immediately enforceable
Exito Decision RPZ-6/2019	- encouraging participation in a sales presentation by promising gifts and prizes which, in reality, had to be paid for - misleading consumers as to the promotional price of products (e.g. healing mats, massage devices) - providing false information about inability to withdraw from a contract concluded during sales presentations	PLN 3 936 270 order to discontinue unfair practices immediately enforceable
Kangen Decision RPZ-7/2019	- misleading consumers as to the inability to withdraw from a contract	PLN 85 577
MEDISPOL (currently Radnar) Decision RPZ-17/2019	- non-disclosure of the commercial purpose of sales presentations (free medical check-ups were to be organised by "Centrum Zdrowia" (Health Centre)) - misleading consumers as to their health condition in order to encourage them to purchase products which are not medical products	PLN 397 111
Pollana Med. Decision RŁO-6/2019	- providing false information about inability to withdraw from a contract concluded during sales presentations - non-compliance with the obligation to return the amount paid by consumers in the case of effective withdrawal from a contract concluded away from business premises	PLN 1 052 684 order to discontinue unfair practices and immediate enforceability – second of the contested practices

Transport services

The President of UOKiK was informed by consumers that carriers are charging them **additional fees for non-standard product dimensions** and informing them about it at the moment of delivery of a shipment. Two explanatory proceedings were initiated against companies operating as intermediate courier agents – Furgonetki sp. z o.o. and Sendit S.A., with notices being sent to four other carriers, i.e.: DPD Polska sp. z o.o., GLS Poland sp. z o.o., InPost Express sp. z o.o. and UPS Polska sp. z o.o. Additional fees are charged, if package dimensions or weight declared by the consumer do not match those ascertained by the carrier or when the consumer did not check it as a non-standard package within the meaning specified in the terms of service of the relevant company when commissioning its shipment. Senders are being informed about the need to pay an additional fee only at the moment when the package is received. Intermediaries are charging this fee even several weeks after the service is provided.

Prohibited clauses concerning the determination of exchange rates

A constantly recurring issue in decisions issued by the President of UOKiK is the **method for determining exchange rates by banks in model foreign-currency mortgage loan agreements**. The contested provisions in most cases inaccurately and ambiguously specify the rules for calculating the value of exchange rates and specific instalments.

UOKiK analysed contractual clauses used by Getin Noble Bank S.A. in annexes to foreign-currency mortgage loan agreements. In 2019, the President of UOKiK issued a decision¹⁹, in which he found them abusive and prohibited their use. He also imposed a penalty of nearly PLN 13.5 mn on the company. Contested clauses concerned the method used by the bank to determine exchange rates. The base rate adopted by the bank was “the market exchange rate specified on the Reuters website”. Such imprecise clause referred to a professional, paid-access website to which consumer could not access. In effect, they were unable to independently check whether the

bank correctly determines exchange rates and calculates instalments on their basis. Furthermore, the company reserved for itself the right to change the calculated exchange rate, if within one day of its calculation there are large fluctuations on the market. Consumers were unable to react to the bank’s activities and verify their validity. In addition to the financial penalty, the entity was required to inform its customers about the content of the decision issued by UOKiK. From that document, they will learn that prohibited clauses are not binding on the parties to the contract, which means that they may be treated as if they were not included in the contract. Consumers may also refer to the decision of UOKiK when lodging complaints with the bank.

In 2018, a penalty in the amount of nearly PLN 7 mn for similar practices was imposed on Deutsche Bank Polska S.A. In that case, UOKiK found three clauses used by that company in model contracts, annexes and regulations concerning loans denominated in Swiss francs or euro as prohibited. These clauses pertained to the calculation of exchange rates and rules concerning the performance of loan agreements by consumers²⁰. UOKiK conducted similar proceedings with respect to 7 other banks²¹.

Prohibited contractual clauses – developers

Each year, UOKiK receives many complaints about developers regarding the use of **prohibited contractual clauses and failure to transfer ownership of the property to the buyer in a timely manner**. One of the proceedings concerned a developer from Poznań – 3DOM – implementing the Strzeszyn Park investment. UOKiK found four clauses used by the company in model contracts proposed to customers to be prohibited.

Examples of contractual clauses contested by UOKiK:

→ Changes to the square footage of an apartment

The developer included a clause pursuant to which a difference of up to 2% in the final square footage of an apartment compared to the one stated in the contract would not affect the price settlement. This

¹⁹ Decision DOZiK 19/2019.

²⁰ Decision DOZiK-9/2018.

²¹ Raiffeisen Bank International AG (formerly: Raiffeisen Bank Polska), BGŻ

BNP Paribas, Santander Bank Polska (formerly: BZ WBK), Bank Millennium,

PKO BP, BPH, Pekao SA.

means that if the square footage of an apartment proved smaller, the consumer would still be under an obligation to pay a higher price that does not correspond to the actual square footage of their apartment.

→ Penalties for delay

Pursuant to the model contract, the developer had to pay a penalty for failure to meet the deadline to transfer the right of ownership or release the apartment, in the amount of 0.05 percent of gross price, but in any case not more than 5 percent. This way, the company bore consequences only for delay not exceeding approx. 100 days. With the upper threshold of the contractual penalty guaranteed, 3DOM could keep failing to meet the deadline for the performance of a contract for a long period of time without exposing itself to negative financial consequences. In these circumstances, consumers are unable to put pressure on the company, which could be exerted by means of the contractual penalty stipulated for their benefit, if its maximum amount was not limited.

→ Powers of attorney

UOKiK contested a clause pursuant to which a buyer granted the developer power of attorney to vote and perform other activities related to the division of a joint real property for use or the merging and division of apartments. In effect, 3DOM was able to decide about many important matters, which did not always have to be consistent with the interests of a particular consumer. The clause was worded imprecisely – it was not clear what actions may be taken by the company on behalf of the customer and in what matters. Furthermore, it was one of the clauses in the model contract which the buyer may have overlooked and would not have been aware of its consequences. They also did not have the option to sign the contract with the clause excluded. Importantly, clauses concerning powers of attorney should form a separate document worded in a precise and unambiguous manner.

For using prohibited contractual clauses, UOKiK imposed a financial penalty on 3DOM in the total amount of over PLN 157.5 thous.²² The decision is not yet final.

Unfair sale of corporate bonds

UOKiK continued measures initiated in 2018 concerning **irregularities related to the offering and sale of GetBack corporate bonds**. These products were presented to consumers as safe and guaranteeing profit, despite the fact that they involved high investment risk. In consequence, many people lost their life's savings.

Corporate bonds are securities issued by companies in order to obtain capital to conduct business activity. The document states that the issuer (company) has a debt towards the buyer (bondholder). The buyers of bonds have the right to receive interest and a reimbursement of principal in at the moment when bonds are redeemed by the issuer.

In 2019, UOKiK issued a decision against Polski Dom Maklerski²³. This entity prepared documentation related to the issue of GetBack bonds and participate in their sale. Subscription for bonds was carried out, among others, by means of an electronic form. The document contained a statement in which the consumer confirmed that in the process of offering the product they did not receive any information that would be inconsistent with official documents related to the issue of GetBack bonds. Regardless of the facts, consumers were forced to accept the contents of the statements, as without that statement it would not be possible to submit the form. UOKiK found the statement to be an prohibited contractual clause and imposed a penalty in the amount of approx. PLN 2.1 mn on Polski Dom Maklerski. Such prohibited contractual clauses are not binding, therefore the decision of UOKiK constitutes important support for consumers aggrieved in this case, who are seeking their claims against the company. The decision is not final

²² Decision RPZ 5/2019.

²³ Decision RBG-2/2019.

and the company has lodged an appeal to the Court of Competition and Consumer Protection.

As regards the sale of GetBack bonds, Polski Dom Maklerski cooperated primarily with Idea Bank against which proceedings were also conducted. UOKiK issued a **partial decision**²⁴, in which it found that Idea Bank misled consumers by offering this product. The collected evidence indicated that sellers offered risky bonds to consumers and presented them as safe, profit-yielding investments. A false offer was presented as exclusive and very limited in time, so as to encourage customers to make an immediate purchase. The Bank lodged an appeal against the decision issued by UOKiK.

In 2019, UOKiK continued intensive measures against other entities concerning possible irregularities in the offering of GetBack financial products.

Unfair car sales

A promise of easy and guaranteed profit may also apply to car rentals. Praebee and Auto Rentier encouraged consumers with a promise of high earnings, while concealing from them risks connected with the contract. The investment consisted in the customer taking out a loan with the bank and purchasing a car from them for approx. PLN 70 thous. The companies undertook that for a period of up to 8 years they will rent out this car, e.g. to companies providing transportation services or as a replacement car. The rent for such rental was to be used to repay the bank loan and pay out additional remuneration to the consumer – PLN 600 per month or PLN 7,200 annually. After 8 years, the customer would have the loan repaid, a car and income of PLN 57,600. All formalities were handled by the companies, the consumer did not have any say, even in the choice of the car – many contracts were missing information about the make, model and registration number. In practice, this prevented customers from assessing the value of the car and in the future could hinder the seeking of claims related to the return of the car.

However, the loan was taken out in the consumer's name and they were responsible for its repayment to the bank. In practice, Praebee stopped paying instalments after only several months and customers were at risk of debt enforcement proceedings. The companies also stipulated a relatively low contractual penalty for terminating a contract concluded with the consumer, therefore the entire risk associated with the transaction was passed on the other party to the contract. Furthermore, Praebee did not inform consumers that they may withdraw from a contract concluded away from business premises within 14 days, without any consequences.

UOKiK initiated proceedings against Praebee (in August 2019) and Auto Rentier (in September 2019), suspecting them of using unfair market practices. At the same time, UOKiK notified the State Prosecutor's Office about a suspected crime. Ultimately, the President of UOKiK deemed the activities of both entities as violating collective consumer interests and sanctioned them with financial penalties – PLN 156 thous. on Praebee²⁵, and PLN 84 thous. on Auto Rentier²⁶. In addition, both companies must send registered letters with information about the decision issued by UOKiK to all individuals with whom they have concluded contracts. The decision has not been appealed.

Unfair debt collection practices

One Debt Partners purchased debts from PGT, a telecommunications company, which previously misled consumers by impersonating their operator at the time. Even prior to the transaction, UOKiK issued a consumer warning against that company and sanctioned it with a financial penalty of PLN 1.97 mn. UOKiK contested the activities of One Debt Partners, determining that the company should not collect debts which arose due to unfair practices. Another charge is misleading consumers by including a warning in the payment notice stating that their data will be provided to Biuro Informacji Gospodarczej InfoMonitor (InfoMonitor Business Information Bureau), even if the case concerned small

²⁴ Decision RBG-13/2019 – a partial decision means that administrative proceedings against Idea Bank have not

yet been concluded. The final decision was issued in February 2020 and concerned the so-called misselling, i.e. the

offering of GetBack bonds to consumers in a way that does not suit their needs.

²⁵ Decision RŁO-8/2019.

²⁶ Decision RŁO-9/2019.

amounts (according to the law, such warning may be included if the outstanding amount exceeds PLN 200). Furthermore, the debt collector brought an action to the court and sent a payment notice to the consumer without proposing to settle the case amicably. The company discontinued the described practices in the spring of 2017, whereas the decision²⁷ issued by UOKiK imposed an obligation to remove their effects on the company. It must withdraw all court claims in cases concerning debt arisen due to contracts with PGT and file a motion to the court enforcement office to discontinue all enforcement proceedings. Furthermore, the company must not open new enforcement proceedings until the final court judgement concerning the decision of UOKiK against PGT.

Fraud by electricity and gas suppliers

UOKiK continues to find cases of prohibited practices on the market where **consumers are misled by individuals impersonating the current electricity and gas supplier**. Such practices were contested in the case of Proton Polska Energia (formerly known as Gasoenergia Polskie Zakłady Energetyczne)²⁸. Its representatives visited consumers at home, offering them new contracts for the supply of electricity and gas on more favourable terms or informing them about the need to extend previous contracts or to read the metre. Only after receiving an invoice, customer found out that they entered into an obligation with a new supplier. Gasoenergia did not also issue copies of concluded contracts, which prevented consumers from examining their contents and made it more difficult for them to seek claims against the company. Consumers were also not informed about the right to withdraw from the contract concluded away from business premises within 14 days. Additionally, salesmen also concealed from consumers that when signing a contract for the supply of electricity, they also signed a contract for the supply of gas, and vice versa. Customers were pressured into signing the contract, preventing them from examining its contents more closely. In its dealings, the company used correspondence with the "Reliable Company" logo, despite the fact that it was not authorised to do so. The President of UOKiK concluded that the company violated collective consumer interests

and imposed a financial penalty in the amount of nearly PLN 380 thous. on the company. The company appealed against the decision to the Court of Competition and Consumer Protection.

Prohibited contractual clauses – amusement parks

In 2019, the President of UOKiK issued three decisions concerning **prohibited clauses used in model contracts by companies operating amusement parks**²⁹. Adventure Park from Gdynia, Paintball Warszawski from Warsaw and AP Infinity Group from Łódź included rules for using amusement facilities in their terms of service and other documents, which were incompliant with the applicable law. The reservations expressed by UOKiK concerned clauses which exempted the company from liability for personal injuries sustained by customers ("You enter the Rope Park at your own responsibility"), passed liability for material damages which occurred at the company's premises solely onto the consumer ("The Organiser does not bear liability for damage to health and equipment of paintball participants", "(...) I take full responsibility for any possible damages caused as a result of improper use of a paintball marker"), exempted the company's liability for personal items of customers ("The Rope Park personnel is not responsible for items left at the Park") or stipulated that the consumer may be removed from the amusement park at the company's discretion ("Non-compliance with any provision laid down in the terms of service may result in removal from the premises of the Rope Park").

For using prohibited contractual clauses, UOKiK sanctioned the companies with financial penalties and prohibited the use of such clauses in dealings with consumers. The decisions became final, as the companies have not appealed against them.

²⁷ Decision RWR-2/2019

²⁸ Decision RGD-7/2019.

²⁹ Decisions: RLU-1/2019, RLU-2/2019,

RLU-3/2019.

2.2

Supervision over the Trade Inspection

The Trade Inspection (IH) is a specialised supervision authority appointed to protect consumer interests and rights. The purpose of its operation is to create market conditions in which consumers feel secure. Its duties are performed by the President of UOKiK and province inspectors of the Trade Inspection.

UOKiK sets the direction of activities pursued by the Trade Inspection. As part of its supervision duties, UOKiK plans, coordinates, monitors and analyses the results of controls conducted by province inspectorates of the Trade Inspection. These are **scheduled controls** conducted based on the annual control schedule approved by UOKiK and **non-scheduled controls** resulting from complaints and information received from consumers, public administration authorities, local government entities, authorities from other EU Member States and businesses.

Controls covered 5 areas: agricultural and food products, non-food products covered by harmonised national and EU regulations, services, non-food products covered by general safety regulations (non-harmonised) and fuels³⁰.

The competencies of the Trade Inspection also include verifying the legality and fairness of activities pursued by businesses, whereas the competencies of UOKiK include conducting appeal proceedings against decisions issued by province inspectors of the Trade Inspection.

Overview of controls

Agricultural and food product controls

All scheduled controls of agricultural and food products have been conducted based on the control schedule of the Trade Inspection developed by the President of

Trade Inspection controls³¹

6 766

controls of agricultural and food products

4 081

controls of non-food products
and services

770

general product safety controls

1 490

market surveillance controls

4 107

other controls – including legality and fairness
of conducted business activity

193

UOKiK decisions on appeals against decisions
issued by province inspectors of the
Trade Inspection³²

³⁰ As of 1 July 2020, the competencies of the Trade Inspection Authority with respect to agricultural and food products have been taken over by the

Agricultural and Food Quality Inspection Authority.

³¹ These include the following inspections: included in UOKiK's inspection

schedule, own inspections conducted by the Trade Inspection Authority, and inspections carried out as interventions.

³² This category includes appeals against decisions concerning the specified inspection categories and fuel quality.

2.6
Out-of-court
consumer dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men and consumer
organisations

2.8
European Consumer
Centre

2.9
Court judgements
in consumer
protection cases

Examples of controls conducted by the Trade Inspection in 2019 at the request of UOKiK

Type	Date of control
The control of food products offered in bulk, with particular focus on pies and pastry goods	Q1 2019
The control of compliance with the Act on Waste Electrical and Electronic Equipment by businesses	Q1 2019
The control of the security of light fixtures	Q2 2019
The control of electrical personal transport equipment	Q2 2019
The control of country of origin labels placed on vegetables and fruit	July 2019
The control of solid fuel boilers with a rated heat output not greater than 500 kW in terms of compliance with national environmental protection requirements	December 2019
The control of energy labels of light fixtures	Q4 2019
The control of toy safety	2019

Reports and information concerning the results of inspections conducted by the Trade Inspection can be found at the website of UOKiK at: https://www.uokik.gov.pl/raporty_z_kontroli_inspekcji_handlowej.php.

UOKiK. They covered **19 thematic categories**. Similarly as in previous years, their most important purpose was to identify irregularities in product labels and ensure that points of sale display correct product information, including about the country of origin. The most frequently conducted controls pertained to organically-farmed products in terms of compliance with regulations on organic farming, milk and dairy products in terms of consistency of the declared composition with actual composition, commercial and catering establishments in terms of the marketable quality of supplied services. Controls also verified whether businesses comply with the regulations on the display of prices, the date of minimum durability and expiration dates on food products.

In 2019, **controls regarding the placement of country of origin labels** have increased, with particular focus on identifying false information on the Polish origin of

products. These activities were carried out as part of scheduled controls and ad hoc controls commissioned by the President of UOKiK as a result of signals received from consumers and agricultural producer organisations. Their purpose was to verify the accuracy of labels on fresh fruit, vegetables and potatoes, especially in foreign retail chains.

The Trade Inspection conducted a total of 6,766 controls related to agricultural and food products, including over 1,700 in connection with consumer complaints. Reservations were raised with regard to 19.5 percent of all batches subjected to control, whereas in terms of proper labelling – approx. 30.5 percent of all batches.

Controls of non-food products and services

Controls of non-food products and services conducted in 2019 covered **11 thematic areas of control**. The most frequently conducted controls pertained to textile products as well as the compliance with law and reliability of businesses providing services to the public.

In connection with new competencies granted, in 2019 the Trade Inspection conducted a control of solid fuel boilers with a rated heat output not greater than 500 kW at the request of the President of UOKiK. This matter is vital due to the need to protect clean air. The purpose of the control was to determine whether the marketed boilers meets legal requirements³³ related to construction, technical documentation and labelling. A total of 176 businesses were subjected to control, with **453 batches of heating boilers** subjected to assessment. An administrative decision ordering the withdrawal of products from the market was issued with respect to 2 batches.

The Trade Inspection also participated in the BEF-1 EU project which involved the control of products treated with biocidal products, intended for consumers and professional users. As a result of the control, 46 out of 184 batches were challenged due to the absence of legally required information.

In 2019, a Department of the Trade Inspection (UOKiK) was involved in works on draft amendment to the Act* on the Control of Agricultural and Food Products, which will enter into force as of 1 July 2020. The purpose of these amendments is to transfer the duties of the Trade Inspection regarding supervision over the marketable quality of agricultural and food products to the **Agricultural and Food Product Quality Inspection Authority**.

* The Act of 23 January 2020 amending the Act on the Marketable Quality of Agricultural and Food Products and Certain Other Acts (Polish Journal of Laws of 2020, item 285).

General product safety controls

Non-food products are also controlled in terms of general safety requirements. Safe products are products which do not put the life and health of consumers at risk. In 2019, activities taken in this area concerned, in particular, the following products: children's items and furniture – baby carriages and carry cots, bicycles for young children and bike child seats, winter sports equipment, footwear, heatproof dishes, sports and recreational equipment.

In total, 770 scheduled and own controls were conducted, examining 2,435 product batches. The safety of 33.6 percent of products from among those examined was challenged.

Controls regarding harmonised EU requirements – market surveillance system

A separate category of controls conducted by the Trade Inspection is carried out as part of the market surveillance system which functions in all EU Member States. Manufactured and marketed products must meet specific human, animal and environmental safety requirements. Controls concern a group of 20 products subject to mandatory safety regulations³⁴.

The Trade Inspection enforces EU requirements on the Polish market pursuant to control priorities determined by UOKiK. In 2019, controls most frequently pertained to: toys, electrical devices (including household appliances), consumer machinery, personal protective equipment, pyrotechnic products. **A total of 1,490 scheduled and own controls were conducted, with 5,242 types of product subjected to control.** Approximately 34.8 percent of them were challenged, with the most reservations raised with regard to toys which did not meet the chemical (e.g. the presence of phthalates) and mechanical (e.g. the presence of small components) requirements. This stems from the fact that UOKiK has own toy testing laboratories and conducts the most laboratory studies in this area.

³³ This matter was regulated in the Regulation of the Minister of Development and Finance of 1 August 2017

concerning requirements for solid fuel boilers (Polish Journal of Laws of 2017, item 1690, and Polish Journal of Laws of 2019, items 363 and 2549).

³⁴ These include the so-called new approach directives which apply, but are not limited to, toys, electrical equipment, personal protective equipment,

construction materials, machinery, lifts, pyrotechnic products.

2.3

Product safety and market surveillance

All products introduced to trade on the EU market must meet specific safety requirements. Businesses bear direct responsibility for ensuring product safety and their declarations are verified by market surveillance authorities appointed for this purpose, including UOKiK. **UOKiK holds general supervision over products intended for consumers³⁵**. For this purpose, it conducts proceedings aimed at eliminating threats posed by products or withdrawing them from the market. It also commissions the Trade Inspection to conduct scheduled and intervention controls.

The President of UOKiK monitors the functioning of the market surveillance system in Poland³⁶ in terms of compliance of products with requirements laid down in harmonised EU laws. As part of his competencies, the President conducts proceedings concerning products placed on the market or put into service in terms of whether they meet requirements laid down in harmonised EU legislation providing for the CE marking.

Activities related to general product safety

UOKiK obtains information about hazardous products from Trade Inspection controllers as well as consumers and supervision authorities of other EU Member States via an EU system – RAPEX.

On this basis, in 2019 UOKiK initiated **111 cases related to general product safety**, including 55 explanatory actions and 56 administrative proceedings. Actions were most frequently taken with respect to furniture, bicycles and carbon dioxide detectors.

If a specific product is unsafe, UOKiK may impose specific obligations on the manufacturer or distributor by way of

a decision, e.g. to withdraw the product from the market or warn consumers about its hazardous nature. A business which places such a product on the market may be sanctioned with a financial penalty in the amount of up to PLN 100 thous. In practice, many businesses voluntarily undertake measures to remove nonconformities even during the proceedings. In effect, the majority of administrative proceedings conducted by UOKiK is discontinued. In 2019, UOKiK issued 14 decisions providing for a financial penalty and the proceedings were discontinued in 31 cases.

Effectiveness of UOKiK's activities on the example of heat-proof dishes

2
warnings

4 725
products withdrawn from
the market

16 788
products for which
the hazard was eliminated

Information regarding unsafe products

Voluntary notifications from businesses

A business which becomes aware that its product poses a threat is under an obligation to withdraw it from the market, replace it or refund an equivalent of the purchase price to the consumer. It should also notify UOKiK about identified irregularities and remedial measures taken. UOKiK monitor the implementation of those measures and publishes any received notifications on its website.

³⁵ Supervision is conducted pursuant to the Act of 12 December 2003 on General Product Safety (Polish Journal of

Laws of 2016, item 2047).

³⁶ Supervision is conducted pursuant to the Act of 13 April 2016 on Compliance

Assessment and Market Surveillance Systems (Polish Journal of Laws of 2019, item 544, and Polish Journal of Laws of

2020, item 1086).

In 2019, UOKiK received **257 voluntary notifications**. The vast majority of them – 223 – concerned motor vehicles.

Register of unsafe products

Products deemed by UOKiK as non-compliant with the safety requirements are entered into the **register of unsafe products**. In 2019, no new product was added to the register.

RAPEX system

The primary function of RAPEX (Rapid Alert System for Non-Food Consumer Products) is to ensure a rapid exchange of information between EU Member States and the European Commission on products posing risks to consumers. UOKiK operates a contact point for this system, therefore it provides information about unsafe products on the Polish market, actions taken, and any voluntary notifications made by businesses. It receives similar information from other Member States. The system is administrated by the EC.

Notifications to the RAPEX system:

- UOKiK – **133**
- EU Member States in total – **2 247**, including 160 pertaining to products manufactured or imported by Polish businesses

Products most often reported to the RAPEX system:

- Toys – EU: **656**, Poland: **78**
- Vehicles – EU: **507**, Poland: **10**
- Electrical and lightning equipment – EU: **285**, Poland: **29**

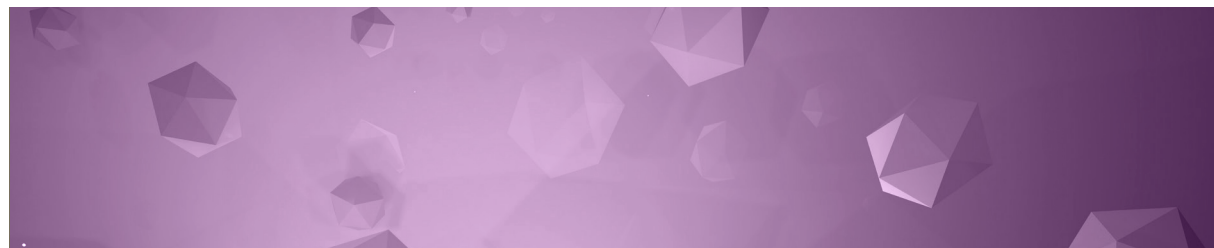
Activities related to compliance with EU requirements

UOKiK monitors the functioning of the national market surveillance system, comprised of bodies authorised to control various categories of non-food products³⁷. As part of the monitoring system, UOKiK cooperates with these institutions, assesses their periodical control schedules and provides them information about products non-compliant with the requirements. They pertain to over twenty groups of products, including electrical equipment, construction materials, machinery, and lifts.

Market surveillance authorities conduct controls at the request of the President of UOKiK or ex officio. If during its course it turns out that the product placed on the market or put into service does not meet the requirements, administrative proceedings are initiated and an administrative fine may be imposed.

The business may voluntarily remove the non-compliance or withdraw the product from the market. If the business does not cooperate, UOKiK may – by way of a decision – order the removal of non-compliance, withdraw the product from the market or from buyers, and the notification of consumers about the irregularities. In 2019, over 60 percent of decisions were repealed due to voluntary remedial measures undertaken by businesses.

In 2019, UOKiK initiated 368 cases concerning compliance of products with requirements, including 104 explanatory and 264 administrative proceedings. The actions of UOKiK most often concerned toys and electrical equipment.



³⁷ The representatives of institutions involved in the national market surveillance

system participate in regular meetings of the Market Surveillance Steering

Committee, which is a permanent team with assessment and advisory

functions under the President of UOKiK.

2.6
Out-of-court
consumer dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men and consumer
organisations

2.8
European Consumer
Centre

2.9
Court judgements
in consumer
protection cases

Authorities forming the market surveillance system together with UOKiK:

- Province Inspectors of the Trade Inspection
- Inspectors of the State Labour Inspectorate
- President of the Office of Electronic Communications
- Bodies of the Environmental Protection Inspectorate
- President of the Office of Rail Transportation
- Construction supervision authorities
- President of the State Mining Authority
- Directors of maritime authorities
- Province road transport inspectors
- Directors of regional offices of measures

Information collected by UOKiK on non-conforming products

Register of non-conforming or hazardous products

UOKiK keeps **a register of non-conforming or hazardous products**. It includes information from national market surveillance authorities regarding products with respect to which decisions imposing certain conditions have been issued³⁸. In 2019, **131** products were entered in the register, and 31 products were unlisted due to the fulfilment of statutory requirements.

ICSMS system

The Information and Communication System for Market Surveillance (ICSMS) enables the collection of informa-

Effectiveness of UOKiK's activities on the example of toys

141

warnings

111 361

products withdrawn from
the market

2 377

products in which non-
compliances have been removed

tion on products that do not meet the requirements of EU harmonisation legislation and the exchange of such information between market surveillance authorities of the EU Member States. UOKiK serves as the Polish contact point for ICSMS. In 2019, UOKiK submitted 9 notifications to the system.

The President of UOKiK monitors the functioning of the market surveillance system in Poland, comprised of national authorities. One of the tasks in that regard is the development of **interinstitutional documents**. In 2019, these included:

- a report on activities taken in relation to the surveillance of the pyrotechnic product market in 2018,
- a report concerning the functioning of the control system for products subject to new approach directives for the year 2018,
- **the National Market Surveillance Programme for the year 2020** – a document drafted annually based on data provided by other national market surveillance authorities (10 institutions) and provided to the European Commission and other EU Member States.

³⁸ Article 84.2 and 84.4 of the Act of 13.04.2016 on Compliance Assessment

and Market Surveillance Systems (Polish Journal of Laws of 2019, item 544,

as amended) or Article 41c.3 to 41c.5 of the Act of 30.08.2002 on the Compliance

Assessment System (Polish Journal of Laws of 2019, item 155).

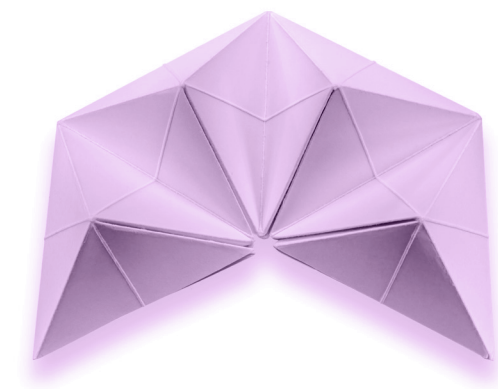
2.1
Practices violating
collective consumer
interests ...

2.2
Supervision over
the Trade Inspection

2.3
Product safety
and market
surveillance

**2.4
Laboratories**

2.5
Fuel quality
control system



UOKiK's activities in numbers – 2019

45

handled com-
plaints from the
market (consumers,
businesses, other
authorities)

202

answered queries

257

notifications of
unsafe products
received from
businesses (most
of them pertained
to cars)

Reform of the national market surveillance system

In 2019, UOKiK and the Ministry of Development established cooperation in order develop ideas for changes to be implemented in regard to the structure and functioning of the market surveillance system in Poland. This became necessary due to the expanded scope of the EU market surveillance system pursuant to the new Regulation 2019/1020/EU*.

The planned reform also includes a new division of competencies between national market surveillance authorities, which are subordinate to different ministers. It was decided to establish the Inter-ministerial Team in charge of the reform of compliance assessment and market

surveillance system, the duties of which includes the review and analysis of legal regulations in force and the development of model solutions in that regard. The team is composed of representatives of ministries and market surveillance authorities. It is headed by the Minister of Development, and the deputy head is the President of UOKiK.

* Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and

amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169/1).

UOKiK's activities in 2019

	general product safety	compliance with EU requirements (new approach directives)
Explanatory actions taken	55	104
New proceedings	56	264
Decisions issued*	45	252
- incl. discontinuation of the case due to remedial measures undertaken by the enterprise and elimination of the risk	31	161
- incl. decisions imposing obligations	0	46
- incl. decisions imposing financial penalties	14	45
Decisions concerning applications for reconsideration of the case	11	20

* Examples of types of decisions have been provided, but this data is not included in the total number of issued decisions. Pursuant to the Act on General Product Safety, it is possible to issue different decisions, which often combine different categories – e.g. decisions to discontinue proceedings and impose a penalty or simply discontinuing the proceedings, decisions imposing obligations with or without a financial penalty, decisions imposing only a financial penalty.

2.4 Laboratories

UOKiK has eight laboratories performing studies at the request of the President of UOKiK and province inspectors of the Trade Inspection. Five specialised units deal with food products, while other handle fuels, toys, textile products and other non-food products³⁹. The results of these studies allow to eliminate low-quality products or products posing a threat to consumers from the market.

Each of the laboratories is accredited by the Polish Centre for Accreditation (PCA), confirming that they meet the requirements of PN-EN ISO/IEC 17025. This standard specifies the requirements for technical competence in the field of measurements, among others. In order to confirm their competence to conduct studies in 2019, the laboratories of UOKiK participated in over 70 proficiency testing programmes and interlaboratory comparative studies.

Laboratories are continuously developing research methods according to the needs of UOKiK and province inspectors of the Trade Inspection, as a result of which 39 new methods were accredited with PCA in 2019.

In 2019, the laboratories of UOKiK examined a total of **3,990 samples, in which they identified 51,337 parameters**. Approx. 54 percent of all samples (2,159) were assessed by laboratories to be compliant with the declaration or regulations. In the group of non-food products, the most non-conforming samples were identified in the case of baby carriages, sport scooters, textile products and toys. In the group of food products, the most non-conforming samples were identified in the case of mild and dairy products, pastry and confectionery goods, meat and processed meat, fats and oils, and fish and fish products.

Laboratories' activities in numbers – 2019

The number of examined samples and identified parameters in the years 2016-2019:

	samples	parameters
2016	4 367	37 991
2017	4 659	41 143
2018	4 330	47 828
2019	3 990*	51 337**

* Including 2,159 samples compliant with the declaration or legal regulations.

** The higher number of identified parameters in subsequent years results

from the continuous improvement of research capabilities of the laboratories.

The number of examined samples along with the percentage share of samples assessed as conforming on the examples of selected products

Meat and processed meat

432 examined samples



28% compliant samples



Textile products

355 examined samples



51% compliant samples



Toys

593 examined samples



59% compliant samples



Fish and fish products

142 examined samples



33% compliant samples



Milk and dairy products

246 examined samples



9% compliant samples



Catering products

275 examined samples



56% compliant samples



Baby carriages

20 examined samples



25% compliant samples



Pastry goods

91 examined samples



11% compliant samples



Petrols

305 examined samples



97% compliant samples



³⁹ As of 1 July 2020, new food inspection regulations will apply. The quality of food in the entire supply chain will

be monitored by one institution, i.e. the Agricultural and Food Product Quality Inspection Authority (IJHARS). This will

entail the need for UOKiK to transfer 5 laboratories to IJHARS.

2.5

Fuel quality control system

The President of UOKiK manages the fuel quality control and monitoring system⁴⁰, the purpose of which is to eliminate fuels which do not comply with quality requirements from the market. UOKiK prepares control schedules for province inspectors of the Trade Inspection and then monitors their progress. On this basis, it prepares annual collective reports concerning fuel quality for the Council of Ministers and the European Commission.

The controls cover the entire fuel distribution supply chain, from producers, fuel storage depots and wholesales, all the way to petrol stations. Responsibility for analysing fuel samples collected during the controls rests with laboratories accredited by the Polish Accreditation Centre. UOKiK manages a specialised fuel laboratory in Bydgoszcz⁴¹.

Petrol stations are selected for a control at random and based on consumer complaints, information from law enforcement authorities and the results of previous controls. In 2019, UOKiK received 655 such notifications.

If fuel does not satisfy quality requirements, UOKiK issues a decision under which the business subjected to control is obligated to refund the costs of conducted laboratory studies. 43 administrative decisions in that regard were issued in 2019.

UOKiK conducts appeal proceedings against decisions issued by province inspectors of the Trade Inspection, who impose sanctions on businesses subjected to control for failure to issue solid fuel quality certificates and to post information on the content of bio-components in the offered liquid fuels at their fuel stations. A total of 41 decisions were issued in the second instance.

In 2019, the Trade Inspection verified the quality of all types of fuel available on the Polish market:

- petrol (unleaded, RON 95 and RON 98),
- diesel fuel,
- Liquefied Petroleum Gas (LPG),
- light fuel oil.

No liquid biofuel samples have been collected for tests, as they are not offered for sale. As of 1 July 2019, the Trade Inspection also controls the quality of solid fuels.

You can check fuel quality at stations and wholesalers subjected to control on your own on a map prepared specifically for this purpose, available at the following website: www.uokik.gov.pl

The regulations in force provide for severe sanctions for trading in poor quality fuels – a fine of up to PLN 1 million or imprisonment up to 5 years.

Overview of activities

Controls of businesses selected at random

1.37 percent of liquid fuel samples collected at random in 2019 failed to meet quality requirements. Compared to 2018, the number of challenged samples slightly declined (1.9 percent). Similarly as in 2018, **the irregularities**

⁴⁰ The Act of 25 August 2006 on the Fuel Quality Monitoring and Control System (Polish Journal of Laws of 2019,

item 660, as amended).

⁴¹ Fuel examinations are conducted by the laboratory in Bydgoszcz, which

forms part of the Laboratory Department of UOKiK, and by a commercial laboratory selected by way of a procu-

rement procedure.

2.6
Out-of-court
consumer dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men and consumer
organisations

2.8
European Consumer
Centre

2.9
Court judgements
in consumer
protection cases

were more often identified in petrol (1.01 percent) than diesel (1.86 percent). The random sample was slightly larger than last year: a total of 1023 samples were collected, compared to 947 in the previous year.

In total, taking into account stations selected based on complaints, 1.86 percent of all samples failed to meet the quality requirements.

The random Liquefied Petroleum Gas (LPG) tests have shown irregularities in the case of 0.60 percent of all 397 analysed samples (compared to 1.43 percent of poor quality samples out of all 413 collected samples in 2018). In the case of solid fuels, 3.03 percent of all 213 samples collected for testing purposes was challenged due to not meeting the quality requirements.

Controls based on complaints and prior irregularities

The Trade Inspection also tested the quality of fuels offered by businesses against whom complaints were filed, selected by law enforcement authorities and businesses with respect to which irregularities have been identified in previous years.

The results of liquid fuel controls have improved compared to 2018. Out of all 658 diesel fuel and petrol samples collected at 520 stations, inspectors have challenged 2.74 percent (compared to 6.63 percent the year before). In most cases, the reservations concerned diesel fuel (4.46 percent of the samples), whereas in the case of petrol no irregularities were identified.

As far as LPG is concerned, the inspectors contested 1.92 percent of the samples, which is an improvement compared to 2018, when the figure equalled 2 percent.

As of 1 July 2019, UOKiK also conducted a control with regard to the quality of solid fuels. 213 samples were collected and tested, out of which 3.03% were challenged.

Decisions of the Trade Inspection regarding fuel quality controls

The Trade Inspection issued 10 decisions on withdrawal from the market of liquid fuels which did not meet the applicable standards, and provided the Energy Regulatory Office with information on 47 filling stations where breaches of the terms and conditions of licenses granted for trading in liquid fuels and of provisions of the Energy Law were identified.

The Trade Inspection submitted 23 suspected offense notifications to the applicable prosecutor's offices. The regulations in force provide for severe sanctions for trading in poor quality fuels – a fine of up to PLN 1 million or imprisonment for the period between 3 months and 5 years.

	randomly controlled stations and collected samples	% of challenged samples
Liquid fuels – petrol and diesel fuel	1 023	1,37
LPG	397	0,60

Control results

655

notifications on
poor quality fuel

43

UOKiK decisions
ordering businesses
to cover the costs of
laboratory tests

23

suspected offense
notifications submit-
ted to prosecutor's
offices

47

information provided
to the Energy Regula-
tory Office (URE) on
the breach of the
terms and conditions
of licenses for trading
in liquid fuels and of
the Energy Law

10

decisions of the
Trade Inspection on
withdrawal of non-
conforming fuels
from trade

3

UOKiK decisions con-
cerning applications
submitted by busi-
nesses to reconsider
a decision issued by
UOKiK, ordering busi-
nesses to cover the
costs of laboratory
tests

2.6

Out-of-court consumer dispute resolution system

The out-of-court consumer dispute resolution system in Poland (also known as ADR – Alternative Dispute Resolution, out-of-court dispute resolution or amicable dispute resolution system) has been functioning since 2017⁴². It is comprised by public and private institutions conducting amicable proceedings between consumers and businesses in cases within their area of competence. The Trade Inspection, as a horizontal institution, deals with matters for which an appropriate sectoral entity has not been established.

The duties of the President of UOKiK include keeping **a register of entities authorised to settle consumer disputes out-of-court**. UOKiK supervises the system by assessing applications for entry to the register submitted by institutions dealing with alternative dispute resolution and applying from the status of authorised entity. It also monitors their compliance with obligations imposed by the ADR Act. It is done by an on-going analysis of websites, reports on activities, and exchanging information as part of work meetings with representatives of the system in Poland⁴³. Entities entered to the register are notified to be European Commission as authorised to conduct alternative consumer dispute resolution proceedings.

In 2019, ADR entities received nearly 20 thous. applications for the initiation of amicable proceedings. In most cases they pertained to industrial products (approx. 54% of applications submitted to the Trade Inspection con-

cerned footwear) and airline services. As regards public entities, the most cases were received by the Trade Inspection (over 7.1 thous.) and the Passenger Rights Ombudsman attached to the Civil Aviation Authority (over 4.5 thous.). In the category of private entities, the most applications were submitted to the Banking Arbitrator attached to the Polish Bank Association (800).

Register of authorised entities

The register of ADR authorised entities is available at the website of UOKiK at: https://www.uokik.gov.pl/rejestr_podmiot_uprawnionych.php. It contains data concerning individual institutions, including name, amount of fee charged, languages in which applications for the initiation of proceedings may be submitted, types and categories of consumer disputes handled by the specific entity.

In 2019, the register included **11 authorised entities**: 7 public entities established under or within the structure of public authorities and 4 private entities established by businesses from a specific industry. One public institution was added to the register – the Passenger Rights Ombudsman attached to the President of the Civil Aviation Authority. Data included in the register and changes thereto are communicated to the European Commission, which publishes the list of entities conducting alternative consumer dispute resolution proceedings, reported to the Commission by EU Member States on the ODR (Online Dispute Resolution) platform.

⁴² The Act on Act of 23 September 2016 on Alternative Consumer Dispute Resolution (Polish Journal of Laws of 2016, item 1823), which implemented

EU regulations to the Polish legal order (hereinafter referred to as the ADR Act), entered into force on 10 January 2017.

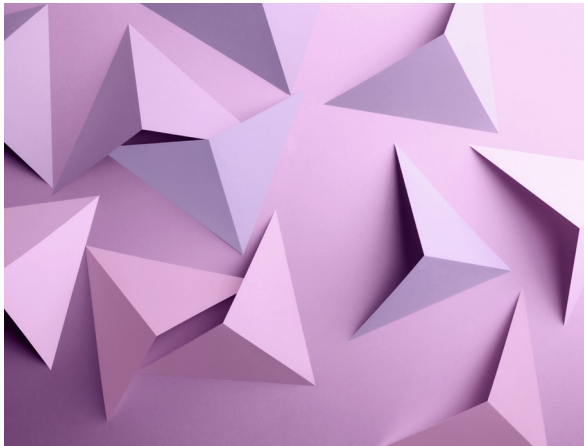
⁴³ They include: The President of UOKiK, authorised entities, the Contact Point for ADR/ODR, and the European Consumer Centre.

2.6 Out-of-court consumer dispute resolution system

2.7 Cooperation with consumer ombudsmen and consumer organisations

2.8 European Consumer Centre

2.9 Court judgements in consumer protection cases



Contact Point for ADR/ODR

The Contact Point for ADR/ODR was established under the President of UOKiK and provides information concerning amicable proceedings as well as assistance in filling out applications. In 2019, it provided a total of 931 advice, 545 electronically and 383 by phone. Furthermore, consultations were also conducted during individual meetings at the registered office of UOKiK. The highest number of cases concerned consumer sales (footwear, household appliances) as well as airline, tourist and financial services. In addition, consumers submitted questions about the rules based on which the ADR system in Poland operates and how the ODR platform is managed.

ODR platform

The ODR platform is an interactive website created at the initiative of the European Commission to help consumers and businesses who wish to settle a dispute amicably. Using an electronic form, it is possible to file a complaint regarding **goods or services purchased online, either domestically or abroad**. All institutions available on the platform have been verified and registered by national authorities (in Poland responsibility for this rests with UOKiK). The website is available in all EU languages and can be found at: <https://ec.europa.eu/consumers/odr/>.

ADR entities present in the register in 2019

Public entities: Sector-specific

financial and insurance services	Financial Ombudsman, the Court of Arbitration at the Polish Financial Supervision Authority
telecommunications and postal services	President of the Office of Electronic Communications
energy services	the Negotiation Coordinator attached to the President of the Polish Energy Regulatory Office
rail transport services	the Rail Passenger Rights Ombudsman attached to the President of the Office of Rail Transport
aviation transport services	the Passenger Rights Ombudsman attached to the President of the Civil Aviation Authority (entered into the register in April 2019)

Horizontal

Trade Inspection

sale of goods and services, in cases not covered by other specialised entities, including tourism, real estate development, education, and renovation and construction services

Non-public entities: Sector-specific

services offered by banks	Banking Arbitrator attached to the Polish Bank Association
aviation transport services	Air Passenger Watchdog "Friendly Flying" ⁴⁴
sale of goods and services online with members of the Chamber	e-Commerce Chamber
sale of food products	Centre for Alternative Resolution of Disputes Concerning Food at the Polish Federation of Food Industry Union of Employers

⁴⁴ This institution was removed from the register on 14 June 2019. The remo-

val decision was issued at the entity's request.

2.7

Cooperation with consumer ombudsmen and consumer organisations

Cooperation with consumer ombudsmen

Cooperation with municipal and district consumer ombudsmen is a constant element of activities pursued by UOKiK to effectively protect consumer interests. It takes the form of meetings, continuous communication by e-mail and phone, trainings. UOKiK provides ombudsmen with a newsletter containing information about its activity, decisions of courts in consumer cases, and queries regarding current activities pursued by ombudsmen. They provide UOKiK with valuable information on irregularities on the market and interventions taken against them.

Each year, UOKiK prepares and publishes a report on the activities of consumer ombudsmen. Its purpose is not only to present collective information concerning the functioning of this institution, but also to present an image of day-to-day work of ombudsmen. An important element of the document are their conclusions concerning the state of the law as well as their role and that of other institutions in the consumer protection system.

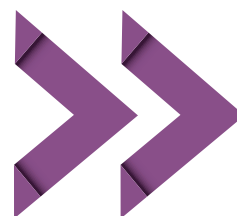
There is a **National Council of Consumer Ombudsmen** operating under the President of UOKiK. It serves an assessment and advisory function, including by submitting remarks concerning the activity of UOKiK or participating in the discussion concerning an amendment of regulations. In 2019⁴⁵, the Council operated in a new composi-

tion, appointed by the President of UOKiK against the written consent of ombudsmen being appointed. It held two meetings – one at the registered seat of UOKiK and one teleconference. The constant exchange of information with the council allows UOKiK to better implement the government's consumer policy.

Cooperation with consumer organisations

Joint initiatives undertaken with consumer organisations concern educational and information campaigns, nationwide advisory, organisation of events focused on consumer affairs, exchange of information on violations on the market, and assessment of legal acts.

Each year, UOKiK organises competitions for consumer organisations, involving the implementation of duties aimed at raising awareness about consumer rights and providing legal assistance⁴⁶. Permanent projects include: nationwide direct advisory, e-advice, and the consumer helpline. **In 2019, PLN 2,328 mn was allocated for the implementation of those projects.**



⁴⁵ The composition and method of appointment to the National Council of Consumer Ombudsmen changed pursuant to provisions laid down in the

Act of 4 July 2019 amending the Act on Competition and Consumer Protection and Certain Other Acts (Polish Journal of Laws of 2019, item 1667).

⁴⁶ Grants are awarded by UOKiK in accordance with the provisions of the Act of 24 April 2003 on Public Benefit Activities and Volunteering (Polish Jo-

urnal of Laws of 2020, item 1057).

2.6
Out-of-court
consumer dispute
resolution system

2.7
**Cooperation with
consumer ombuds-
men and consumer
organisations**

2.8
European Consumer
Centre

2.9
Court judgements
in consumer
protection cases

List of grants awarded in 2019

Total amount of awarded grants: **PLN 2,328 mn⁴⁷**

Consumer helpline in the years 2018-2019 – 2019

organisation: Consumer Foundation

grant amount:

PLN 1,103,000 mn

Effects: 70,550 advice given

Popularisation and protection of consumer rights in the years 2019-2020 – 2019

organisation: Aquila Association,
National Senior Management Institute Foundation

grant amount:

PLN 1 mn

Effects: 2,813 advice given in 10 regional consumer
and field advisory centres,
800 educational activities

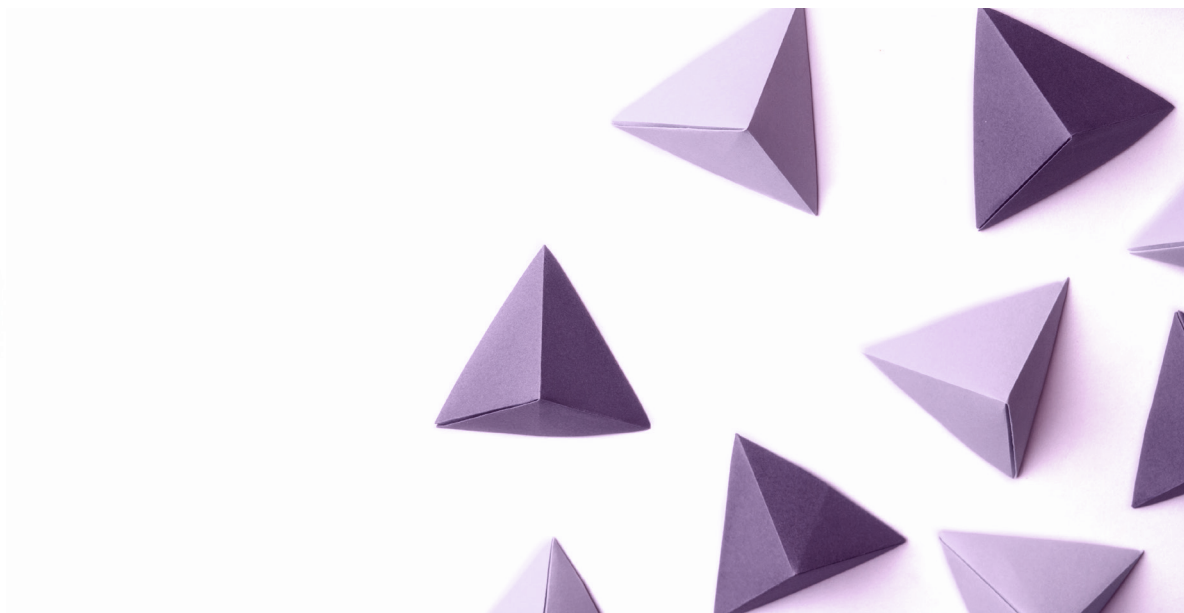
Consumer e-Advice Centre in the years 2018-2019 – 2019

organisation: consortium: Aquila Association, Euro-Concret
Association, Association for the Districts

grant amount:

PLN 225 thousand

Effects: 18,855 advice given



⁴⁷ The amount was rounded up and calculated based on grant amounts stipulated in all agreements conc-

luded with organisations regarding the implementation of tasks commissioned in 2019.

2.8

European Consumer Centre

The European Consumer Centre Poland (ECC Poland) has been within the structures of UOKiK since 2018. It belongs to the network of European Consumer Centres (ECC-Net)⁴⁸, which includes 30 centres in 27 EU Member States and in Norway, Iceland and Great Britain.

ECC Poland provides free advice to consumer regarding their rights on the EU single market and helps solve individual cross-border problems in an out-of-court way. The Centre also carries out activities to promote European consumer rights (via a website, traditional and social media), cooperates with consumer and business organisations, and provides UOKiK information regarding violations of collective consumer interests via CPC-Net (in 2019, 5 such notifications were made).

With each passing year, the number of cases handled by ECC Poland keeps growing. In 2019, the Centre handled 3,818 complaints (14% more compared to the previous year) and 2,076 queries (up by 4%). **Assistance was provided to a total of 5,894 consumers.** The most complaints pertained to businesses from Germany, Luxembourg and Great Britain, while complaints regarding purchases from Polish businesses were most often made by consumers from Lithuania, the Czech Republic and Bulgaria.

The highest number of cases handled by ECC concerned contracts concluded online. Advice given concerned aviation transport services (issues with flights and luggage), the purchase of clothing and footwear, hotel room and car rental, and subscription to dating websites.

Examples of cases

- **Guarantee or warranty?** A consumer from Lithuania purchased a defective fence at a physical store in Poland. They attempted to initiate the complaint procedure with the Polish manufacturer to no avail. After the consumer was denied the option to use the warranty card outside Polish borders, they decided to file a complaint to ECC Lithuania. Ultimately, the case was referred to ECC Poland.
- **Travelling with “class”.** A Polish family of three was on their way back from the Dominican Republic on a charter airline. Unfortunately, their flight was delayed by 3 hours and one of the passengers had to travel in a lower class. The family was able to obtain compensation for the delay, but the airline refused to refund the funds due for the switch to lower class. Thanks to the intervention of ECC Poland and ECC Netherlands, ultimately the airline paid the entire amount to the consumers.
- **Costly CV.** A consumer used a paid CV creator and paid PLN 9.99 for the selected template. After a week, the website charged PLN 59.99 to her card. It turned out that she entered into a subscription agreement and the amount was to be collected monthly. She was not expressly informed by the company about the existence of the subscription. After ECC-Net intervened, the company refunded her the amount of PLN 59.99 and changed how it presented information on its website.

⁴⁸ The ECC-Net network is co-financed from the funds of the European

Commission.

2.6
Out-of-court
consumer dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men and consumer
organisations

2.8 European Consumer Centre

2.9
Court judgements
in consumer
protection cases

ECC POLAND INITIATIVES IN 2019

ECC Poland also conducts numerous activities to promote consumer rights in the EU. Select initiatives in 2019:

- “Vacation postcard in the form of a complaint” – an information campaign for consumers returning from vacation and having a problem with an airline (promoted on YouTube, Facebook and Twitter);
- organisation of the “Consumer on the border” event in Stubice-Frankfurt on the Oder river together with ECC Germany during the city’s Hanseatic Holiday;
- joint activities together with UOKiK in regard to Black Friday – press release and webinar;
- lessons in secondary schools and at universities,
- training for consumer ombudsmen regarding passenger rights and tourism law.

COOPERATION WITH FOREIGN AUTHORITIES

In April 2019, the European Consumer Centre organised a two-day meeting for the representatives of ECC-Net and the European Commission. The first day included consultations as part of the Strategic Group and the Case Handling Group coordinated by ECC Poland. The second day included workshops during which 60 participants representing all EU Member States worked to standardise the rules for handling cases at ECC-Net.

ECC Poland in the media in 2019

- interviews and commentaries: 88
- press publications: 160
- online publications: 317



2.9

Court judgements in consumer protection cases

Judgements in cases concerning the violation of collective consumer interests

Businesses have the right to appeal against decisions issued by the President of UOKiK in cases concerning the violation of collective consumer interests, to the Court of Competition and Consumer Protection. If the court does not agree with the settlement referred to in the decision, it is allowed to repeal or change it, in particular by changing the amount of financial penalty imposed on the business. The court of second instance is the Court of Appeals in Warsaw. It is also possible to file a cassation appeal against its decision to the Supreme Court

Overview of judgements

SOKiK – judgement of 14 March 2019 in the case of UPC⁴⁹

In 2016, UOKiK imposed a penalty of over PLN 800 thous. on UPC **for unlawfully informing consumers about a change in the amount of subscription fee for access to the Internet** (RBG-5/2016). Contracts concluded with consumers lacked a modification clause indicating when and in what circumstances a price for the service may be subject to change. In such circumstances, the business should not unilaterally amend the terms and conditions of contracts. In its judgement, the Court of Competition and Consumer Protection confirmed the position of the President of UOKiK. In its assessment, “there are no sufficient arguments to justify an assumption that one of

the parties to the contract may modify an already existing contractual relationship without contractual or statutory authorisation and completely at will – as to reasons for and content of amendments”. Furthermore, it confirmed the right of UOKiK to use public compensation and impose an obligation on businesses to refund unduly collected amounts due to the violation of collective consumer interests to consumers. However, in the case concerning UPC, the court deemed the use of this instrument to be disproportionate to the weight and type of violation.

SOKiK – judgement of 14 October 2019 in the case of Polkomtel and Cyfrowy Polsat⁵⁰

The judgement relates to the decision issued by UOKiK in 2016 (RGB-10/2016) where it **found advertising campaigns of Cyfrowy Polsat and Polkomtel concerning the smartDOM (smartHouse) offer to be misleading**. The promotional offer suggested that it is possible to acquire a bundle of telecommunications services along with a set of electronic equipment in one subscription bundle for the price of PLN 61 per month. In reality, the offer only included the price of the service provided and there was an extra charge for equipment. The message concerning the need to conclude a separate contract for the purchase of equipment and pay an additional fee for that equipment was illegible to an average consumer due to the font size used as well as the length and duration of the informative text. In this decision, UOKiK imposed a penalty of nearly PLN 16.7 mn on both businesses. The Court of Competition

⁴⁹ File reference number XVII AmA
64/16.

⁵⁰ File reference number XVII AmA
33/17.

and Consumer Protection dismissed the appeal lodged by the companies in its entirety. It deemed activities taken jointly by Cyfrowy Polsat and Polkomtel as practices violating collective consumer interests, upheld penalties imposed on businesses and ordered the broadcast of fragments of the decision on television.

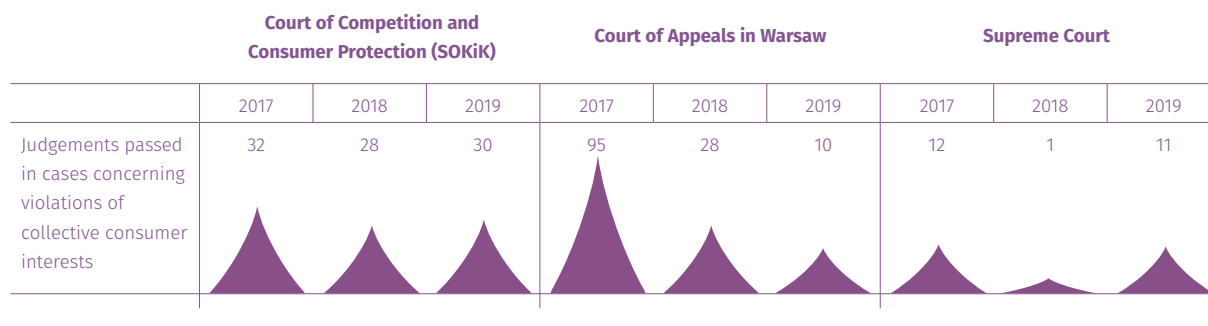
SOKiK – judgement of 4 April 2019 in the case of Novum⁵¹

The Court of Competition and Consumer Protection dismissed the appeal lodged by Novum against the decision of UOKiK from 2015 (DDK-29/2015) in its entirety. In this decision, UOKiK found that the company violated collective consumer interests. **Novum consultants called consumers with a proposal to conclude a contract without obtaining their prior consent.** Pursuant to the law (the Act on the Protection of Certain Consumer Rights and Liability for Damage Caused by Unsafe Products), an entity who initiates contact for marketing purposes must obtain prior consent of the consumer. Furthermore, conversations were held in such a way that customers were convinced that the offer is presented by their current operator. UOKiK found that the company misled consumers and sanctioned it with a penalty in the total amount of over PLN 481 thous.

SOKiK – judgement of 15 January 2019 in the case of Orange Polska⁵²

The judgement relates to appeal of Orange Polska against the decision issued by the President of UOKiK in 2016 (DDK-26/2016). The proceedings were instigated following a series of complaints received by UOKiK from consumer ombudsmen and from consumers using services offered by the company. The practice challenged by UOKiK involved the **automatic renewal of contracts concluded for a definite period in the event of inaction on the part of the consumer.** If the customer did not provide a termination notice prior to expiry of the contract, it was not terminated but rather extended for an additional period. The periods in question were 6 months in case of the Neostrada service and 12 or 24 months in case of other landline services. Consumers who terminated their contract early were charged high penalties. The operator changed the practice in the meantime, but even then many consumers had difficulties with freely choosing how to extend the contract. This was caused by Orange consultants forcing the extension of a contract for a definite period of time. The long-term nature and significant reach of the challenged practice had an impact on the amount of the financial penalty imposed on the company. It amounted to nearly PLN 30 mn. Apart from the financial penalty, the President of UOKiK decided to order the removal of the effects caused by the challenged practice in the form of

Court judgements in cases concerning violation of collective consumer interests – years 2017-2019⁵³



⁵¹ File reference number XVII AmA 34/16.

⁵² File reference number XII AmA

19/17.

⁵³ Database of judgements issued by the Court of Competition and Consumer

Protection, the Court of Appeals in Warsaw and the Supreme Court concerning decisions of the President of UOKiK can

be found at: https://www.uokik.gov.pl/baza_wyrokow.php.



public compensation for consumers. UOKiK imposed on Orange Polska the obligation to reimburse the company's former subscribers for early termination fees charged for terminating an automatically renewed contract. The company also had to make it possible for its subscribers to terminate the contracts renewed in the manner referred to above without any consequences whatsoever.

In January 2019, the Court of Competition and Consumer Protection dismissed the company's appeal. The Court agreed with charges included in the decision and found that the penalty imposed on Orange is adequate to its violations.

SOKiK – judgement of 25 April 2019 in the case of PGT⁵⁴

In December 2016, UOKiK issued a decision in the case concerning PGT (RPZ-10/2016), in which it found that the company used practices violating collective consumer interests. The company operating under the name “Telefonia Polska Razem” was misleading consumers. **Company representative impersonated the current telecommunications service provider** and offered to change the terms and conditions of the contract. In reality, documents presented to consumers constituted a new contract and

signing them entailed changing service providers. Additionally, PGT made it difficult for its customers to withdraw from the contract for free by not providing a signed copy and annexes.

The President of UOKiK ordered the company to discontinue illegal activities and imposed the maximum penalty provided for by law in the amount of over PLN 1.97 mn.

In April 2019, the Court of Competition and Consumer Protection dismissed the appeal lodged by PGT. The judgement is not yet final.

SOKiK – judgement of 14 March 2019 in the case of mBank⁵⁵

The judgement relates to the appeal of mBank against the decision issued by UOKiK in 2015 (DDK-20/2015). In this decision, UOKiK found that the company violated collective consumer interests and imposed a financial penalty in the amount of over PLN 6.5 mn on the company. **When it settled foreign-currency loan agreements, it did not take into account negative interest rates**, despite the fact that the LIBOR rate used to calculate this interest rate dropped below zero. The President of UOKiK imposed an obligation on the bank to remove persisting effects of

⁵⁴ File reference number XVII AmA 9/17.

⁵⁵ File reference number XVII AmA 32/16.

the violation by refunding the amount resulting from the calculation of interest rate with the negative value taken into account to consumers.

The Court of Competition and Consumer Protection dismissed the appeal of mBank and shared the position of UOKiK as to the challenged practice and the obligation to remove persisting effects of the violation imposed on the bank. However, it lifted the imposed financial penalty due to the precedent character of the case.

SOKiK – judgement of 19 August 2019 in the case of Raiffeisen Bank International AG⁵⁶

In 2016, UOKiK found in its decision (DDK-24/2016) that Raiffeisen Bank violated collective consumer interests, as **it did not take into account negative LIBOR when calculating loan interest rates indexed in Swiss francs**. The bank, without having obtained the consent of its clients, attempted to unilaterally introduce a contractual provision according to which any negative LIBOR rate was to be deemed as amounting to zero. In accordance with the provisions of applicable laws, such amendment would constitute a material change of the agreement for which the consent of the consumer must be sought. After discontinuing this practice, the bank continued not to apply the negative loan interest rate. UOKiK imposed a penalty of over PLN 3.5 mn on Raiffeisen Bank Polska. Pursuant to the decision adopted, an obligation was imposed upon the bank to calculate interest rate in accordance with the agreement and pay compensation to consumers for all periods during which negative interest rates occurred.

In 2019, the Court of Competition and Consumer Protection dismissed the appeal of the entrepreneur in its entirety.

Supreme Court – decision from 26 March 2019 in the case of Raiffeisen Bank Polska⁵⁷

The Supreme Court refused to adopt a resolution in response to the judicial question of the Court of Appeals in the case concerning an appeal lodged by Raiffeisen Bank Polska. However, in the statement of reasons it addressed

the issue of considering the bank's behaviour as a practice violating collective consumer interests. It confirmed that one of the main criteria of eligibility is the illegality of an action (or omission), i.e. its incompliance with the law. The said illegality is objective in nature, therefore it does not matter whether the bank's activities were culpable. "The perpetrator of a deed, i.e. the perpetrator's guilt or innocence (in the subjective sense, meaning the defectiveness of the perpetrator's decision-making process) and the degree of guilt (intention or lack of intention), is immaterial to the determination of illegality of an action taken by a business".

Supreme Court – judgement of 10 October 2019 in the case of Orange Polska⁵⁸

In its decision (DDK-23/2010) from 2010, UOKiK concluded that Polska Telefonia Cyfrowa Centertel (today known as Orange Polska) violated collective consumer interests by using an **aggressive market practice**. It also imposed a penalty of nearly PLN 9.3 mn on the company. UOKiK challenged the company's distance selling model in which the consumer had to sign a contract in the presence of a courier. Therefore, they did not have the conditions and time to freely examine the documents and make a rational decision on that basis. In the opinion of UOKiK, the company used its position and exerted pressure on customers who perhaps, in other circumstances, would decide not to make a long-term commitment.

The regional and appeal courts did not agree with UOKiK's assessment. They found that the consumer had prior opportunity to examine the contract on the service provider's website and consult its provisions with the consultant.

The Supreme Court, while considering the cassation appeal lodged by the President of UOKiK, had doubts as to how the provisions of the Unfair Commercial Practices Directive should be interpreted in this case. Therefore, the Supreme Court asked the Court of Justice of the EU to clarify whether the distance selling model used by PTC Centertel can be considered an aggressive commercial practice. In line with the position of CJEU (file refer-

⁵⁶ File reference number XVII AmA 24/17.

⁵⁷ File reference number I NSZP 1/18.

⁵⁸ File reference number I NSK 16/19.

ence number C-628/17), the Supreme Court found in its judgement that a model of entering into contracts for the supply of telecommunications services which requires the consumer to make a decision in a short period of time in the presence of a courier cannot be considered an aggressive commercial practice. However, aggressive commercial practices are such activities pursued by businesses which consist in encouraging the consumer to make an unfavourable decision by limiting their freedom of choice. In a situation where both parties preliminarily agree the terms and conditions on which the service is to be provided and then those terms and conditions are confirmed in the contract presented for execution to the consumer, even a short period of time to examine the documents does not lead the consumer to make – under the pressure of courier's presence – a decision which they would not make otherwise. Furthermore, the Supreme Court found that the consumer had prior opportunity to examine the terms and conditions of the contract.

Supreme Court – judgement from 19 November 2019 in the case of CT Creative Team⁵⁹

The judgement relates to the decision issued by UOKiK in 2014 (RŁO-37/2014). It concluded that CT Creative Team violated collective consumer interests, as it **did not duly inform users about costs connected with the use of additional services with premium rates**. A penalty in the amount of approx. PLN 31 thous. was imposed on the company. The Court of Competition and Consumer Protection dismissed the company's appeal and upheld the decision. In a verbal statement of reasons, it stated that consumers were not informed each time that by using additional options in a game they were sending text messages at premium rates. The Court of Appeals agreed with the company's appeal and decided to repeal the decision issued by the President of UOKiK.

In the last judgement from 2019, the Supreme Court dismissed the cassation appeal lodged by the President of UOKiK against the judgement of the Court of Appeals. In its decision, the Supreme Court stated that consumer law

creates favourable conditions for consumers to make an informed decision. The Supreme Court did not deem it required to provide information about the costs of additional options during a game and stated that information about the costs of all paid options is provided to the user before choosing the "Always OK" option (clicking this button was equivalent to expressing consent). Additionally, the Supreme Court stated that the obligation to provide information by the business may arise from good practices, but in this case such good practice was not demonstrated.

Judgements in cases concerning general product safety and compliance of products with EU requirements

Companies have the right to appeal against decisions issued by UOKiK concerning general product safety and compliance of products with EU requirements (the New Approach Directives) to the Provincial Administrative Court. Moreover, companies may also lodge a cassation appeal against Provincial Administrative Court judgements to the Supreme Administrative Court.

Judgements in cases concerning appeals against decisions made by province inspectors of the Trade Inspection and decisions imposing an obligation to cover laboratory fees

The President of UOKiK handles appeals against decisions issued by province inspectors of the Trade Inspection in connection with conducted controls. Furthermore, UOKiK conducts proceedings and makes rulings and decisions imposing on a business an obligation to cover the costs of fuel quality tests.

An appeal against decisions made by UOKiK may be lodged to the Provincial Administrative Court, whereas cassation appeals against Provincial Administrative Court judgements may be lodged to the Supreme Administrative Court.

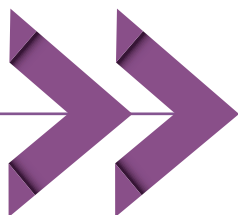
⁵⁹ File reference number I NSK 90/18.

2.6
Out-of-court
consumer dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men and consumer
organisations

2.8
European Consumer
Centre

2.9
Court judgements
in consumer
protection cases



Appeals lodged and judgements issued in 2019

general product safety

compliance with EU requirements

Appeals against UOKiK decisions lodged by businesses to the Provincial Administrative Court	3	5
Appeals against UOKiK decisions dismissed by the Provincial Administrative Court	3	3
Appeals against UOKiK decisions sustained by the Provincial Administrative Court	3	0
Cassation appeals against Provincial Administrative Court judgements lodged to the Supreme Administrative Court	2	2

Appeals lodged and judgements issued in 2019 – fuel quality

29

appeals against UOKiK decisions lodged by businesses to the Provincial Administrative Court

23

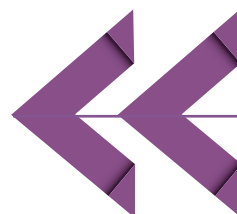
appeals against UOKiK decisions dismissed by the Provincial Administrative Court

5

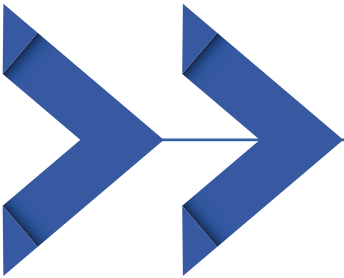
appeals against UOKiK decisions sustained by the Provincial Administrative Court

2

cassation appeals against Provincial Administrative Court judgements lodged to the Supreme Administrative Court



03



CHAPTER 3.

An important area of UOKiK's activities related to competition and consumer protection is shaping the legal environment, conducting social studies and market analyses, as well as informing and educating market participants regarding consumer and antitrust regulations. UOKiK is also involved in activities on the international cooperation forum, especially in initiatives implemented by EU institutions and other EU Member States.

3.1

Legislative work

As part of its competencies, UOKiK drafts legal acts concerning competition and consumer protection. It also participates in legislative work initiated by other institutions in other areas of competence. In 2019, UOKiK analysed a total of 1,255 draft acts and positions to draft acts of the *Sejm* in terms of regulations that may have an impact on competition and the situation of consumers.

3.1.1

National legislation

Legislative work in UOKiK's area of competence

Draft Act amending the Act on Competition and Consumer Protection and Certain Other Acts

The amended act harmonises Polish law with the Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC¹. It prohibits businesses from discriminating customers due to nationality, place of residence or pursuit of business activity. In effect, consumers are to have equal access to the offer, regardless of the European Economic Area member state (EU, Great Britain, Norway, Iceland and Liechtenstein) from which they are making a purchase.

The provisions of the amended Act on Competition and Consumer Protection state that in Poland responsibility for enforcing the provisions of the EU Regulation rests with:

- UOKiK – if the practice used by the business violates collective consumer interests and if geo-blocking constitutes a competition-restricting practice,
- common courts – to the remaining extent.

According to the new regulations, consumers will be able to obtain information on matters related to the application of the EU Regulation at the Contract Point for alternative consumer dispute resolution and the online consumer dispute resolution system (Contact Point for ADR/ODR) operating under UOKiK.

The act also changed the procedure for establishing branch offices of UOKiK and assigning them tasks. Thus far, the seats of branch offices have been specified in the Act on Competition and Consumer Protection. The amended provisions stipulate that this issue will be regulated by way of an ordinance of the Prime Minister granting a charter to the Office of Competition and Consumer Protection (UOKiK). This way, the President of UOKiK will have more flexibility as to the determination of tasks to be assigned to the head office, branch offices and laboratories of UOKiK.

¹ OJ L 60 I, 2.03.2018, p. 1 and OJ L 66, 8.03.2018, p.1.

The amendment also changed the composition of **the National Council of Consumer Ombudsmen**, which is an advisory body to the President of UOKiK. Thus far, the Council was composed of 9 ombudsmen – one from the territory under each of the branch offices. After the changes, each province will have a representative in the Council – which will be composed of a total of 16 ombudsmen representatives.

The provisions of the act expanded the access of the President of UOKiK to legally protected secrets: information protected by fiscal and banking confidentiality. This change is intended to improve the effectiveness of detecting breaches of provisions laid down in the Act on Competition and Consumer Protection.

The Act amending the Act on Competition and Consumer Protection² entered into force:

- 17 September 2019 to the extent of provisions concerning geo-blocking,
- 3 January 2020 to the extent of provisions concerning the structure of UOKiK.

Draft Act amending the Act on Competition and Consumer Protection – in connection with the implementation of Regulation No. 2017/2394 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws (CPC Regulation)

The President of UOKiK developed draft amendments to the Act on Competition and Consumer Protection with the aim to supplement competencies related to consumer protection with competencies provided for in the CPC Regulation. In principle, EU Regulations are not subject to transposition, as they apply directly, but in this case it is necessary to specify the competent authority and grant it authorisations specified in the Regulation, if it does not yet have such authorisations.

The following tools need to be implemented:

1. a legal basis for cooperation with other consumer protection authorities in EU Member States and the EC;
2. amendments to expand/enhance the competencies of the President of UOKiK as an authority protecting collective consumer interests:
 - tracking of cash flows;
 - authorisation to purchase goods or services, including, where necessary, using the ability to impersonate someone else/hide identity;
 - authorisations concerning an online interface. Pursuant to Article 9 (4)(g) of the CPC Regulation, where no other effective means are available to bring about the cessation or the prohibition of the violation covered by this Regulation and in order to avoid the risk of serious harm to the collective interests of consumers, the



² Act of 4 July 2019 amending the Act on Competition and Consumer Protec-

tion and Certain Other Acts (Polish Journal of Laws of 2019, item 1667).

competent authority has the following enforcement powers:

- the power to remove content or to restrict access to an online interface or to order the explicit display of a warning to consumers when they access an online interface,
 - the power to order a hosting service provider to remove, disable or restrict access to an online interface, or
 - where appropriate, the power to order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it.
- expansion of the institution of searches to consumer proceedings as well;
- power to issue external alerts referred to in Article 27 of the CPC Regulation by designated entities, European Consumer Centres, consumer organisations and associations and, where appropriate, business associations.

Draft Act amending Certain Acts to Limit Payment Backlogs

The purpose of the series of new regulations drafted by the Ministry of Entrepreneurship and Technology (currently – the Ministry of Development) is to limit **late payment of amounts due for provided services or purchased goods (payment backlogs)** and, therefore, improve financial liquidity of Polish businesses. The President of UOKiK participated in the drafting of these provisions to the extent concerning proceedings in cases concerning the prevention of excessive delays in commercial transactions.

Provisions laid down in the act introduced the power to impose an administrative penalty on a business which is late in the satisfaction of its payment obligations. **Proceedings in this regard will be conducted by the President of UOKiK**, if the sum of outstanding payments

due owed by a business within a period of 3 consecutive months is at least PLN 5 million. This threshold was determined proceedings initiated until 2021. In later years, actions will be taken if the value of outstanding payments exceeds PLN 2 mn. Proceedings will be initiated ex officio and must be completed within 5 months. A notification concerning suspected excessive delays in the satisfaction of payment obligations may be submitted to UOKiK by anyone, not only an entity who fell victim to payment backlogs. The details of the person making the notification will not be disclosed.

Proceedings will be preceded by an analysis of the probability of excessive delays in the satisfaction of payment obligations, based on the assessment of information provided by the Head of the National Revenue Administration. As part of the proceedings, UOKiK will control payments from the last two years prior to the initiation of such proceedings. If the President of UOKiK confirms that a business is excessively late with the satisfaction of payment obligations, they may impose a penalty on the business. However, UOKiK will not impose penalties on entities which are the victims of payment backlogs.

The act provides for an option to lower the penalty by 20%, if the business settles all liabilities plus interest within 14 days from the receipt of a decision on the initiation of proceedings. UOKiK will also be able to apply an additional reduction by 10%, if the debtor pays the penalty immediately and waives the right to file an application to reconsider the case. On the other hand, if UOKiK concludes that a previously fined business is excessively late with payments yet again, it may increase the penalty by 50%.

The Act entered into force on 1 January 2020³.

Draft Act amending the Act – Environmental Protection Law and Certain Other Acts

In 2019, the duties and powers of the President of UOKiK and the Trade Inspection have expanded in regard to the control of solid fuel boilers. UOKiK participated in legislative work on amendments to the Act – Environmental Protection Law, which were carried out by the

³ Act of 19 July 2019 amending Certain Acts TO Limit Payment Backlogs (Polish

Journal of Laws of 2019, item 1649).

Ministry of Entrepreneurship and Technology (currently – Ministry of Development).

The purpose of the new regulation is to reduce air pollution caused by emissions from individual heating systems from the household and welfare sector. The amendment stipulates that the Trade Inspection will control compliance by entities placing solid fuel boilers on the market with requirements specified in the Regulation of the Minister of Development and Finance of 1 August 2017 concerning requirements for solid fuel boilers (Polish Journal of Laws, item 1690, as amended). Where boilers not meeting the requirements are placed on the market, the Trade Inspection may impose a penalty on the business, in the amount of 5% of its revenue earned in the previous calendar year, but in any case not lower than PLN 10 thous.

The Act entered into force on 23 November 2019⁴.

Draft Act on the Protection of Rights of Buyers of Apartments or Detached Houses and on the Developer Guarantee Fund

Relations between a buyer and a developer are regulated by the Act of 16 September 2011 on the Protection of Rights of Buyers of Apartments or Detached Houses (hereinafter referred to as the Developer Act), currently in force. The nearly eight-year period of its validity indicates the need to introduce changes to some of its solutions or clarify them to an appropriate extent.

The draft act provides for the establishment of the **Developer Guarantee Fund (DGF)**, which enhances the protection of apartment buyers against the collapse of the development firm.

DGF will source its funds from contributions made by developers. The maximum rate according to which contributions to the DGF will be calculated, as provided for in the draft act, is 3 percent in the case of an open escrow account and 0.6 percent in the case of a closed escrow account. The actual minimum rate will be specified in the regulation issued by the minister responsible

for construction, local spatial planning, and land development and housing, in consultation with the minister responsible for financial institutions, after obtaining the opinion of the Insurance Guarantee Fund and the President of the Office for Competition and Consumer Protection. This solution will ensure flexibility and ability to appropriately respond to changing market conditions.

The current system for the protection of funds paid in by apartment buyers does not provide an adequate level of safety. Open housing escrow accounts most often used by developers, without any other security measures in place in the form of insurance or bank guarantees (the so-called “OHEA”), does not provide effective protection for the buyer in the event that the developer is declared bankrupt. Funds held on such an account are withdrawn in line with the development project schedule specified in the agreement, but prior to the transfer of the title of ownership for the property onto the buyer. If the developer is declared bankrupt, it gives rise to risk that the buyer may lose both funds and the property.

The draft being prepared aims to establish **a comprehensive buyer deposit protection system in Poland**, which comprises the following solutions:

- establishment of the Developer Guarantee Fund and imposition of an obligation on the developer to pay contributions to that fund on any deposits made by the buyer to the Housing Escrow Account (HEA);
- change of the catalogue of buyer deposit protection measures by removing OHEAs offered with additional security measures in the form of an insurance or bank guarantee;
- clarification of rules for making deposits to HEAs by buyers;
- clarification of provisions on rules concerning the powers of audit of the bank and rules for making withdrawals from HEA to the developer;

⁴ Act of 16 October 2019 amending the Act – Environmental Protection Law and Certain Other Acts (Polish Journal of Laws of 2019, item 2166).

- imposition of an obligation on the developer commencing sales to obtain the consent of a mortgage creditor to perform the so-called encumbrance-free separation of premises and transfer its title of ownership to the buyer, if such encumbrance exists;
- determination of the rights and obligations of parties to the developer agreement in the event that the bank keeping HEA declares bankruptcy;
- elimination of doubts as to whether the act also applies to contracts concluded for apartments/houses with an occupancy permit;
- specification of rights and obligations of parties to the preliminary agreement;
- provision for the right of the buyer to refuse to confirm acceptance due to material defects of the apartment;
- clarification of the acceptance procedure along with the specification of consequences of failure to remove a defect within the time limit designated by the consumer.

The draft also contains a number of **solutions to supplement this system**, i.e.:

- introduction of an obligation for the developer to provide a prospectus to the person buying the apartment (thus far, the prospectus was issued at the request of a person interested in entering into a developer agreement);
- introduction of an additional annex to the prospectus in the form of a “Draft land development concept for the investment and its immediate vicinity, with the specification of the building and important conditions of the investment location arising from separate provisions and the current and planned use of adjacent areas (e.g. the function of land, protection zones, nuisance)”;
- separation of the investment task and inclusion of the obligation to keep HEAs;

- determination of documents representing the source of information on investments planned within a radius of 1 km from the property;
- expansion of the act to cover agreements the subject-matter of which is ownership or a share in the right of ownership to commercial premises (multi-user parking structure, facilities intended for recreational purposes, bicycle storage room) and – to a limited extent – sales agreements concluded between the buyer and a developer or a business other than the developer.

All instruments proposed in the project are to create one comprehensive system, where regardless of the type of HEA chosen by the developer (as this decision is at the developer’s discretion), the buyer will receive the same level of guarantee for the security of the buyer’s funds.

In 2019, UOKiK continued to work on the draft.

Legislative work performed at the initiative of other institutions

Draft Act amending Certain Acts to Limit Regulatory Burdens

This draft, prepared on the initiative of the Ministry of Entrepreneurship and Technology, contained changes to the definition of a consumer. They are intended to **extend protection to natural persons who enter into agreements directly related to their business activity**, when the content of an agreement indicates that it does not have a professional nature related, in particular, to the subject of pursued business activity, made available based on provisions on the Central Registry and Information on Business Activity.

UOKiK submitted amendments to the proposals presented by the Ministry of Entrepreneurship and Technology.

Draft Act amending Certain Act to Counteract Usury

The draft was prepared by the Ministry of Justice. It provided for amendments to the Act of 12 May 2011 on Consumer

Loans with the intention to lower the maximum ceiling of non-interest loan costs. Among comments submitted in the course of inter-ministerial consultations, UOKiK proposed that:

- the draft should not introduce amendments concerning mandatory information to be presented in advertisements, so as to ensure compliance of provisions laid down in the act with Directive 2008/48/EC on credit agreements for consumers (the comment were not taken into account);
- when granting a loan, the lender should be able to choose whether to use the Credit Information Bureau or one of the business information bureaux (the comment was taken into account).

Ultimately, the draft has yet to be adopted by the *Sejm*.

Draft Act on Medical Devices

As part of inter-ministerial arrangements, in November 2019 the President of UOKiK sent a letter containing comments to the draft act on medical products to the President of the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products.

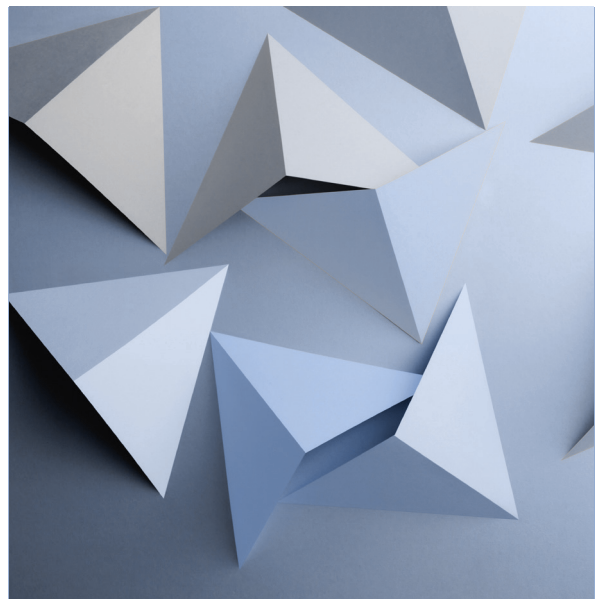
The purpose of the draft act being prepared is to implement Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices and Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices.

After analysing this draft, the President of UOKiK stated that they see the weight of irregularities which occur during the so-call medical device presentations and of unfair practices used there, which are misleading consumers. He also underlined that it is because of the desire to protect consumer interests that the President of UOKiK frequently takes action on that market to identify irregularities by using available instruments specified in the Act on Competition and Consumer Protection, especially the aforementioned power to conduct proceedings and issue decisions in cases concerning the violation of collective consumer interests.

In the course of analysing specific provisions laid down in the draft act on medical devices, the President of UOKiK pointed out that Article 55.3 pertaining to supervisory competencies of the President of UOKiK with regard to one form of medical device advertising should be removed from the draft act, as it represents an unjustified breach in the system, and that the competency should be assigned fully to the President of the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products.

Furthermore, as part of legislative work led by the government, UOKiK submitted comments to the following draft legal acts:

- draft Act on the Profession of Pharmacist,
- draft Act of 11 September 2019 amending the Act on Enforcement Proceedings in Administration and Certain Other Acts,
- draft Act amending the Act on the Marketable Quality of Agricultural and Food Products,
- draft Act amending the Act on Maintaining Cleanliness and Order in Communes,



- draft Act on the Mutual Recognition of Goods Placed on the Market in Compliance with the Law in Another Member State,
- draft Act amending the Act – Criminal Code and Certain Other Acts,
- draft Act amending the Act – Code of Civil Procedure and Certain Other Acts.

National authorities will acquire new tools and powers, which will ensure:

- independence in the enforcement of EU competition protection regulations;
- effective collection of evidence;
- effective sanctions;
- coordination of leniency programmes;
- closer cooperation between competition authorities in the area of compliance with competition protection law and its enforcement.

3.1.2 International legislation

UOKiK participates in the legislative process on the forum of the European Union. UOKiK representatives prepare positions of the Government of the Republic of Poland regarding draft EU regulations and participate in EU Council working parties, where detailed provisions of draft legal acts are negotiated. In areas in which UOKiK performs the function of a cooperating institution, it ensures adequate protection of competition rules and consumer interests.

Examples of UOKiK's activities as regards international legislation

Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (ECN+ Directive)

The purpose of the ECN+ Directive is to empower national competition authorities to more effectively enforce EU regulations aimed at identifying anti-competitive agreements and preventing the abuse of a dominant position. This way, a common area for enforcing competition law in EU Member States will be established.

The draft directive was adopted on 11 December 2018⁵. Member States have until 4 February 2021 to implement provisions laid down in the ECN+ Directive. In 2019, UOKiK worked on the transposition of the ECN+ Directive to the Polish legal order. To that extent, assumptions to the amendment of the Act on Competition and Consumer Protection and other acts have been prepared and co-operation was established with ministries responsible for areas of law which require legislative amendments.

New Deal for Consumers

On 11 April 2018, the Commission published two legislative proposals, which comprised the so-called "New Deal for Consumers":

- Proposal for a Directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC.
- Proposal for a Directive of the European Parliament and of the Council amending Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU as regards the better enforcement and modernisation of EU consumer protection rules (the so-called Omnibus Directive).

⁵ Directive (EU) 2019/1 of the European Parliament and of the Council

of 11 December 2018 to empower the competition authorities of the Member

States to be more effective enforcers and to ensure the proper functioning

of the internal market (OJ L, 2019:11.3).

Representative activities

UOKiK continued to participate in legislative work on the draft directive on representative activities for the protection of the collective interests of consumers. It provides for more effective enforcement of consumer law and **better effectiveness in seeking claims by consumers in the event of violations**. The project stipulates that representative activities may be brought by the so-called qualified entities (such an entity may be, inter alia, a consumer organisation that meets criteria specified in the directive). As part of representative action, the qualified entity may seek an order to cease a violation and an order for compensation (incl. damages, reimbursement of costs borne, contract termination, etc.). In 2019, there were 6 meetings of the Working Party on Consumer Protection and Information, during which members discussed provisions proposed in the draft directive.

On 29 November 2019, the Council adopted a general approach to the Directive which included key recommendations of Poland.

Omnibus Directive

UOKiK continued to participate in legislative work on the draft directive.

UOKiK representatives participated in intensive legislative work at the stage of work carried out by the Working Party for Consumer Protection and Information at the EU Council and participated in the preparation of positions to instructions for Coreper meetings. At the beginning of 2019, work on the directive entered the trialogue stage, i.e. a stage of negotiations between the European Commission, European Parliament and EU Council.

Negotiations conducted in the course of legislative work lead to the inclusion of numerous recommendations and suggestions submitted by the representatives of UOKiK.

The directive was adopted on 27 November 2019⁶. EU Member States have two years from that date to implement the directive into domestic legal orders.

The Omnibus Directive provides for amendments to four directives on: unfair terms in consumer contracts, product prices, unfair commercial practices, and consumer rights. Key changes include:

- **modification of current provisions concerning** sanctions provided for in Directives 98/6/EC, 2005/29/EC and 2011/83/EU, and the introduction of new provisions concerning sanctions in Council Directive 93/13/EEC while leaving the choice as to the type of sanctions to be imposed and the establishment of adequate procedures for sanctions in the event of infringement of the aforementioned directives within their domestic law to the Member States;
- **facilitation of a more standardised application of sanctions**, especially in the event of intra-Union infringements, widespread infringements and widespread infringements with a Union dimension, as defined in the Regulation (EU) 2017/2394, by introduction of common, non-exhaustive and indicative criteria for the use of sanctions in Directives 93/13/EEC, 98/6/EC, 2005/29/EC and 2011/83/EU (such as, for example: nature, weight, scale and duration of an infringement as well as any compensation awarded by a business to the consumer for damages caused);
- ensuring that authorities from Member States can impose **effective, proportionate and dissuasive penalties** in relation to widespread infringements and to widespread infringements with a Union dimension that are subject to coordinated investigation and enforcement measures in accordance with Regulation (EU) 2017/2394, fines should be introduced as an element of penalties for such infringements and Member States should set in their national law the maximum fine for such infringe-

⁶ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Di-

rective 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Coun-

cil as regards the better enforcement and modernisation of Union consumer protection rules (OJ L 328/7).

ments at a level that is at least 4% of the trader's annual turnover in the Member State or Member States concerned;

→ **improving the transparency of online purchases**

by introducing additional, detailed information requirements in the event of contracts concluded at an online marketplace, including by ensuring that the consumer is given information whether they are making a purchase from a trader or a private individual prior to entry into a contract at an online marketplace and information on offer positioning criteria, e.g. that a trader paid for a better spot in search results;

→ the introduction of the same consumer protection principles for the delivery of "free" (in exchange for personal data) **digital content and digital services** as apply to paid digital content delivery services (e.g. they will be able to withdraw from the contract within 14 days), additionally definitions of digital content and digital services will be adapted to those arising from Directive 2019/770 of the European Parliament and of the Council;

→ **sales at product presentations and in consumers' homes** – in many Member States, including in Poland, such activity often involves the use of aggressive marketing and unfair commercial practices – new EU regulations enable Member States to protect reasonable consumer interests against aggressive or misleading marketing or sales practices in the context of unannounced visits of a trader at the consumer's home or trips organised by the trader, the purpose or end result of which is the promotion or sale of products to consumers (such provisions must be proportionate, non-discriminatory and must be justified by consumer protection);

→ **combating dual quality of products** – marketing of a product as being identical to the same product marketed in several other Member States, where

those products differ significantly, e.g. in terms of composition, will be considered a misleading commercial practice on terms specified in the regulations.

Directive on certain aspects concerning contracts for the supply of digital content (the so-called Digital Content Directive)

The ministry in charge is the Ministry of Justice, with which UOKiK cooperated on this draft.

The purpose of the draft was to encourage a greater number of businesses, especially small and medium-sized enterprises, to conduct cross-border online sales as well as raise the confidence of consumers and grant them access to a wider offer of material goods and digital content.

Work was continued in 2019. The directive was finally adopted on 20 May 2019⁷.

This document establishes common regulations regarding certain requirements for contracts for the supply of digital content or digital services concluded between businesses and consumers.

It provides for **full harmonisation of provisions concerning the compliance of digital content or digital service with the contract**, legal protection measures in the event of non-compliance or non-delivery of digital content or digital services and ways in which those measures may be used, and concerning the change of digital content or digital services.

Directive on certain aspects concerning contracts for the sale of goods

At the beginning of 2019, work on the directive was continued. The document was adopted on 20 May 2019⁸. Its purpose was to modernise and replace Directive 1999/44/EC of the European Parliament and of the

⁷ Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of

digital content and digital services (OJ L 136/1).

⁸ Directive (EU) 2019/771 of the European Parliament and of the Coun-

cil of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, amending Regulation (EU) 2017/2394

and Directive 2009/22/EC and repealing Directive 1999/44/EC (OJ L 136/28).

Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees. This directive is currently being implemented to the Polish Civil Code, which regulates matters related to the liability of the seller under a warranty. This act introduces total (maximum) harmonisation concerning the sale of material goods. It regulates such matters as: compliance of goods with the contract, protection measures and how to use them, and the burden of proof and issues related to commercial guarantee.

3.1.3 References for a preliminary ruling

In the case law of the Court of Justice of the European Union (CJEU), there is a special place for decisions concerning questions referred for a preliminary ruling, **in which CJEU interprets a specific issue of EU law at the request of a national court**. The purpose of this procedure is to ensure effective and standardised application of community laws and, therefore, avoid discrepancies between national and EU regulations. UOKiK monitor preliminary ruling proceedings on an on-going basis and analyses them in terms of whether it is justifiable to join them, if the relevant judgement could affect Polish case law.

In 2019, UOKiK received **over 40 new preliminary ruling cases** referred by CJEU on matters concerning consumer affairs.

Examples of UOKiK's activities in regard to preliminary ruling proceedings before CJEU

Proceedings in case C-779/18 Mikrokasa and Revenue Niestandaryzowany Sekurytyzacyjny Fundusz Inwestycyjny Zamknięty w Warszawie

The proceedings were initiated by the District Court in Siemianowice Śląskie in order to properly interpret the provisions of two EU directives. The court had doubts whether the provisions of Directive 2008/48/EC on credit agreements for consumers should be interpreted as precluding “non-interest credit costs” from being distinguished in domestic law in a manner that enables the actual non-interest credit costs borne by the loan provider to be concealed from the consumer. Furthermore, the court intended to determine whether the provisions of Directive 93/13/EEC on unfair terms in consumer contracts prohibit review whether contractual terms determining non-interest credit costs the amount of which has been limited by domestic law are unfair.

When drafting the position of Poland, UOKiK proposed to formulate the following interpretation of the provisions of EU law:

- provisions of Directive 93/13/EEC do not preclude the review of the terms of agreements for consumer credits in terms of whether they are prohibited insofar as non-interest credit costs are concerned, even if the sum of non-interest credit costs does not exceed the limit specified in national law;



- the provisions of Directive 2008/48/EC do not regulate the issue of informing the consumer about actual costs borne by the loan provider in connection with granting a loan to the consumer, but pertain to costs which the consumer must bear regardless whether these costs reflect only costs borne by the loan provider or include profit of the loan provider as well.

The final position of Poland presented in the proceedings was consistent with the interpretation of provisions proposed by UOKiK.

Proceedings in case C-222/19 and C-252/19 BW et al.

Proceedings before CJEU were initiated by the District Court in Opatów, which intended to determine whether the provisions of Directive 2008/48/EC and directive 93/13/EEC preclude **the introduction of “maximum non-interest credit costs” and the mathematical formula for the calculation of these costs to the national legislation**. These legal solutions allow to include the costs of business activity pursued by a business in costs borne by the consumer in connection with a credit agreement.

In the course of work on the position of Poland, UOKiK proposed to formulate an interpretation of the provisions of EU law pursuant to which:

- provisions of both directives do not preclude the introduction to the national legislation of “maximum non-interest credit costs” and the mathematical formula for the calculation of these costs, as provided for in Article 5.6a in connection with Article 36a of the Act of 12 May 2011 on Consumer Credit.
- the interpretation of national provisions cannot preclude the implementation of obligations arising from EU law, including Directive 93/13/EEC, and especially negate the imposed on the national court obligation to review contractual terms *ex officio* in terms of whether they are unfair, including the amount of individual costs which the consumer is under an obligation to bear.

The proposal of UOKiK was included in the position of Poland presented in the proceedings before CJEU.

Proceedings in case C-84/19 Profi Credit Polska

Proceedings were initiated by the District Court for Szczecin-Prawobrzeże and Zachód, which intended to determine whether provisions of directive 93/13/EEC should be interpreted in the following ways:

- as not applicable to **the review of whether contractual terms concerning non-interest credit costs are unfair**, if national regulations introduce an upper limit of these costs and state that non-interest credit costs arising from an agreement for consumer credit are not payable, insofar as they exceed the maximum values;
 - if non-interest costs connected with entry into an agreement and granting a loan (in the form of a fee, commission or any other charge), as one of the conditions of this agreement, are expressed in a simple and intelligible language, they are not subject to the review mentioned in this provision in the context of whether they are unfair;
 - contractual terms which provide for different types of costs connected with granting a loan are not “expressed using a simple and intelligible language”, if they do not clarify in exchange for which specific mutual services they are collected and do not allow the consumer to determine differences between them.
- In the course of work on the position of Poland, UOKiK proposed to formulate the following interpretation of the provisions of EU law:
- directive 93/13/EEC does not exclude the application of its provisions regarding the review of fairness of individual terms concerning non-interest credit costs, if national regulations in force in the Member State introduce an upper limit of these costs and state that non-interest credit costs arising from an agreement for consumer credit are not payable, insofar as they exceed the maximum non-interest credit costs;

- the national court should determine whether contractual clauses concerning non-interest credit costs borne and being repaid by the borrower (in the form of fees, commissions or other charges) along with the loan are subject to the review mentioned in this regulation in the context of whether they are unfair. If in light of the nature, general scheme and clauses of the agreement under review as well as legal and factual context of that agreement the national court determines that the contractual clauses under analysis do not specify the general subject of the agreement nor the ratio of remuneration to services provided in exchange for that remuneration, these clauses will not be excluded from review in terms of whether they are unfair. However, if the national court determines that contractual clauses specify the aforementioned elements and are formulated in a simple and intelligible language, they will be excluded from such review;
- contractual terms which provide for different types of costs connected with granting a loan are not “expressed using a simple and intelligible language”, if they do not clarify in exchange for which specific mutual services they are collected and do not allow the consumer to determine differences between them.

The position of Poland presented in the proceedings included the interpretation of proceedings presented by UOKiK.

Proceedings in case C-495/19 Kancelaria Medius

Case C-495/19 Kancelaria Medius (Medius Law Firm) was initiated before the Court of Justice of the European Union by a question referred for a preliminary ruling by the Regional Court in Poznań. Its subject-matter is determination whether **the provisions of the Polish Code of Civil Procedure regulating the procedure for the issuing of judgements rendered in absentia by national courts** remain compliant with Directive 93/13 on unfair practices in consumer agreements.

With complete passivity of the defendant in a case, Polish procedural regulations allow issuing decisions solely

based on claims presented by the plaintiff. When referring a question for a preliminary ruling to the Court of Justice, the regional court expressed doubt whether the court examining the case may analyse contractual clauses in terms of whether they are prohibited, in line with the obligation imposed on that court pursuant to Directive 93/13, if there are grounds to issue a judgement in absentia in the case. The referring court's doubts also concerned determination whether the court passing a judgement in absentia has the right to conduct an evidentiary hearing. Positions concerning the issue concerned in Polish case law and legal doctrine are not uniform.

After conducting a comprehensive analysis, the President of UOKiK in its position regarding the case stated that Polish regulations concerning the procedure for passing judgements in absentia do not prevent the court from examining clauses in an agreement concluded with a consumer in terms of whether they are fair and, therefore, are not incompliant with EU law, i.e. Directive 93/13. UOKiK's position was reflected in comments submitted by the representative of the Republic of Poland in proceedings before CJEU.

Proceedings in cases C-698/18 and C-699/18 Raiffeisen Bank et al.

Proceedings initiated by the Romanian court aim to determine whether the provisions of Directive 93/13/EEC should be interpreted:

- as permitting a set of means of legal recourse that consists in an ordinary legal action, not subject to any limitation period, to establish the unfairness of certain terms in a consumer contract and an ordinary legal action of a personal and pecuniary nature that is subject to a limitation period, which is used in pursuit of eliminating the effects of all obligations arising and performed under clauses which are found to be unfair to consumers;
- as precluding an interpretation, derived from application of the principle of the certainty of civil law legal relationships, according to which the objective point in time by which the consumer must have

known or should have known of the existence of the unfair terms is the time at which the loan agreement with that consumer came to an end.

In the course of work on the position of Poland, UOKiK proposed to formulate an interpretation of the provisions of EU law pursuant to which the provisions of Directive 93/13/EEC:

- require Member States to ensure that **the ability to determine whether a contractual clause is prohibited is not limited in time**, including that a legal action to establish a contractual clause as prohibited is not subject to any limitation period;
- do not preclude the existence of national regulations providing for the limitation of a legal action for the reimbursement of non-due amounts paid by the consumer on the basis of an prohibited contractual clause, provided that this period starts not earlier than on the day on which the judgement declaring such clause prohibited becomes final.

The position of Poland presented in the proceedings included the interpretation of proceedings presented by UOKiK.

Proceedings in case C-260/18 Dziubak

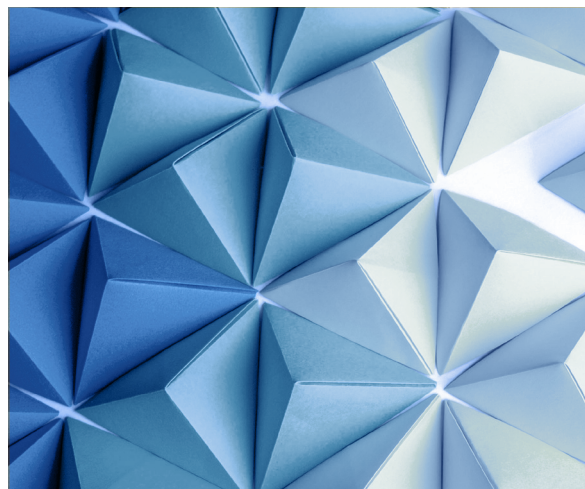
On 3 October 2019, CJEU issued a judgement in preliminary ruling proceedings initiated by the Regional Court in Warsaw, in which it declared that provisions of Directive 93/13/EEC on unfair terms in consumer agreements must be interpreted:

- as not precluding a national court, **after finding that certain terms of a loan agreement indexed to a foreign currency** concerned are unfair, from taking the view that the contract cannot continue in existence without those terms because the effect of their removal would be to alter the nature of the main subject matter of the contract;
- as meaning that the consequences for the consumer of a contract being annulled in its entirety must be assessed in the light of the existing or foreseeable

circumstances at the time when the dispute arose, and that, second, for the purposes of that assessment, the wishes expressed by the consumer in that regard are the decisive factor;

- as **precluding gaps in a contract caused by the removal of the unfair terms contained in that contract** from being filled solely on the basis of national provisions of a general nature which provide that the effects expressed in a legal transaction are to be supplemented by the effects arising from the principle of equity or from established customs, which are neither supplementary provisions nor provisions applicable where the parties to the contract so agree;
- as precluding unfair terms contained in a contract from being upheld where their removal would entail that contract being annulled and the court takes the view that that annulment would give rise to unfavourable effects for the consumer, if they do not agree to the terms concerned being upheld.

The aforementioned judgement is consistent with the position of Poland presented in the proceedings before CJEU. UOKiK participated in work on that position. At the same time, the judgement issued by CJEU is of great significance to disputes before common courts between banks and consumers who took out mortgage loans indexed to a foreign currency.



Position of UOKiK concerning the judgement of CJEU in case C-260/18 Dziubak*

The President of UOKiK prepared the position concerning the judgement, in which he addressed the key issues resulting from that judgement. It is intended to be a guideline for borrowers in disputes for their rights against banks.

1. The judgement of CJEU is of significance for each agreement containing prohibited clauses.
2. The agreement may be annulled only with the consent of the consumer.
3. Article 358.2 of the Polish Civil Code referring to average exchange rate of the National Bank of Poland cannot be considered as a supplementary provision, therefore it cannot be applied in place of invalid, prohibited clauses of agreements for loans in Swiss francs.
4. The bank does not have a right to seek remuneration for the use of principal and interest when the court annuls a mortgage loan agreement indexed to a foreign currency.

* The full text of the position of the President of UOKiK can be found at finanse.uokik.gov.pl.

It is of great significance from the perspective of borrowers, as thus far the majority of lenders reduced only a portion of costs connected with the loan taken in the event of its early repayment.

After CJEU issued the judgement in case C-383/18 Lexitor, in 2019 the President of UOKiK issued decisions concerning early repayment of consumer loans:

- Decision DOZIK-4/2019 – Aasa did not reimburse consumers the proportionate part of the collected upfront fee in the event of early repayment of consumer loans;
- Decision RŁO-5/2019 – a penalty in the amount of over PLN 902 thous. – iCredit retained all fees, including for credit checks, delivery of loan to the customer's home, contractual penalties, in the event of early repayment of a loan;
- Decision RGD-5/2019 – a penalty in the amount of over PLN 483 thous. – Optima unduly collected the upfront fee despite early repayment of a loan;
- Decision RKR-3/2019 – Eurocent (in bankruptcy) – the company retained the entire commission in the event of early repayment of a loan;
- Decision RKR-8/2019 – Vivus Finance, Decision RKR-9/2019 – Zaplo, Decision DOZIK-14/2019 – Bank Pocztowy – these companies did not proportionately settle commissions collected from customers at the moment of early repayment of a consumer loan.

Proceedings in case C-383/18 Lexitor

On 11 September 2019, CJEU issued a judgement in proceedings initiated by the District Court for Lublin-Wschód. According to that judgement, Directive 2008/48/EC on credit agreements for consumers must be interpreted as meaning that **the right of the consumer to a reduction in the total cost of the credit in the event of early repayment of the credit includes all the costs imposed on the consumer**. This judgement confirmed the interpretation of provisions laid down in the directive presented by UOKiK thus far and is consistent with the position presented by Poland in the proceedings.

3.2

Social surveys and market analyses

Market research constitutes an important source of information for UOKiK as regards the status of competition in select sectors of the economy. They are used for collecting evidence in conducted proceedings and analyses of consolidation processes. UOKiK also conducts social surveys in order to determine the knowledge of consumers and businesses regarding select legal issues.

Market research and analyses

The proper performance of tasks is manifested by the interest of UOKiK in the situation on the market. To that extent, it is useful to conduct nationwide or local researches with the participation of businesses. It is a vital aspect of UOKiK's operation that allows to obtain an in-depth analysis of the entire market, select sectors or a specific problem that affects the situation of consumers or conditions in which business activity is pursued.

Information obtained in this way often constitute grounds for intervention concerning the use of prohibited market practices. UOKiK may conduct explanatory proceedings as market research, both in the area of competition and consumer protection.

In 2019, UOKiK initiated 11 nationwide proceedings to collect information on specific markets. Their purpose was to identify any distortion of competition or a threat of such distortion, or to analyse their impact on consumer interests. Furthermore, 17 local researches were initiated as well.

4 nationwide and 13 local researches have been completed.

Separate researches (not included in the presented data) were conducted in the context of proceedings in concentration cases. They were conducted in order to directly analyse the impact of planned concentrations on the market (see section 1.3).

Market research of services related to municipal waste management in municipalities in the years 2014-2019 (1st stage of the market research of services related to municipal waste management)

The reason for the research were signals received by UOKiK regarding a substantial rise in fees for municipal waste management. The research was conducted in two stages. All 302 municipalities have been examined in the 1st stage (completed in 2019). The purpose of the analysis was to collect information on fees collected from residents in the years 2014-2019 and to identify factors affecting their rates. The second stage involved a study of regional municipal waste processing facilities (RIPOK). Findings from that stage will be presented in a separate report in 2020.

The results yielded from the research conducted with regard to municipalities indicated a rise in fees for municipal waste management all over the country. In the years 2018-2019 (including plans until the end of the year), over 60% of municipalities have changed fee rates or planned to change them. The median of fee rates for waste has been on the rise since 2017. A higher growth rate was observed in regard to fees charged on residents who did not declare that they will recycle waste – an increase up to PLN 24 per person in 2019 compared to PLN 15-16 in the years 2014-2016. In the case of residents who declared that they would

Market research⁹ aimed at collecting information on specific markets, especially for the purposes of identifying any distortion of competition or a threat of such distortion, or for purposes of analysing their impact on consumer interests

	Initiated in 2019	Completed in 2019
Nationwide research	11	4
Local research	17	13

Examples of researches initiated in 2019

local research

Market research of procurement procedures involving the spending of EU funds within the framework of the Regional Operating Plan for Lubuskie Province 2014-2020 (Operating Programme Technical Assistance);

Local market research of forestry services

nationwide research

Market research of tomato purchasing and processing in Poland

Market research of the mineral wool market

Market research of the wholesale and retail sale of paper books, e-books, audiobooks in the MP3 format

recycle waste, the rate increased from PLN 10 to PLN 13. The highest increase in fees was observed in the Mazowieckie Province.

As part of the research, municipalities were also asked to indicate reasons for an increase in fees, separately for each year. In the years 2014-2019, the reason most often indicated by municipalities was the higher price of the winning bid in the next procurement procedure

(from 61% to 72% of municipalities). Starting from 2018, more than half of all municipalities indicated an increase of the so-called marshal's fees as the reason for higher waste collection fees, whereas approx. 1/3 of them – for the same period – indicated a change in the number of fractions in connection with new statutory requirements (the obligation to recycle into 5 bins) as the reason for higher fees. From 17% to 44% (depending on the year) of surveyed municipalities indicated an increase in costs borne by businesses dealing with waste, whereas between 20% and 37% of municipalities indicated improper behaviour of residents (e.g. incorrect pre-sorting). Approx. 5-7% of municipalities indicated unfair activities of businesses as the reason for higher prices in individual years.

The problem of higher waste management fees is largely a systemic issue. **There is a nationwide problem with an excessively low share of separately collected waste.** In consequence, the environmental fee for landfilling has risen.

In Poland, there were over 70 local markets for waste management in facilities (regional municipal waste processing facilities) – markets with a monopolistic or oligopolistic structure within the territory of municipal waste management regions (RGOK). Individual markets and installations differed significantly in terms of prices – despite the use of similar technologies. Particularly high costs for waste management in waste management facilities was observed in the Mazowieckie Province. This was further analysed during the next stage of the market research¹⁰.

Another important component of the system responsible for the generation of higher costs is the municipal waste collection service, which is also carried out on monopolised local markets. Therefore, the number of businesses collecting municipal waste has declined in the years 2012-2017 by approx. 35 percent, according to Statistics Poland. Undoubtedly this is related to legal amendments from 2012 which were the subject of a warning issued by UOKiK, as they stipulated that the choice of a business

⁹ Market research is conducted in the form of separate explanatory proceedings and are classified as separate cases (regardless of explanatory proceedings

conducted in regard to competition and consumer protection).

¹⁰ The regionalisation described in the report on municipalities was abolished

on 6 September 2019 – after this report has been issued. This matter will be described in more detail in the second report on regional municipal waste

management facilities – which currently operate under the name "municipal facilities".

collecting waste rests solely and exclusively with the municipality. In the years 2018-2019, in 50-60 percent of municipalities **only one bidder submitted a bid in procurement procedures**.

UOKiK also researched two important aspects of fee collection that may be the reason for diversity in the amount of fees at a local level. It turned out that the number of residents from declarations submitted to municipalities was on average 17% lower than the number taken from statistics kept by Statistics Poland. Furthermore, it was determined that the share of municipalities utilising the option to reduce the fee for some residents (e.g. large families or persons with low income) was relatively low and amounted to approx. 22 percent.

In addition to the above reasons for higher waste management fees, there are also reasons of a global nature. In the years 2018-2019, ban on the import of waste by China as of the beginning of 2018 had a significant impact on all of Europe, including Poland. China was previously the largest global recipient of paper and plastic waste.

A report from the conducted research was published in August 2019¹¹.



Cooperation with the Institute of Environmental Protection – National Research Institute in Warsaw

In connection with the research of the municipal waste market, in September 2019 UOKiK signed an indefinite agreement with the Institute of Environmental Protection – National Research Institute in Warsaw. It pertained to the rules of cooperation in the acquisition of data and information on markets related to environmental protection and waste management.

Individual stages of the survey and assumptions for reports were consulted with the Institute.

Electronic press market research

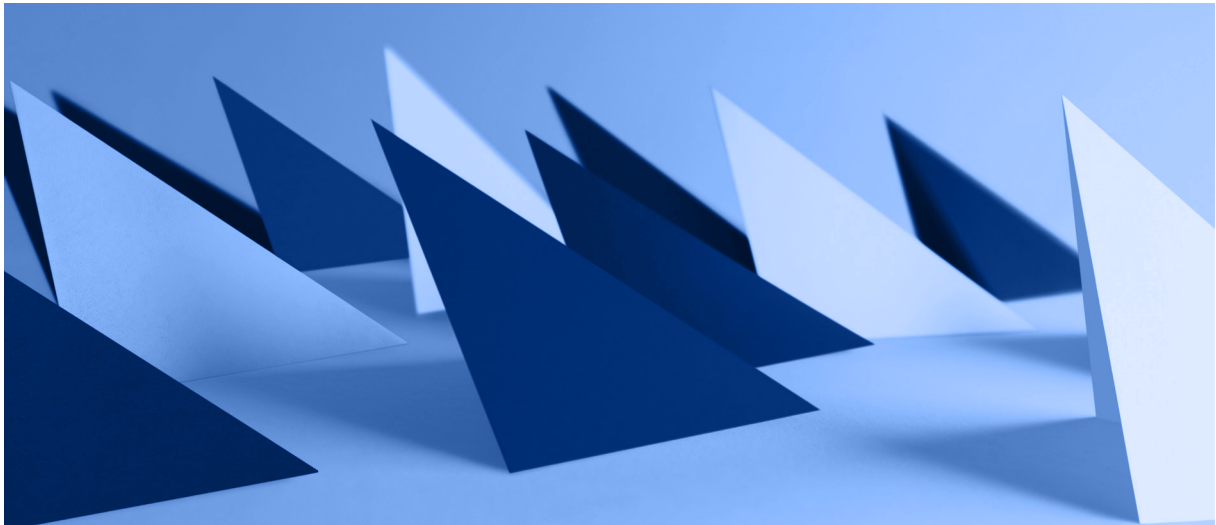
The electronic press market research was initiated as a result of signals received by UOKiK, indicating that one of the distributors operating on the market may have violated competition law. Its purpose was to determine the structure of the market, analyse any problems reported by investigated entities (publishers and distributors) and analyse the possibility of an entity having market power.

Collected data indicates that **there are 5 distinct formats (segments) on the electronic press market**, i.e. e-publications, e-issue subscription, retail digital access, wholesale digital access and archival issues. The first three aforementioned formats represent 98-99% of all electronic press sales: e-issues, e-issue subscription and retail digital access. Total electronic press sales continue to be insignificant compared to the sales of printed press (which represents several percent of all traditional press sales), but it is showing an upward trend.

There are significant differences in the structure of market players on each of the three vital electronic press market segments (e-issue sales, e-issue subscriptions, retail digital access). In the e-issue segment (for all press

¹¹ A report from the market research conducted with regard to municipal waste management services is avail-

able at: https://www.uokik.gov.pl/analizy_rynku2.php#faq3722.



titles, in 2018 three entities had the largest shares, i.e. Polska Press, Wydawnictwo Podatkowe Gofin, and RASP. On the other hand, the biggest share in e-subscription sales was represented by Gremi Media, whereas in terms of retail digital access sales – Infor Biznes, Agora and Wydawnictwo Podatkowe Gofin.

The distribution of electronic press differs significantly from the distribution of traditional press, in the case of which distributors collect press from publishers and then deliver it to the retail points of sale. Due to significantly lower distribution costs compared to traditional press, e-press publishers are able to independently handle the sale of their titles and are not beholden to cooperation with external entities. In effect, publishers make the majority of their electronic press sales using own distribution channels. The conducted analysis confirmed that in the case of electronic press, publishers have a stronger position in negotiations with e-issue distributors.

Social surveys

UOKiK commissions the performance of social surveys related to the knowledge of consumer rights and competition law. They are used to measure the level of awareness about select legal issues, analyse barriers preventing safe and satisfactory participation on the market. The monitoring of consumer attitudes and consumer confidence on specific markets is equally important.

Survey results are used to define areas that require intervention or legislative changes. They are also important for information and educational activities as well as for the improvement of cooperation with stakeholders.

In 2019, a survey was conducted to determine consumer opinions on online platforms and purchases via e-commerce platforms. The results show that consumers readily use online platforms. Social media and shopping platforms are the most popular – they are used at least once a month by 85% and 76% of respondents, respectively. Despite the advantages of online platforms, over half of consumers indicate that they have also experienced various problems.

It should be noted that consumers often are not aware that they have entered into a contract with the platform and legal aspects in that regard seem to be insufficiently clear. Furthermore, carefully reading through the terms of service adopted by platforms is not a common practice – users most often turn to the terms of service and read them in situations when a problem has already arisen. A discouraging factor is the length of documents and understanding that they have to be accepted either way in order to use platforms. The inability to make changes also pertains to the issue of collecting and using information on users, with the stipulation that consumers are not fully aware which of their data is being collected by online platforms.

3.3

Information and educational activities

The information and educational activity of UOKiK includes educational projects, events, competition and

cooperation with media. UOKiK conducts publishing activity and operates thematic websites.

WEBSITES

www.uokik.gov.pl

8 347 491

unique visits in 2019

the source of news about UOKiK and information on consumer warnings, decisions and significant views issued by the President of UOKiK, among others. The Public Information Bulletin is kept at the website of UOKiK. In 2019, UOKiK received **604 applications for access to public information.**

www.finance.uokik.gov.pl

121 120

unique visits in 2019

a website containing news about the situation on the market of mortgage loans indexed to the Swiss franc, unit-linked insurance, corporate bonds, alternative investments, and consumer loans.

www.konkurencja.uokik.gov.pl

63 684

unique visits in 2019

a collection of information on key activities pursued by UOKiK in regard to competition-restricting practices, including a presentation of the leniency and whistleblower protection programmes.

www.polubowne.uokik.gov.pl

26 659

unique visits in 2019

a website with information on how the alternative dispute resolution system functions and containing practical guidelines for consumers.

www.przewagakontraktowa.uokik.gov.pl

7 266

unique visits in 2019

a source of news on activities pursued by UOKiK to counteract the unfair use of contractual advantage in the trade in agricultural and food products.

www.prawakonsumenta.uokik.gov.pl

1 843 882

unique visits in 2019

a database of knowledge about consumer rights, including the right to information, complaint and withdraw from the contract.

Information and educational projects

Aware Contracting Authority – competition law in public tenders

In 2019, UOKiK continued the project titled “Aware Contracting Authority – competition law in public procurement procedures” financed by the European Social Fund within the framework of the Operational Programme Knowledge Education Development 2014-2020. One of its elements is an e-learning platform launched at www.szkoleniazmowy.uokik.gov.pl, offering training on bid rigging agreements. Since its launch in 2017 until the end of 2019, nearly 4,000 users have registered on the platform. The platform contains 5 lesson modules using which procurement procedure organisers/participants can learn about bid rigging agreements, how to identify them, and who to notify in the event of a suspected entry into a prohibited agreement. Online training were available until June 2020.

Activities aimed at seniors

In 2019, two information campaigns aimed at senior consumers were continued, i.e. “Senior, beware!” and “Senior, don’t let yourself be deceived”. The purpose of these measures is to warn seniors against unfair sales practices used by businesses when entering into distance contract or entering into contracts away from business premises, e.g. at sales presentations or at home. They are invited to attend meetings with the promise of free examinations, while in reality they are forced to purchase household appliance or paramedical devices. Unfair practices also take place at retirement homes, when sellers offer them lower electricity or phone bills while pretending to work for the current operator. As part of the campaigns, educational materials (posters, leaflets) were being distributed together with partners – the Polish National Police Headquarters, the Social Insurance Institution and the Agricultural Social Insurance Fund.

UOKiK representatives also took part in the annual, nationwide campaign for seniors titled “Senior’s Day”, organised by the Social Insurance Institution with the Polish Association of Pensioners and Disabled Persons, and partners. In 2019, the event was inaugurated under the slogan “Healthy, safe, active”. Its primary purpose

is to activate seniors and popularise knowledge about social insurance.

Furthermore, the President of UOKiK was an honorary patron for 6 events related to competition and consumer protection that were held in 2018.

In addition, the President of UOKiK took patronage over the “Senior, don’t let yourself be deceived – avoid sales presentations!” campaign organised by the Municipal Consumer Ombudsman in Legnica.

Training activities

UOKiK has conducted activities to popularise knowledge regarding competition and consumer protection, especially the practical application of provisions in that regard. In 2019, UOKiK employees:

- participated in training on counteracting and combating bid rigging agreements, including at the Polish National Police Headquarters and at the Public Procurement Authority;
- conducted training on combating bid rigging agreements for contracting authorities, including in cooperation with the Public Procurement Authority.

Events and Competitions

Conference to celebrate the World Consumer Rights Day

In 2019, the conference on the World Consumer Rights Day was devoted to discussions on the consumer protection system in Poland. The first part of the meeting addressed the issue of consumer law enforcement in the public and private law dimension. Participants discussed how to synchronise activities in both dimensions, so as to create a complementary and effective system of pursuing claims. In addition, participants discussed how to intensify the enforcement of regulations in regard to businesses disrupting the market or infringing on consumer rights. The second part of the conference was devoted to discussing the future of the market surveillance system in Poland in the face of challenges arising from the globalisation of trade, technological progress and continued

significant share of non-confirming and unsafe products in trade within the territory of the EU. The event was also accompanied by an official ceremony where consumer ombudsmen were presented with awards in connection with the 20th anniversary of existence of this institution in Poland.

Workshops – Economy in competition law

The 6th edition of workshops under the name “Economy in competition law” were held on the 5th of June. Workshops were organised by UOKiK in cooperation with Positive Competition and the Competition Law Association. The meeting was devoted to model agreements between businesses operating at different levels of trade – in the context of the latest case law practice of the European Commission and UOKiK as well as economic aspects of an assessment of this type of agreements. The discussion also touched on the evaluation of guidelines concerning vertical restrictions and Regulation 330/210. A special guest of the event was Marieke Scholz, deputy head of the unit responsible for antitrust case support in the telecommunications sector at the Directorate-General for Competition.

Conference titled “Effective combating of prohibited market agreements – practice and challenges”

On December 10th, UOKiK held an international conference at its registered office in connection to the World Competition Day. The meeting addressed **practical aspects of combating bid rigging agreements**. Furthermore, it also discussed methods used to effectively obtain evidence of competition law violations. Participants raised issues related to the application of the search procedure and other investigative measures as well as challenges connected with electronic communication.

15th Consumer Knowledge Olympiad of the Wielkopolska Region

The finale of the 15th Elżbieta Połczyńska Consumer Knowledge Olympiad of the Wielkopolska Region was held on 12 April 2019. The Olympiad was held under the auspices of the President of the Office of Competition

and Consumer Protection and Marshal of the Wielkopolskie Province. It was organised by: the Branch Office of UOKiK in Poznań in cooperation with the local governments of the Wielkopolskie Province, Poznań Branch of the Consumer Federation, Wielkopolskie Province Trade Inspector, District and Municipal Consumer Ombudsmen, and the Districts of the Wielkopolskie Province. The competition was also sponsored by the Financial Ombudsman and the Insurance Education Foundation. In 2019, over 400 pupils from upper secondary schools from 16 districts of the Wielkopolskie Province participated in the preliminaries. In order to advance to the finale, they had to solve a test on the knowledge of consumer law. Questions concerned rules for filing complaints, guarantees, contracts concluded with travel agencies or online. 48 pupils advanced to the finale. First place was taken – for the second time – by a pupil from the Upper Secondary School Complex in Sompolno. In terms of team rankings, Konin district proved to be the best, similarly as in 2018.

Competition for the best master’s and doctoral thesis

UOKiK organises an annual competition for the best master’s thesis in the area of competition and consumer protection, whereas every 3 years it also conducts a competition for the best doctoral thesis. Any person who graduated in law and other domains, including economy, administration, and management, is eligible to participate in the competition. In 2019, UOKiK awarded prizes to a total of nine master’s theses and two doctoral theses.

Patronage of the President of UOKiK

In 2019, the President of the UOKiK took **honorary patronage over 27 events**. An example of an initiative under the auspices of UOKiK was an educational campaign under the name “Learn more about your trading partner”, organised by the Polish Association of Direct Selling in cooperation with the Consumer Federation from January 2019 to December 2019. The campaign was aimed at the hotel and restaurant industry, including companies renting rooms for sales presentations.

Publishing activities

UOKiK drafts and issues publications of an educational and informative nature. All publications are posted the website of UOKiK, where you can download an electronic copy and order free delivery of select titles.

In 2019, the following new publications were issued:

- “Report on the activities of district and municipal consumer ombudsmen in 2017”
- “Report on the activities of district and municipal consumer ombudsmen in 2018”

UOKiK also issued a leaflet titled **“Explanations for businesses – searches”**, the purpose of which is to explain to businesses their rights and obligations during a search and familiarise them with activities conducted to that extent by UOKiK employees.

UOKiK published two theses which received a prize in the competition organised by the President of UOKiK for the best master’s thesis: related to competition protection – “Vertical restrictions imposed on online sales in selective distribution systems” and related to consumer protection – “Consumer protection in an economy oriented towards cooperation in the law of the European Union”.

In 2019, UOKiK printed additional copies of the following leaflets: **“Warranty. How to lodge a complaint regarding a defective product?”** and **“Senior, don’t let yourself be deceived”**.

Cooperation with the media

Another important aspect of information activities pursued by UOKiK is on-going communication with the media and posting press releases about decisions, initiatives and positions of UOKiK on its website. **Over 65 percent of all press releases pertained to cases related to consumer protection**, including the results of controls conducted by the Trade Inspection. In 2019, UOKiK was the most active on its Twitter profile – the number of tweets was nearly 25 percent higher than in the previous

year. The media also readily communicated information about activities conducted by UOKiK – the number of online publications increased by 2,300 compared to the year 2018, whereas the number of materials prepared for television and radio increased by 161.

The representatives of UOKiK actively participated in morning television shows, such as “Pytanie na śniadanie” (TVP2) and “Dzień dobry TVN”.

Furthermore, UOKiK was involved in promoting the campaign under the name “Learn more about your trading partner”, the originators of which were the Polish Association of Direct Selling and the Polish Consumer Federation. The campaign was aimed at hotels and health spas renting rooms for sales presentations.

Another initiative supported in the media by UOKiK was the campaign under the name “Enchanted”, organised by the Polish Financial Supervision Authority and the Ministry of Investments and Development. Its primary purpose was to warn consumers about investments in aparthotels and condohotels.

On its website and Twitter profile, UOKiK also promoted educational films for consumers, prepared by the Aquila Association as part of grants awarded by UOKiK to non-governmental consumer associations.

UOKiK for the media

158

press releases

17

press conferences

680

tweets (over 3 mn views)

The media about UOKiK

9 228

press articles

45 111

online publications

4 541

radio and TV materials

59 236

mentions of UOKiK among
others on Twitter, Facebook

3.4 International cooperation

A vital aspect of activities pursued by UOKiK are initiative taken on the international forum. UOKiK cooperates with competition and consumer protection authorities from other countries on horizontal and sector-specific matters. Furthermore, UOKiK participates in initiatives taken by working parties under EU institutions. The international activity of UOKiK also includes the area of state aid as well as market control and surveillance.

Cooperation for consumer protection

Consumer Policy Network – CPN

CPN meetings, organised by the EC several times a year, provide a platform for EU consumer protection authorities to exchange experiences on the most up-to-date horizontal issues regarding consumer protection, both at national and EU level.

First of the meetings planned for 2019 was held on **20-21 March 2019 in Paris**. The meeting was attended by UOKiK representatives. It was agreed that consumer protection policy needs an update and actions need to be taken to build consumer confidence in digital technologies. It was pointed out that there is a need to establish the Consumer Agenda 5.0 for digitalisation, sustainable development and law enforcement.

Another CPN meeting was held on **6-7 June 2019 in Berlin**. Participants discussed issues related to the current consumer policy and its future priorities. It was pointed out that there is a need to strengthen the role of consumer policy in the new strategic Agenda of the EU for the years 2020-2024. In connection with the directions of activities specified at the meeting in Paris (digitalisation, sustainable development, law enforcement), three horizontal areas were identified in particular: international cooperation (e.g. within the framework of OECD), consumer studies, consumer policy coordination.



Another of the scheduled meetings was held on **10 October 2019 in Brussels**. It was devoted to issues related to current consumer policy in individual Member State and at the EU level. The EC presented activities conducted to that extent on the OECD forum. Furthermore, representative present at the meeting discussed issues related to artificial intelligence.

International Consumer Protection and Enforcement Network (IPCEN)

IPCEN is an organisation that brings together consumer protection authorities from more than 60 countries. Its purpose is to exchange information on cross-border market practices which could adversely affect consumer interests. It also promotes cooperation between authorities responsible for the implementation of consumer regulations.

In 2019, the President of UOKiK and the Director of the Legal Department, in connection with UOKiK's membership in that organisation, participated in an annual High-Level Meeting and in **a conference organised by the Zambian presidency of IPCEN in Livingstone, Zambia**. The event was focused on the following issues: marketing practices in the digital world aimed at children, current cooperation between IPCEN members, financial consequences issues in the world of consumers, alternative dispute resolution system.

Consumer Protection Cooperation (CPC) between the authorities of Member States

Three times a year, the EC organises meetings between the authorities of Member States which are responsible for enforcing the provisions of consumer law. This network functions based on provisions laid down in **Regulation No. 2006/2004**. The purpose of cooperation under CPC is to exchange information for the purposes of proceedings in connection with cross-border violations. Meetings organised in 2019, attended by UOKiK representatives, were focused mainly on issues related to the implementation of the new CPC Regulation (Regulation No 2017/2394), especially new powers of competent authorities, such as the power to make purchases for testing purposes or track financial and data flows. Other important initiatives included additional meetings in the form of workshops, the purpose of which was to discuss practical aspects related to the implementation of new competencies.

Cooperation for competition protection

Council of the European Union – Finnish presidency

In September 2019, the Finnish presidency of the Council of **the European Union organised the European Competition and Consumer Day in Helsinki**, which was attended by the President of UOKiK. Conference participants deliberated during two separate panels.

The first panel began with a debate on the relationship between consumer law and agreements promoting sustainable development and whether the interpretation of the provisions of competition law is sufficiently clear for business. One of the issues raised was the extent to which competing businesses may enter into agreements in compliance with competition law, e.g. to the extent of agreements promoting environmental benefits.

The second panel was devoted to strengthening the role and choice of consumers in a digital society. This broad area was discussed in the context of provisions concerning consumer protection and data-driven economy. The debate addressed one of the key priorities of the EU:

to strengthen the role of consumers in relations with businesses.

European Competition Network – ECN

UOKiK representatives participated in the efforts of working parties of the European Competition Network, which is comprised of the European Commission and competition authorities of EU Member States. They participated in drafting reports collecting information on the application of Articles 101 and 102 of TFEU by anti-trust authorities and the use of procedural powers to that extent by those authorities. As part of the Working Party for Digital Markets, UOKiK representative presented the activity of UOKiK regarding cases conducted on digital markets.

The ECN holds the **so-called plenary meetings at least twice a year**, which serve as a forum for exchanging information on key horizontal issues, such as those related to the implementation of the ECN+ Directive. In 2019, the ECN also worked on revising block exemptions concerning vertical agreements.

In 2019, UOKiK sent 10 informal RFIs (Requests for Information, i.e. requests for assistance submitted by member states, via the IT system made available by the European Commission – e.g. a request for information on the existing legal order or law implementation practice). These were mainly requests for information concerning competition law regulations in force in a specific Member State. Furthermore, UOKiK responded to several dozen RFIs submitted by other member states.

European Competition Authorities Meeting (ECA Meeting)

The annual meeting of the heads of European Competition Authorities (ECA) is devoted to current issues related to competition protection. It is an opportunity to exchange views and experience in related to antitrust law policy and application in Europe.

The management of UOKiK was present at the ECA meeting held **in March 2019 in Hague**.

International Competition Network – ICN

The International Competition Network (ICN) is a platform for cooperation and exchange of experience by more than 130 competition authorities from around the world. UOKiK's representatives participated in three working groups of the network for: cartels, unilateral market practices, promotion of antitrust law. The network also provides support for smaller and younger competition protection agencies and encourages experts from non-governmental organisations to cooperate more closely with competition protection entities.

UOKiK representatives participated in workshops concerning cartels, organised **on 7-10 October 2019 in Brazil**. The event was held under the name "Cartels in the age of data-driven economy". It was focused on issues related to information management on data-driven markets: antitrust liability for violations related to software; intelligence and control tools; assessment of evidence in the digital age.

Competition Committee of the Organisation for Economic Cooperation and Development – OECD

UOKiK representatives participated in OECD meetings concerning the protection and promotion of competition. They participated in the work of the Competition Committee and OECD working parties. Furthermore, they participated in workshops co-organised by OECD and the Italian Antitrust Authority devoted to the protection of competition on digital markets.

OECD workshops in Belarus

On 6 November 2019 in Minsk, Belarus, the President of UOKiK and the Director of the Department of Competition Protection of UOKiK, together with a representative of OECD and the Polish NGO sector held workshops organised by OECD regarding effective methods for combating cartels.

The workshops were aimed at employees of the Ministry of Antitrust, Regulations and Trade (MART) of the Republic of Belarus. UOKiK representative presented the powers of UOKiK as regards the acquisition of evidence

of cartel violations and bid rigging agreements. They also discussed practical experiences of UOKiK with specific methods for combating anti-competitive agreements. Workshops were highly regarded by those in attendance.

They were an opportunity to establish bilateral contacts with the government administration in Belarus. At the conclusion of workshops UOKiK, in consultation with the Ministry of Foreign Affairs, invited MART representative for a study visit in Warsaw in 2020.

Merger Working Group

In 2019, UOKiK representatives participated in **three annual meetings of the Merger Working Group of the European Commission**. This Group is comprised of representatives from the European Commission, national competition authorities in the EU and observers from competition authorities operating in the EEA. The leading topic of the meetings were mergers on healthcare services markets in individual Member States. To that extent, representatives of national competition authorities presented the characteristics of their healthcare system and mergers on those markets, discussing among other things the definition of the relevant market and its structure, performance of a competitive assessment of a specific merger and the use of preventative measures.

The purpose of the meetings was to exchange experiences, including differences arising from different healthcare systems and jurisdictions. Furthermore, the meetings were also devoted to issues concerning changes considered by the European Commission in relation to the control of mergers, breaches of law through the performance of mergers prior to obtaining consent from the antitrust authority, issuing of conditional decisions and cooperation between national competition authorities in regard to multi-jurisdictional mergers.

Cooperation in the field of state aid

State Aid Evaluation Workshop 2019

In November 2019, UOKiK representative participated in the State Aid Evaluation Workshop 2019. The workshop is an annual event and its purpose is to exchange experi-

ences in the area of evaluation between Member States. The workshops addressed the issue of the importance of evaluation results for the improvement of the state aid system from the perspective of the European Commission. It also included a presentation of results from evaluations conducted by individual Member States thus far and a discussion on how they may be used. The representatives of the Directorate General for Competition discussed the current status and legal aspects of implementing the evaluation of state aid. In addition, the evaluation reports prepared by Italy, Finland, Spain and France as well as directorates and executive agencies of the European Commission have been presented.

Contact Group of International Subsidy Policy

The Group comprises representatives of the European Commission and Member States – experts in matter related to competition and/or trade. The Group works under the leadership of the High Level Forum of Member States in order to present a report for this forum and the Trade Policy Committee. The purpose of the Group is to exchange opinions and practices related to international subsidy policy in order to support each other in initiatives at a multi-directional, regional and bilateral level. **Two meetings were held in 2019.** During those meetings Poland was represented by UOKiK.

Transparency Steering Group

The purpose of work carried out by the Group is to develop guidelines of the European Commission on the method for the registration of data in the TAM system. It is an EC system used by Member States to collect data on high-value state aid granted in the EU in one place. The use of the TAM system is not mandatory, but it is particularly recommended by the European Commission. In 2019, Poland was required to provide reports on state aid granted in Poland in the years 2016-2019. Data was collected from the database of the SHRIMP application. A meeting between the representatives of all Member States was held **on 11 October 2019 in Brussels.** The meeting was devoted to the presentation of aid compliance study results and discussion on the extent of modernisation of the SARI system used to provide annual reports to the European Commission. The rep-

resentatives of Spain, Slovenia and the Czech Republic have talked about aid monitoring systems in place in their countries as well as activities conducted to satisfy the state aid transparency requirement.

Member States' Working Group on Implementation of State Aid Modernisation

The Group is a regular platform for exchanging information and experience related to the implementation of state aid modernisation. Meetings are held regularly, several times a year.

The Group deals with the following topics:

- implementation of modernisation results (training programmes, information exchange platforms, expert networks),
- assurance of compliance with EU regulations (analysis of state aid monitoring systems, examining cases of state aid, ex ante and ex post evaluation of aid granted under block exemptions),
- analysis of state aid monitoring systems in individual Member States;



- important projects of common European interest (IPCEI),
- innovative clusters,
- latest case law of European courts in the area of state aid.

The Group held three meetings in 2019: in Bratislava (March), Cluj-Napoca (May) and Helsinki (October). The work of the group is summarised and approved during the High Level Forum.

High Level Forum

One of the elements of the state aid law reform was the establishment of closer cooperation and partnership between the European Commission and Member States. Under this initiative, the European Commission initiated political meeting with high level representatives of the Member States. These meetings are conducted to exchange information and consult on the implementation of the reform and its next stages. In June 2018, Poland was represented by two representatives from UOKiK.

Product safety and market surveillance cooperation

European Commission

The first joint meeting of the Expert Group on the Internal Market for Products – Market Surveillance Group and the Prohibitions and Restrictions Strategy Group was held **on 11 March 2019** and was devoted to issues related to closer cooperation between market surveillance authorities and customs authorities.

On 17 May 2019, the representative of UOKiK acting as the national ICSMS system administrator participated in the meeting of the Expert Group on the Internal Market for Products ICSMS. The meeting was focused on continued development of the ICSMS information exchange system and its adaptation to the provisions of Directive 2019/1020/EU. Pursuant to that Directive, ICSMS will become the main tool for information exchange and communication between market surveillance authorities, customs authorities and the EC.

In 2019, **the Expert Group on the Internal Market for Products – Market Surveillance Group held 3 meetings**, which were attended by a representative from UOKiK. These meetings were focused on issues related to the preparation of Member States to the application of new Regulation 2019/1020/EU and revised “Blue Guide”, which is a compendium of knowledge regarding the EU market surveillance and compliance assessment system.

Joint action in regard to consumer product market surveillance in 2016 (JA2016)

The 26-month long (started in September 2017) Europe-wide project “JA2016” co-financed by the EU ended **in November** 2019. The Trade Inspection and UOKiK participated in that project. Its primary purpose was to develop and exchange good practices in the area of market surveillance as well as verify whether products offered on the single market are compliant with EU legislation, including by testing them in accredited European laboratories. The Trade Inspection and UOKiK participated in 3 activities concerning a safety control of electric toys, hammer drills and hair care products (air dryers, hair curlers and straighteners). Laboratory tests of Polish samples conducted under the project did not show any irregularities that pose a serious threat. On the other hand, reservations raised with regard to the Polish samples of electric toys concerned their negative impact on the environment in connection with materials used in them (lead and cadmium content exceeded the permissible values).

Coordinated Activities on the Safety of Products

UOKiK joined the CASP 2019 project, which provides for 5 activities with regard to products – soft, plush toys, chargers, batteries, baby carriages, child safety seats for bicycles, electric personal transporters – and 3 horizontal activities (risk assessment, online market surveillance, knowledge sharing). The Trade Inspection and UOKiK participated in 1 product action (electric personal transporters – i.e. electric scooters, electric bicycles and electric hoverboards) and in all horizontal activities.

The project meeting of CASP 2019 – Knowledge sharing – cooperation between customs authorities and market surveillance authorities was held **on 10-11 September 2019**. The meeting was attended by the representatives

of 9 Member States (AT, CY, DE, DK, FI, FR, LU, LV, RO) and the EC. The purpose of the meeting was the presentation of good practices and principles of cooperation between customs authorities and market surveillance authorities, and the exchange of experiences between project participants.

Textile Administration Cooperation Group (Textile AdCo)

A representative of UOKiK participates in regular meetings of **the Administration Cooperation and Market Surveillance Working Group** to the extent specified in the Textile Regulation No 1007/2011 (Textile AdCo). These meetings are usually held twice a year and represent an international forum of cooperation between market surveillance authorities in the area of textile products. They are used for exchanging information on interpretative and practical problems which occur during the control of textile products. The meeting was attended by representatives of Poland, Croatia, Czech Republic, Greece, France, Spain, Lithuania, Luxembourg, Germany, Romania and Italy.

UOKiK regularly participates in works carried out by other ADCO – **the Administrative Cooperation Working Group** – groups. They operate in various areas of market surveillance, e.g. toys, electrical equipment, pyrotechnic products. They constitute expert forums on which issues related to the enforcement of EU regulations in a specific area are discussed. Their purpose is to standardise the approach of market surveillance authorities, so as to ensure the same level of consumer protection and conditions of competition in the entire European Union.

Study visits

Study visit by representatives of the Georgian Competition Agency

On 16-20 December 2019, UOKiK hosted the representatives of the Georgian Competition Agency (GCA), a representative of the Georgian parliament and coordinators of the EU project being implemented by the GCA under the name “Support to the Georgian Competition Agency”. During the visit, UOKiK representatives presented the powers of the President of UOKiK and the

internal structure of the Office of Competition and Consumer Protection as an authority with a wide range of powers in the area of protecting collective consumer interests and competition (the so-called “dual Authority”). Furthermore, members of the delegation had an opportunity to visit the Public Procurement Office and the European Consumer Centre as well as meet with lawyers from one of the law firms specialising in cases concerning competition and consumer protection. The study visit was also an opportunity for UOKiK employees to obtain information about the specifics of GCA's operation as an emerging competition authority that continuously adapts to EU standards and aims to obtain powers to enforce provisions protecting collective consumer interests.

Study visit at the Portuguese Competition Agency (*Autoridade da Concorrença*) and the Portuguese Consumer Protection Authority (*Direcção-Geral do Consumidor*)

The visit of UOKiK representatives in Portugal was conducted on 2-4 December 2019. First, they visited the Portuguese competition agency (*Autoridade da Concorrença*), where they learned about the agency's powers and cases related to competition protection under its jurisdiction. Next, they met with the representative of the Portuguese consumer protection authority (*Direcção-Geral do Consumidor*). The primary purpose of that meeting was to learn about the electronic complaint management system in place there. The final stop during the international visit was a conversation with Miguel Sousa Ferro – a professor of competition law at the University in Lisbon. It pertained to regulations concerning contractual advantage in force in Portugal.

Conclusion

In 2020, UOKiK will celebrate its 30th anniversary. It will be an opportunity to summarise the achievement of this institution and take a close look at challenges connected with the planned expansion of its powers.

The Act amending Certain Acts to Limit Payment Backlogs entered into force on 1 January 2020¹². This legal act introduced a ban on excessive delays in the satisfaction of payment obligations in transactions with trading partners. The President of UOKiK was assigned a new duty in that regard – to conduct proceedings concerning excessive delays in the satisfaction of payment obligations and impose financial penalties on unreliable debtors.

In 2020, work will be continued on the implementation of two relevant EU regulations to the Polish legal system – ECN+ Directive (competition protection) and CPC Regulation (consumer protection). They require the amendment of the Act on Competition and Consumer Protection in terms of new powers to be granted to the Polish Competition Authority.

The President of UOKiK will also gain more flexibility in shaping the internal structure of the institution under his management. This results from the amended Act on Competition and Consumer Protection, which changes the rules for establishing branch office of UOKiK and assigning duties to them. The new charter of UOKiK¹³, pursuant to which the branch office in Warsaw was eliminated, leaving 8 branch office with the structure of the Polish Competition Authority, entered into force as of 3 January 2020.

In the upcoming year, the powers of the Trade Inspection will change as well. As of 1 July 2020, the Trade Inspection will transfer the control of agricultural and food product quality to the Agricultural and Food Product Quality Inspection Authority. As of that date, the Agricultural and Food Product Quality Inspection Authority will be responsible for supervising the quality of food at all stages of trade. Furthermore, it will take over 5 food laboratories currently operating under UOKiK.

¹² Act of 19 July 2019 amending Certain Acts to Limit Payment Backlogs (Polish Journal of Laws of 2019, item 1649).

¹³ It was granted pursuant to Ordinance No. 272 of the Prime Minister of 20 December 2019 granting a char-

ter to UOKiK (Official Gazette of 2019, item 1198).

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