



**International  
Competition  
Network**

**ANTI-CARTEL  
ENFORCEMENT  
TEMPLATE**

**CARTELS WORKING GROUP  
Subgroup 2: Enforcement Techniques**

**POLAND,  
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# ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

## IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

## 1. Information on the law relating to cartels

<p><b>A. Law(s) covering cartels:</b></p>	<p>Act of 16 February 2007 on competition and consumer protection, as amended (Consolidated text: Journal of Laws of 2015, item 184). All further references to articles refer to this Act.</p> <p>English version is available on UOKiK's website at: <a href="https://uokik.gov.pl/download.php?plik=7618">https://uokik.gov.pl/download.php?plik=7618</a></p>
<p><b>B. Implementing regulation(s) (if any):</b></p>	<p>Block exemptions:</p> <ol style="list-style-type: none"> <li>1. Regulation of the Council of Ministers of 30 March 2011 on exemption of certain categories of vertical agreements from the prohibition of competition restricting agreements Consolidated text: Journal of Laws of 2014, item 1012.</li> </ol> <p>English version:</p> <p><a href="https://uokik.gov.pl/download.php?plik=12127">https://uokik.gov.pl/download.php?plik=12127</a></p> <ol style="list-style-type: none"> <li>2. Regulation of the Council of Ministers of 17 April 2015 on exemption of certain categories of technology transfer agreements from the prohibition of competition restricting agreements (Journal of Laws of 2015, item 585)</li> <li>3. Regulation of the Council of Ministers of 22 March 2011 on exemption of certain categories of agreements concluded between entrepreneurs in connection with the performance of insurance activity from the prohibition of competition restricting agreements (Journal of Laws of 2011, No. 67, item 355)</li> </ol>

	<p>4. Regulation of the Council of Ministers of 13 December 2011 on exemption of certain categories of specialisation or research &amp; development agreements from the prohibition of competition restricting agreements (Journal of Laws of 2011, No. 288, item 1691)</p> <p>Leniency:</p> <p>1. Regulation of the Council of Ministers of 23 December 2014 on the mode of proceeding in cases of applications for immunity from or reduction of fines (Journal of Laws of 2015, item 81).</p>
<p><b>C. Interpretative guideline(s) (if any):</b></p>	<p>Guidelines on settlements (2015.11.18)</p> <p>Guidelines on issuing detailed justification of charges in cases of: 1) competition restricting practices, 2) practices infringing collective consumer interests, and 3) imposition of fines for violation of the Act (2015.09.01)  <a href="https://uokik.gov.pl/download.php?id=1341">https://uokik.gov.pl/download.php?id=1341</a></p> <p>Guidelines concerning commitment decisions in cases of competition restricting practices and practices infringing collective consumer interests (2015.10.26)</p> <p>Guidelines concerning the leniency programme (procedures for applying for leniency and handling leniency applications) (2009.02.24; to be updated)  <a href="https://uokik.gov.pl/download.php?plik=9486">https://uokik.gov.pl/download.php?plik=9486</a></p> <p>Guidelines concerning fines for competition restricting practices (2009.01.19)  <a href="https://uokik.gov.pl/download.php?plik=1217">https://uokik.gov.pl/download.php?plik=1217</a></p>
<p><b>D. Other relevant materials (if any):</b></p>	<p>Competition and Consumer Protection Policy 2015 (Polish version: <a href="https://uokik.gov.pl/download.php?plik=16694">https://uokik.gov.pl/download.php?plik=16694</a> )</p> <p>Report on UOKiK's activities for 2014 (available in English at <a href="https://uokik.gov.pl/download.php?plik=17394">https://uokik.gov.pl/download.php?plik=17394</a></p>

## 2. Scope and nature of prohibition on cartels

<p><b>A. Does your law or case law define the term "cartel"?</b></p> <p><b>If not, please indicate the term you use instead.</b></p>	<p>The Act of 16 February 2007 does not use the term "cartel". Instead, it refers to "agreements restricting competition". The full definition of "agreements" may be found in Article 4(5): "agreements" shall mean:</p> <p>a) agreements concluded between entrepreneurs, between associations thereof and between entrepreneurs and their associations, or certain provisions of such agreements,</p> <p>b) concerted practices undertaken in any form by two or more entrepreneurs or associations thereof,</p> <p>c) resolutions or other acts of associations of entrepreneurs or their statutory organs.</p>
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	<p>Article 6 of the Act defines agreements restricting competition as: Agreements which have as their object or effect elimination, restriction or any other infringement of competition on the relevant market, in particular those consisting in:</p> <ol style="list-style-type: none"> <li>1) fixing, directly or indirectly, prices and other trading conditions,</li> <li>2) limiting or controlling production or sale as well as technical development or investments,</li> <li>3) sharing markets of sale or purchase,</li> <li>4) applying to equivalent agreements with third parties onerous or not homogenous agreement terms and conditions, thus creating for these parties diversified conditions of competition,</li> <li>5) making conclusion of an agreement subject to acceptance or fulfilment by the other party of another performance, having neither substantial nor customary relation with the subject of such agreement,</li> <li>6) limiting access to the market or eliminating from the market undertakings which are not parties to the agreement,</li> <li>7) collusion between undertakings entering a tender, or by those undertakings and the undertaking being the tender organiser, of the terms and conditions of bids to be proposed, particularly as regards the scope of works and the price.</li> </ol>
<p><b>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas<sup>1</sup>) and other types of “cartels”?</b></p>	<p>The practices specified in art. 6(1-3) and art. 6(7) are considered as most serious (hardcore restrictions):</p> <ul style="list-style-type: none"> <li>- price fixing,</li> <li>- limiting output/technical development,</li> <li>- market allocation,</li> <li>- bid rigging.</li> </ul>
<p><b>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors.]</b></p>	<p>Articles 7 and 8 of the Act:</p> <p>Article 7.</p> <ol style="list-style-type: none"> <li>1. The prohibition referred to in Article 6 paragraph 1 shall not apply to agreements concluded between: <ol style="list-style-type: none"> <li>1) competitors whose combined share in the relevant market affected by the agreement does not exceed 5%;</li> <li>2) undertakings which are not competitors, if the share of any of them in the relevant market affected by the agreement does not exceed 10%.</li> </ol> </li> <li>2. The prohibition referred to in Article 6 paragraph 1 shall also not apply in cases where the shares in the relevant market as defined in paragraph 1 were not exceeded by more than two percentage points in the two consecutive calendar years within the term of the agreement.</li> <li>3. The provisions of paragraphs 1 and 2 shall not apply to cases specified in Article 6, paragraph 1, subparagraphs 1 to 3 and subparagraph 7.</li> </ol>

<sup>1</sup> In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

	<p>Article 8.</p> <p>1. The prohibition referred to in Article 6 paragraph 1 shall not apply to agreements which at the same time:</p> <ol style="list-style-type: none"> <li>1) contribute to improvement of the production, distribution of goods or to technical or economic progress;</li> <li>2) allow the buyer or user a fair share of the benefits resulting thereof;</li> <li>3) do not impose upon the undertakings concerned such impediments which are not indispensable to the attainment of these objectives;</li> <li>4) do not afford these undertakings the possibility to eliminate competition in the relevant market in respect of a substantial part of the goods in question.</li> </ol> <p>2. The burden of providing evidence to circumstances referred to in paragraph 1 shall rest upon the undertaking concerned.</p> <p>3. The Council of Ministers may, by way of a regulation, exempt from the prohibition referred to in Article 6 paragraph 1, certain types of agreements which meet the conditions referred to in paragraph 1 above, taking into consideration the benefits resulting from such types of agreements. In the regulation, the Council of Ministers shall specify:</p> <ol style="list-style-type: none"> <li>1) conditions which are to be satisfied for the agreement to be considered exempted from the prohibition;</li> <li>2) clauses, the existence of which in the agreement constitutes an infringement of Article 6;</li> <li>3) a period during which the exemption shall apply, and may specify clauses, the existence of which in the agreement is not considered as infringement of Article 6.</li> </ol> <p>See also reply to question 1.B</p>
<p><b>D. Is participation in a hardcore cartel illegal <i>per se</i>?</b></p>	<p>Yes</p>
<p><b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</b></p>	<p>Administrative offence (except for bid-rigging which is both an administrative offence and a crime).</p>

### 3. Investigating institution(s)

<p><b>A. Name of the agency, which investigates cartels:</b></p>	<p>The Office of Competition and Consumer Protection (Urząd Ochrony Konkurencji i Konsumentów)</p>
<p><b>B. Contact details of the agency:</b></p>	<p>Pl. Powstańców Warszawy 1  00-950 Warszawa  Phone: (+48 22) 55 60 800  Fax: (22) 826 61 25  <a href="mailto:uokik@uokik.gov.pl">uokik@uokik.gov.pl</a>  <a href="mailto:bp@uokik.gov.pl">bp@uokik.gov.pl</a>  <a href="http://www.uokik.gov.pl">www.uokik.gov.pl</a> (Polish, English)</p>

<b>C. Information point for potential complainants:</b>	See the contact details above
<b>D. Contact point where complaints can be lodged:</b>	See above
<b>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</b>	When conducting an inspection UOKiK may request the assistance of officers of other state inspections or the Police. Searches in private premises may be conducted only by the Police.

#### 4. Decision-making institution(s)<sup>2</sup> [to be filled in only if this is different from the investigating agency]

<b>A. Name of the agency making decisions in cartel cases:</b>	
<b>B. Contact details of the agency:</b>	
<b>C. Contact point for questions and consultations:</b>	
<b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b>	
<b>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</b>	

#### 5. Handling complaints and initiation of proceedings

<b>A. Basis for initiating</b>	
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<sup>2</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

<p><b>investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</b></p>	<p>In Poland, antitrust proceedings are instituted solely ex officio (Article 49 of the Act). However, everybody may submit to UOKiK a written notification concerning a suspicion that competition-restricting practices have been applied, together with a justification (art. 86 of the Act). Such notifications are not binding and constitute only a source of information.</p>
<p><b>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</b></p>	<p>Please refer to the answer below.</p>
<p><b>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</b></p>	<p>Article 86(1-3).</p> <ol style="list-style-type: none"> <li>1. Any person may submit to UOKiK a written notification concerning suspected competition-restricting practices, along with a justification.</li> <li>2. The notification referred to in paragraph 1 may include in particular: <ol style="list-style-type: none"> <li>1) indication of the undertaking suspected of competition-restricting practices;</li> <li>2) indication of the facts on which the notification is based;</li> <li>3) indication of the provision of the Act or the TFEU, the infringement of which is being notified by the submitting party;</li> <li>4) information making an infringement of the provisions of the Act or the TFEU plausible;</li> <li>5) identification data of the submitting party.</li> </ol> </li> <li>3. Any documents that may constitute evidence of such an infringement shall be attached to the notification.</li> </ol>
<p><b>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?</b></p>	<p>See reply to point 5.A above.</p>
<p><b>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</b></p>	<p>In such circumstances UOKiK provides the complainant with information in writing about the manner of handling the notification along with justification, within the time limit provided for in the Code of Administrative Procedure. (Article 86(4))</p>
<p><b>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</b></p>	<p>Pursuant to art. 35(1) of the Code of Administrative Procedure, matters should be resolved without undue delay. Any matter requiring preliminary proceedings should be dealt with within one month, whereas particularly complex matters – within two months from the date of initiating the proceedings, and on appeal – within one month from the date of receipt of the appeal.</p>

## 6. Leniency policy<sup>3</sup>

<sup>3</sup> For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

<p><b>A. What is the official name of your leniency policy (if any)?</b></p>	<p>UOKiK has been running its leniency programme since 2004. Information on the programme and contact details for leniency applications may be found on UOKiK's website(<a href="https://uokik.gov.pl/leniency_programme.php">https://uokik.gov.pl/leniency_programme.php</a>).</p>
<p><b>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</b></p>	<p>The Act provides for both full immunity and fine reduction. (Articles 113a-113k)</p>
<p><b>C. Who is eligible for full leniency?</b></p>	<p>Full leniency will be granted to the <b>first</b> leniency applicant who:</p> <ul style="list-style-type: none"> <li>- did not coerce others,</li> <li>- meets the statutory requirements</li> <li>- provides UOKiK with sufficient evidence either to open an investigation or contributes towards issuing a decision finding an infringement.</li> </ul> <p>A first-in leniency applicant who coerced others to take part in an agreement can still, however, be eligible for a fine reduction. The second and subsequent leniency applicants will not be eligible for immunity, but may benefit from a reduction in any fines imposed as long as they provide UOKiK with evidence that will significantly contribute to issuance of a decision.</p>
<p><b>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</b></p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	<p>Both.</p> <p>An undertaking is eligible for leniency irrespective of whether it submits a leniency application before or after antitrust proceedings are instituted. However, depending on the time of submitting such application, the undertaking's obligations differ.</p>
<p><b>E. Who can be a beneficiary of the leniency program (individual businesses)?</b></p>	<p>Undertakings, individuals (managers who, as part of their role and at the time of the infringement, intentionally allowed the prohibition of competition restricting practices to be violated, either through action or omission - Art. 6a of the Act)</p>
<p><b>F. What are the conditions of availability of full leniency:</b></p>	<p>Art. 113a-b</p> <p>In order to be eligible for <b>full immunity</b>, the undertaking needs to satisfy all of the following conditions:</p> <p>1) the undertaking was the first from among the agreement's participants to submit a correct leniency application, and fulfilled the requirements related to cooperation with UOKiK in the course of the proceedings, non-disclosure of the intention to submit the application and termination of participation in the</p>

	<p>prohibited agreement;</p> <p>2) the undertaking provided UOKiK with evidence sufficient for instituting antitrust proceedings or information allowing UOKiK to obtain such evidence; or, if the application was submitted in the course of antitrust proceedings, evidence which significantly contributed to the issuing of a final decision or information allowing UOKiK to obtain such evidence, provided that UOKiK was not already in possession of such evidence.</p> <p>3) the undertaking had not coerced other undertakings to participate in the agreement.</p>
<p><b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</b></p>	<p>Art. 113c</p> <p><b>Partial leniency</b> is available to undertakings which do not meet the requirements for full leniency and satisfy all of the following conditions:</p> <p>1) the undertaking submitted a correct application;</p> <p>2) the undertaking fulfilled the requirements related to cooperation with UOKiK in the course of the proceedings, non-disclosure of the intention to submit the application and termination of participation in the prohibited agreement;</p> <p>3) the undertaking presented evidence of material significance for the case, provided that UOKiK was not already in possession of such evidence.</p>
<p><b>H. Obligations for the beneficiary after the leniency application has been accepted:</b></p>	<p>Art. 113a</p> <p>The applicant is obligated to cooperate with UOKiK „within the full extent” starting from the date of submitting the application, and in particular:</p> <p>1) to provide, on their own initiative or on request of UOKiK and without undue delay, any material evidence or information regarding the agreement which are or may be in their possession;</p> <p>2) not to hinder the process of testifying by the applicant’s employees, managers or members of the company’s governing bodies;</p> <p>3) not to destroy, falsify or conceal any evidence or information related to the case;</p> <p>4) not to disclose the fact of submitting the application without UOKiK’s consent.</p> <p>The applicant should also terminate participation in the agreement immediately after submitting the application, if they have not done so beforehand.</p>
<p><b>I. Are there formal requirements to make a leniency application?</b></p>	<p>The requirements concerning leniency applications are outlined in art. 113a of the Act.</p> <p>The procedure for handling leniency applications is set out in the Regulation of the Council of Ministers of 15 January 2015 on the mode of proceeding in cases of applications for immunity from or reduction of fines (Journal of Laws of 2015, item 81), hereinafter: “Regulation”.</p> <p>1. Applications may be made in writing or orally, at one of UOKiK’s branch offices or at the head office. They may be submitted personally, by post, in electronic form or by fax. Applications made orally are recorded.</p> <p>2. Applications should contain a description of the agreement, and in particular:</p> <p>- identification of the undertakings – parties to the agreement;</p>

	<ul style="list-style-type: none"> <li>- products and services the agreement relates to;</li> <li>- territory covered by the agreement;</li> <li>- object of the agreement;</li> <li>- circumstances of entering into the agreement;</li> <li>- information on the way the agreement has been implemented;</li> <li>- duration of the agreement;</li> <li>- roles of the participating undertakings;</li> <li>- names and positions of the persons playing key roles in the agreement and descriptions of such roles;</li> <li>- indication whether the undertaking has also submitted a leniency application with the competition authorities of other EU member states or the European Commission.</li> </ul> <p>The applicant should also enclose evidence or information allowing UOKiK to collect evidence as outlined in points 6(F) and 6(G) above.</p> <p>If the undertaking is not in possession of the information referred to in art. 113a par. 2 or evidence / information referred to in art. 113b point 2 or art. 113c par. 1 point 3, it may submit a marker application describing the agreement and containing at least the following information:</p> <ul style="list-style-type: none"> <li>- identification of the undertakings – parties to the agreement;</li> <li>- products and services the agreement relates to;</li> <li>- territory covered by the agreement;</li> <li>- object of the agreement;</li> <li>- duration of the agreement;</li> <li>- names and positions of the persons playing key roles in the agreement and descriptions of such roles.</li> </ul>
<p><b>J. Are there distinct procedural steps within the leniency program?</b></p>	<ol style="list-style-type: none"> <li>1. Application submitted.</li> <li>2. UOKiK confirms the date and hour of submitting the application. At this stage, summary applicants are informed whether they are the first applicant in a given case.</li> <li>3. Verification. If the application is found to be incomplete or formally unacceptable, the undertaking is requested to correct the application within a prescribed time limit.</li> <li>4. Prima facie analysis of the application, information and evidence leading to provisional acknowledgement of the fulfilment of the conditions for leniency or rejection of the application. In both cases the undertaking is notified in writing; in the case of rejection such notification is with substantiation. At this stage, applicants other than those submitting summary applications are informed whether they are the first applicant in a given case.</li> <li>5. In the final decision closing antitrust proceedings, following an assessment of the evidence and information provided by the undertaking and cooperation in the course of the proceedings, UOKiK either grants immunity or refuses to do so.</li> </ol>
<p><b>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</b></p>	<p>§ 6(1) and § 7 of the Regulation</p> <p>If an analysis of the application, information or evidence suggests that the undertaking may fulfill the requirements for leniency set out in art. 113a-113c of the Act, UOKiK should notify the undertaking in writing without undue delay. In such notification, UOKiK also informs that the acknowledgement of the fulfilment of such conditions is only provisional and will be subject to a more thorough verification in the course of the</p>

	<p>antitrust proceedings. The undertaking is also informed about the legal consequences of a failure to effectively cooperate with UOKiK.</p> <p>If, however, such an analysis demonstrates that the undertaking does not meet the conditions set out in the Act, UOKiK notifies the undertaking in writing, without undue delay, about the application being dismissed, with substantiation.</p>
<p><b>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</b></p>	<p>Legal basis – Art. 113b-c of the Act. Leniency is granted in the decision closing antitrust proceedings. The decision is made by the President of UOKiK.</p>
<p><b>M. Does your legislation have a marker system? If yes, please describe it.</b></p>	<p>The leniency regulations provide for markers both for immunity and reduced fines applicants. For more detailed information on the requirements concerning such summary applications see point 6(l) above.</p>
<p><b>N. Does the system provide for any extra credit<sup>4</sup> for disclosing additional violations?</b></p>	<p>Since 18 January 2015, UOKiK has also been running the Leniency Plus programme available to undertakings applying for partial immunity which, before the decision is issued, submit another leniency application concerning an agreement in relation to which no preliminary investigation or antitrust proceedings are being conducted and provide relevant evidence or information, provided that the undertaking is the first from among the participants of this other agreement to submit a leniency application. An undertaking taking part in the Leniency Plus programme obtains a 30% fine reduction in relation to the first agreement and full immunity in relation to the other one.</p>
<p><b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b></p>	<p>Any information or evidence obtained by UOKiK as part of the leniency procedure, including information concerning an undertaking or manager submitting an application for immunity or fine reduction, and information obtained as part of the settlement procedure is kept confidential, with the following exceptions:</p> <ol style="list-style-type: none"> <li>1) Such information is disclosed to the parties directly prior to issuing a decision.</li> <li>2) Such information may be disclosed if the undertaking or manager participating in the leniency/settlement procedure provide their consent to such disclosure in writing.</li> </ol> <p>Information obtained by UOKiK as part of the leniency procedure and as part of the settlement procedure may not be disclosed on the basis of provisions concerning access to public information.</p>

<sup>4</sup> Also known as: “leniency plus”, “amnesty plus” or “immunity plus”. This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

<p><b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b></p>	<p>Appealing from the decision of UOKiK rejecting a leniency application is subject to the general procedure concerning the appeal to the Court of Competition and Consumer Protection. Article 81.1 of the Act states that: "the decision of the President of the Office is subject to appeal to the Court of Competition and Consumer protection, lodged within a month from the date the decision was served".</p>
<p><b>Q. Contact point where a leniency application can be lodged:</b></p>	<p>Undertakings or managers wishing to participate in the programme may submit a leniency application in writing or orally in the head office in Warsaw or any of UOKiK branch offices. Applications may also be sent by email to <a href="mailto:leniency@uokik.gov.pl">leniency@uokik.gov.pl</a> or by fax to 22 826 10 33; in such cases, however, a hard copy of the application should be delivered to UOKiK within the next 5 days. Leniency helpline: tel. 00 48 22 55 60 555, fax 22 826 10 33.</p>
<p><b>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</b></p>	<p>After a final decision is issued, revocation is impossible.</p> <p>The decision of the President of the Office is subject to appeal to the Court of Competition and Consumer lodged within a month from the date the decision was served.</p>
<p><b>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</b></p>	<p>The Polish law system does not allow for such "affirmative leniency".</p>

## 7. Investigative powers of the enforcing institution(s)<sup>5</sup>

<p><b>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>6</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</b></p>	<p>I. REQUESTS FOR INFORMATION</p> <p>Art. 50(1) Undertakings are obligated to provide UOKiK with "all necessary information and documents" on request. Such a request should indicate the scope of the information or documents to be provided, the object of the request, the time limit, and information on sanctions for failing to provide information or providing untrue or misleading information. No court order is needed.</p> <p>II. EXPERT WITNESSES</p> <p>Art. 54(1) In matters requiring specialist information, UOKiK</p>
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<sup>5</sup> "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

<sup>6</sup> "Searches/raids" means all types of search, raid or inspection measures.

may request opinions of one or more expert witnesses.

### III. INSPECTIONS AND SEARCHES

The amended Act of 16 February 2007 on Competition and Consumer Protection (“Competition Act”) empowers UOKiK to carry out inspections and searches, each of which is a separate activity governed by different procedural rules. The legal basis for inspections is provided by Article 105a of the Competition Act:

“In the course of proceedings before the President of UOKiK, an inspection may be held at any undertaking, hereinafter referred to as the “inspected party”, within the scope of such proceedings; such inspection shall be performed by an authorised employee of UOKiK or the Trade Inspection, hereinafter referred to as the “inspecting party”.

Inspections may be conducted in the course of UOKiK’s proceedings at business premises and means of transport. The Competition Act contains a closed catalogue of the powers of the inspecting party (article 105b). However, the inspecting party in the exercise of such powers needs to rely on the entrepreneur’s willingness to co-operate, i.e. they may not exercise such powers without the entrepreneur’s consent and co-operation. Therefore, inspections are useful only when dealing with cooperating entrepreneurs, e.g. when the entrepreneur is willing to make available a large volume of documentation which can only be consulted in their office rather than handed over to UOKiK.

Searches, on the other hand, may be conducted solely on the basis of search warrants issued by the Court of Competition and Consumer Protection (SOKiK).

Searches at business premises and objects (such as computers, vehicles) may be conducted by UOKiK staff, while searching private premises and objects can be done only by the Police.

The legal basis for searching business premises is provided by Article 105n of the Competition Act:

“1. In matters concerning anticompetitive practices, in the course of the preliminary investigation or antitrust proceedings, UOKiK may conduct a search of the entrepreneur’s premises and objects in order to find and obtain information contained in files, books, letters, all types of documents or data carriers, devices and IT systems or other objects which may be used as evidence in the proceedings, if there are grounds for assuming that such information or objects are contained therein.”

[...] 3. In the course of the preliminary investigation, the President of UOKiK may file with the court a request for consent to a search only if there are justified suspicions of a material breach of the Competition Act, in particular elimination of evidence.”

The legal basis for searching private premises is provided by Article 91 of the Competition Act:

“1.If there are grounds to suppose that any objects, files, books, documents and data carriers within the meaning of the regulations on informatisation of operations of entities

	<p>performing public tasks are stored in residential premises or any other premises, building or means of transportation and such storage may affect the findings which are material to pending proceedings, the Court of Competition and Consumer Protection, upon request from the President of UOKiK, may consent to the Police performing a search in such premises, including seizure of objects that may be used as evidence in the proceedings.</p> <p>2. The search referred to in paragraph 1 shall be also attended by an authorised employee of UOKiK or other persons referred to in Article 105a, paragraph 2.</p> <p>3. Upon instruction from the Court of Competition and Consumer Protection, the Police shall perform the actions referred to in paragraph 1.”</p> <p>Art.105g of the Act enables the competition authority to seize or secure files, books, all kinds of documents or data carriers and of other entities that may be used as evidence in the matter, for the duration of the inspection. However, not longer than 7 days.</p> <p>Specific provisions of the Code of Criminal Procedure apply mutatis mutandis to searches conducted on the basis of the Competition Act (as listed in Article 105q of the Competition Act).</p>
<p><b>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</b></p>	<p>Yes, see point 7.b for details. A court warrant is necessary and the search may be conducted by the Police only.</p>
<p><b>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</b></p>	<p>Any evidence which falls out of scope and purpose of the inspection decision cannot be seized or secured in the course of that inspection.</p>
<p><b>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</b></p>	<p>According to the Polish law court warrants authorizing searches cannot be challenged.</p>

## 8. Procedural rights of businesses / individuals

<p><b>A. Key rights of defence in cartel cases:</b></p>	<ul style="list-style-type: none"> <li>- Everyone is entitled to submit in writing explanations concerning the essential circumstances of a given case, on his or her own initiative or upon request of UOKiK (art. 50(3));</li> <li>- In order to safeguard the involved parties' right to defence, the parties are presented with a statement of objections with information on the findings of fact and evidence collected in the course of the proceedings along with their legal analysis.</li> <li>- The parties may adduce witness evidence (art. 52);</li> <li>- The parties may propose expert witnesses;</li> <li>- Until the activities of an expert are terminated, each party may request such expert to be excluded from the proceedings for the same reasons as may be invoked to exclude a UOKiK employee. The party lodging a request to exclude an expert after the works have been initiated has an obligation to make plausible that the cause for the exclusion arose thereafter or was unknown to the party beforehand (art. 55);</li> <li>- The parties may have access to UOKiK's case files, with certain restrictions. UOKiK may limit to a necessary extent access to evidence in the case files, provided that access to such files may compromise any business secrets of the undertaking involved, or any other secrets protected under relevant separate provisions (art. 69). Information and evidence collected in relation to leniency applications or settlements are made available to the parties before the final decision in the case is issued (art. 70(2)).</li> <li>- When issuing the decision terminating the proceedings, UOKiK takes into consideration only the charges in relation to which the parties could express their viewpoint;</li> <li>- The parties may appeal from the decision of UOKiK to the Court of Competition and Consumer protection;</li> <li>- The parties have certain rights in the course of the UOKiK inspections (e.g. the inspected party may refuse to provide information or co-operate in the course of an inspection exclusively in cases where this would expose him or her, or his or her spouse, ascendants, descendants, siblings and persons in affinity with the inspected party in the same line or the same degree as above, as well as any persons related thereto by adoption, custody or ad hoc guardianship, or a cohabitant, to criminal liability; art. 105d(2)).</li> </ul>
<p><b>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation?</b></p>	<p>There is no difference in the protection awarded to business secrets depending on the way of collection.</p> <p>Relevant provisions on business secrets and access to files:</p> <ul style="list-style-type: none"> <li>- UOKiK may, upon a motion/request or ex officio, and by way of a procedural decision, limit to a necessary extent access to evidence in the case files, provided that access to such files may compromise any business secrets of the undertaking involved, or any other secrets protected under relevant separate provisions (art. 69);</li> <li>- UOKiK employees are obligated to protect the undertakings' business secrets or any other secrets protected under relevant separate provisions of which they have become aware in the course of the proceedings. This does not apply to publicly known facts, information on the proceedings being initiated, and information on final decisions being issued along with their findings (art. 71(1)).</li> </ul>

## 9. Limitation periods and deadlines

<p><b>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision in the merits of the case must be made?</b></p>	<p>The limitation period is 5 years from the end of the year in which competition restricting practices ceased, and in the case of managers – 5 years from the end of the year in which the manager ceased competition restricting practices (art. 93).</p>
<p><b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</b></p>	<p>Preliminary proceedings should be completed within 4 months, and in more complex matters 5 months from the day such proceedings are instituted (art. 48(4)). Antitrust proceedings in matters of competition restricting practices should be completed within 5 months from the day they were instituted (art. 92).</p>
<p><b>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?</b></p>	<p>UOKiK's decisions may be appealed against within 1 month from the day of service. UOKiK hands such appeals over to the Court of Competition and Consumers Protection without undue delay, but not later than within 3 months from the day such appeal was lodged.</p>

## 10. Types of decisions

<p><b>A. Please list which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</b></p>	<p>UOKiK may issue the following types of decisions:</p> <ol style="list-style-type: none"> <li>1. decision assessing the practice as restricting competition and either ordering the undertaking to cease the practice or confirming that the practice has already ceased (art. 10(1));</li> <li>2. commitment decision (accepting the undertaking's commitments regarding actions to be taken or practices to be terminated; art. 12(1)).</li> <li>3. remedies (in order to guarantee that a given practice ceases or in order to eliminate the consequences of such a practice, UOKiK may use the following remedies:             <ol style="list-style-type: none"> <li>1) granting of an IP licence under non-discriminatory terms and conditions;</li> <li>2) allowing access to infrastructure under non-discriminatory terms and conditions;</li> <li>3) revision of an agreement;</li> <li>4) safeguarding supply of products or provision of services to other entities under non-discriminatory terms and conditions; art.10.4.)</li> </ol> </li> <li>4. settlements (in cases where the party has accepted the fine and this arrangement is expected to accelerate the proceedings; art. 89a)</li> </ol>
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<p><b>B. Please list which types of decisions on the merits of the case can be made in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 10/A).</b></p>	<p>The same decisions (see 10.A)</p>
<p><b>C. Can interim measures<sup>7</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>8</sup>.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</b></p>	<p>If it is plausible that any further use of the practice may cause serious and irreparable damage to competition, UOKiK may order immediate termination of infringement before the antitrust proceedings are terminated. Appeal lodged by the undertaking does not suspend the execution (art. 89).</p>

## 11. Sanctions for procedural breaches (non-compliance with procedural obligations)<sup>9</sup>

<p><b>A. Grounds for the imposition of procedural sanctions / fines:</b></p>	<p>UOKiK may impose upon the undertaking, by way of a decision, a financial penalty not exceeding the equivalent of EUR 50,000,000, if the entrepreneur, even unintentionally:</p> <ol style="list-style-type: none"> <li>1) did not provide UOKiK with required information, or provided untrue or misleading information;</li> <li>2) prevented or hindered an inspection by UOKiK, and in particular failed to perform the obligations related to such inspections set out in the Act;</li> <li>3) prevented or hindered a search by UOKiK, and in particular failed to perform the obligations related to such inspections set out in the Act (art. 106(2)).</li> </ol> <p>UOKiK may also impose upon the undertaking, by way of a</p>
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<sup>7</sup> In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

<sup>8</sup> Only for agencies which answered “yes” to question 2.C. above

<sup>9</sup> In some jurisdictions non-compliance with procedural obligations (e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.) can be sanctioned.

	<p>decision, a financial penalty not exceeding the equivalent of EUR 10,000 for each day of delay in executing a UOKiK decision or a judgement of the Court of Competition and Consumer Protection (art. 107).</p> <p>A financial penalty not exceeding 50 times the average salary may be imposed on a manager or member of a governing body of an undertaking if this person, either intentionally or unintentionally, failed to execute a UOKiK decision or a judgement of the Court of Competition and Consumer Protection, or prevented or hindered an inspection or a search by UOKiK. A penalty of the same amount may also be imposed on a person authorised by the inspected/searched party, occupier of premises or holder of means of transport, for providing untrue information in the course of an inspection or search, or preventing or hindering an inspection or a search by UOKiK, and on an employee of the inspected party for preventing or hindering the presentation of relevant documents. A financial penalty not exceeding PLN 20,000 may be imposed on any person who copied documents relating to leniency applications or settlements without a written consent of the relevant undertaking or used the information obtained from such documents otherwise than for the purposes of the proceedings or an appeal, with the exception of criminal or fiscal criminal proceedings. A financial penalty not exceeding PLN 5,000 may be imposed on a witness for unjustified refusal to testify or unjustified failure to appear upon being summoned, and on an expert witness for unjustified delay in presenting an opinion or unjustified failure to appear upon being summoned.</p>
<b>B. Type and nature of the sanction (civil, administrative, criminal, combined):</b>	Administrative
<b>C. On whom can procedural sanctions be imposed?</b>	Undertakings, associations of undertakings and individuals
<b>D. Criteria for determining the sanction / fine:</b>	Notorious non-compliance with the procedural obligations
<b>E. Are there maximum and / or minimum sanctions / fines?</b>	See reply to question A above.

## 12. Sanctions on the merits of the case

<p><b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b></p> <p><b>On whom can sanctions</b></p>	Administrative sanctions
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<b>be imposed?</b>	On undertakings and individuals (managers)
<b>B. Criteria for determining the sanction / fine:</b>	<p>According to the “Clarifications on calculating financial penalties for competition restricting practices” (see D below for more information), the following criteria are used for determining the fine:</p> <ol style="list-style-type: none"> <li>1. Nature of the infringement (hardcore restrictions, serious violations, other).</li> <li>2. Characteristics of the market and the undertaking’s business (e.g. characteristics of the product concerned and its users; structure of the market, barriers to entry, economic power of the undertaking; negative effects for market participants; irreparability of the damage; actual implementation of the infringement; small geographic scope of the violation as compared to the undertaking’s scope of business; share of the products from the relevant market in generating the undertaking’s overall revenue.</li> <li>3. Duration of the infringement.</li> <li>4. Aggravating and mitigating factors.</li> </ol>
<b>C. Are there maximum and / or minimum sanctions / fines?</b>	The maximum fine is 10% of the undertaking’s turnover in the financial year preceding the year in which the fine is imposed (art. 106(1)). For managers, the maximum fine is PLN 2,000,000.
<b>D. Guideline(s) on calculation of fines:</b>	“Clarifications on calculating financial penalties for competition restricting practices” (Polish version available here: <a href="https://uokik.gov.pl/wyjasnienia_w_sprawie_kar3.php">https://uokik.gov.pl/wyjasnienia_w_sprawie_kar3.php</a> ). Works on an amended version of the document (incorporating necessary changes following the amendments to the Competition Act which entered into force on 18 January 2015) are currently in progress.
<b>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</b>	Art. 479 <sup>30</sup> of the Code of Civil Procedure If an appeal is lodged against a decision of UOKiK, the Court for Competition and Consumer Protection may, upon request from the party lodging the appeal, suspend the execution of the decision until a judgement in the case is issued.

### 13. Possibilities of appeal

<b>A. Does your law provide for an appeal from a decision that there has been a violation of a</b>	<p>Yes, UOKiK decisions may be appealed against, both on procedural grounds and on the merits of the case.</p> <p>The provisions of the Code of Civil Procedure are applicable.</p>
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<p>prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p>	
<p><b>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</b></p>	<p>Appeals against UOKiK decisions may be lodged within one month from the day the decision was served. Appeals are examined by the Court of Competition and Consumer Protection.</p>