



International
Competition
Network

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

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

**POLAND,
Date of completion: 1/03/2009**

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

A. Law(s) covering cartels:	Act of 16 February 2007 on competition and consumer protection (Journal of Laws 2007, No. 50, item 331), hereinafter also referred to as 'the Act'. English and Polish version available at: www.uokik.gov.pl
B. Implementing regulation(s) (if any):	<p><u>Regulation of the Council of Ministers of 26 January 2009 on the mode of proceeding in case the undertakings request the President of the Office of Competition and Consumer Protection to refrain from imposing a penalty or to decrease it</u></p> <p><u>Regulation of the Council of Ministers of 28 January 2003 concerning the exemption of certain vertical agreements in the motor vehicle sector from the ban of agreements restraining competition (Journal of Laws of 2003, No. 38, item 329)</u></p> <p><u>Regulation of the Council of Ministers of 19 November 2007 on the exemption from the prohibition of competition restricting agreements of certain categories of vertical agreements (Journal of Laws of 2007, No. 30, item 1691)</u></p> <p><u>Regulation of the Council of Ministers of 19 November 2007 on the exemption from the prohibition of competition restricting agreements related to certain categories of specialisation and research and development agreements (Journal of Laws of 2007, No. 30, item 1692)</u></p> <p><u>Regulation of the Council of Ministers of 30 July 2007 regarding the exemption of certain categories of technology transfer agreements from the prohibition to establish agreements restricting competition (Journal of Laws of 2007, No. 137, item 963)</u></p> <p><u>Regulation of the Council of Ministers on the exemption of certain categories of agreements concluded between entrepreneurs in connection with the performance of insurance activity from the prohibition of agreements that restrict competition (Journal of Laws of 2007, No. 137, item 964)</u></p>

C. Interpretative guideline(s) (if any):	<p><u>Guidelines on setting fines for competition restricting practices</u> See please: http://www.uokik.gov.pl/en/press_office/press_releases/art143.html</p> <p><u>Guidelines on leniency programme</u> http://www.uokik.gov.pl/pl/ochrona_konkurencji/program_lagodzenia_kar/</p>
D. Other relevant materials (if any):	<p>Report on the activities of the OCCP in the year 2007 (available on www.uokik.gov.pl in Polish and English). Competition Policy 2008-2010 http://www.uokik.gov.pl/pl/informacja_i_edukacja/informacja/komunikaty_prasowe/art474.html See also the website.</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead.</p>	<p>The Act of 16 February 2007 does not provide the term ‘cartel’. The Act defines ‘agreements restricting competition’. The detailed definition of the ‘agreements’ may be found in Article 4.5 of the Act: ‘agreements shall mean’:</p> <ul style="list-style-type: none"> a) agreements concluded between undertakings, between associations thereof and between undertakings and their associations, or certain provisions of such agreements, b) concerted practices undertaken in any form by two or more undertakings or associations thereof, c) resolutions or other acts of associations of undertakings or their statutory organs.’ <p>According to Article 6: ‘Agreements which have as their object or effect elimination, restriction or any other infringement of competition in the relevant market shall be prohibited, in particular those consisting in:</p> <ul style="list-style-type: none"> 1) fixing, directly or indirectly, prices and other trading conditions; 2) limiting or controlling production or sale as well as technical development or investments; 3) sharing markets of sale or purchase; 4) applying to equivalent transactions with third parties onerous or not homogenous agreement terms and conditions, thus creating for these parties diversified conditions of competition; 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; 6) limiting access to the market or eliminating from the market undertakings which are not parties to the agreement; 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.’
--	--

<p>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 quotas¹) and other types of “cartels”?</p>	<p>The Act does not distinguish between very serious cartel behaviour and other types of cartels, however, the most serious agreements are listed in Article 6 (see point A).</p>
<p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors.]</p>	<p>Articles 7 and 8 of the Act:</p> <p>Art. 7.1 The prohibition of agreements referred to in Article 6, Paragraph 1 shall not apply to agreements concluded between:</p> <ol style="list-style-type: none"> 1) competitors whose combined market share in the calendar year preceding the conclusion of the agreement does not exceed 5%; 2) undertakings which are not competitors, if the market share of any of them in the calendar year preceding the conclusion of the agreement does not exceed 10%. <p>2. The provisions of Paragraph 1 shall not apply to cases specified in Article 6 (1), Subparagraphs 1 to 3 and Subparagraph 7.</p> <p>Article 8.1. The prohibition of agreements referred to in Article 6, Paragraph 1 shall not apply to agreements which at the same time:</p> <ol style="list-style-type: none"> 1) contribute to improvement of the production, distribution of goods or to technical or economic progress; 2) allow the buyer or user a fair share of benefits resulting thereof; 3) do not impose upon the undertakings concerned impediments which are not indispensable to the attainment of these objectives; 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. <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"> 1) conditions which are to be satisfied for the agreement to be considered exempted from the prohibition;

¹ 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>2) clauses, the existence of which in the agreement constitutes the infringement of Article 6;</p> <p>3) a period during which the exemption shall apply and may specify clauses, the existence of which in the agreement is not considered to infringe Article 6.</p> <p>See also 1.B</p>
D. Is participation in a hardcore cartel illegal <i>per se</i>?	Yes
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	Administrative offence

3. Investigating institution(s)

A. Name of the agency, which investigates cartels:	Office of Competition and Consumer Protection (Urząd Ochrony Konkurencji i Konsumentów)
B. Contact details of the agency:	<p>Pl. Powstańców Warszawy 1 00-950 Warsaw, Poland Phone: (+48 22) 55 60 800 Fax: (+48 22) 826 61 25 uokik@uokik.gov.pl dzk@uokik.gov.pl www.uokik.gov.pl</p>
C. Information point for potential complainants:	See the contact details above
D. Contact point where complaints can be lodged:	See above
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	During the inspection, the President of the Office may ask for the assistance provided by the officers of other state inspection agencies or the Police.

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

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

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	The Act of 16 February 2007 abolished the institution of proceedings launched on request. The antimonopoly proceedings in the cases of competition restricting practices are now initiated on <i>ex officio</i> basis. Motions lodged do not bind the OCCP President and constitute only a source of information.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	Complaints can be submitted in any way.
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	<p>Everyone may submit to the President of the Office a written notification concerning a suspicion that competition restricting practices have been applied, together with a justification. The notification shall include, in particular:</p> <ol style="list-style-type: none"> 1) indication of the undertaking which is accused of applying competition restricting practices; 2) description of the actual state being the basis of the

² Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

complainant?]	notification; 3) indication of the provision of the Act or the EC Treaty, the infringement of which is objected against by the notification submitter; 4) making the infringement of the provisions of the Act or the EC Treaty plausible; 5) identification data of the notification submitter. Any documents that may constitute the evidence of infringing the provisions of the Act shall be attached to the notification.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	See point 5.A.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	If the notification fulfills the requirements mentioned in point 5.C. the President of the Office shall provide the notification submitter with information in writing about the way of handling the notification together with its justification.
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?	The President of the Office shall provide the notification submitter, within the time period specified in Articles 35 to 37 of the Act of 14 June 1960 – the Code of Administrative Procedure pursuant to which the matters should be resolved without undue delay. Any matter requiring explanatory proceedings should be dealt no later than within one month, whereas particularly complicated matter - no later than within two months from the date of initiation of proceedings and on appeal - within one month from the date of receipt of the appeal.

6. Leniency policy³

A. What is the official name of your leniency policy (if any)?	There is no official name of the programme. Since 2004 the OCCP has been running a leniency programme (Polish: program łagodzenia kar). On the website of the Office there is information on the programme together with the contact persons in case of submitting a motion for the leniency programme.
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	The Act on competition and consumer protection outlines both - according to the Art 109 the President may refrain from imposing a fine or may decrease it, depending on a particular case.

³ 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.

C. Who is eligible for full leniency?	Only the first one.
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? 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>Both.</p> <p>If the investigation is opened an entrepreneur may deliver the evidence which will be sufficient to issue a decision by the President of the OCCP.</p>
E. Who can be a beneficiary of the leniency program (individual / businesses)?	An entrepreneur (undertaking)
F. What are the conditions of availability of full leniency:	<p>Pursuant to Article 109 of the Act, the President of the OCCP may refrain from imposing the fine for participating in a competition restricting agreement prohibited under the Polish law (Article 6 of the Act) or the Community law (art. 81 of the EC Treaty) if the undertaking involved:</p> <ol style="list-style-type: none"> 1. has been the first, amongst the participants of the agreement in question, to: <ol style="list-style-type: none"> a) provide the President of the OCCP with sufficient information concerning the existence of the agreement for the OCCP to be able to institute relevant antimonopoly proceedings, or b) present the President of the OCCP, on the undertaking's own initiative, a piece of evidence that, in consequence, enables the OCCP to issue a decision finding the agreement in question to constitute a practice restricting competition, and 2. is fully co-operating with the President of the OCCP in the course of the proceedings, e.g. by providing him with all and any information and evidence that it has at its disposal, and 3. has ceased participating in the agreement not later than as of the day on which it notified the President of the OCCP of the existence of the agreement or presented the evidence sufficient to institute the proceedings, and 4. was not the initiator of the agreement and did not induce other undertakings to participate in the agreement.
G. What are the conditions of availability of partial leniency (such as	If an undertaking does not fulfil all of the abovementioned requirements it cannot be absolved of the fine. However, if it, nevertheless, fulfils the requirements set out above in point 1(b)

<p>reduction of sanction / fine / imprisonment):</p>	<p>and 3, the fine may be decreased. The fine for undertaking which is the first to meet the two conditions cannot be higher than 5% of its preceding year's revenue. The fine for the undertaking which is the second to do that cannot be higher than 7% of its preceding year's revenue and the fines for all the other undertakings which meet the conditions later - 8%.</p> <p>The reduction of the fine to up to 5% of preceding year's revenue can be applied to an undertaking which has met the conditions set out above in point 1(b), 2 and 4 if another undertaking involved in the agreement had met the conditions of point 1(a), 2 and 3 earlier.</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted:</p>	<p>See point G</p>
<p>I. Are there formal requirements to make a leniency application?</p>	<p>The detailed procedure to be followed in the event of applications for renoucement or reduction of fine is set forth in the Regulation of the Council of Ministers of 26 January 2009 on the mode of proceeding in case the undertakings request the President of the Office of Competition and Consumer Protection to refrain from imposing a penalty or to decrease it.</p> <p>The undertaking which is convinced that it meets the conditions referred to in art. 109 item 1 or 2 of the act, may submit to the President of the Office a written request to renounce from imposition or to decrease the penalty, hereinafter referred to as the "request". The President of the Office confirms the date and hour of request receipt.</p> <p>The request sent by electronic mail or by fax to the e-mail address or fax number indicated on the website of the Office of Competition and Consumer Protection, is deemed as submitted as of the day and hour of its receipt by the Office, if the original of the document or its certified copy is submitted to the President of the Office within 3 days from the day of receipt of the request by electronic mail or by fax.</p> <p>The undertaking may also submit the request verbally, in form of minutes.</p> <p>The undertaking attaches to the request information sufficient to initiate the antimonopoly proceeding or a piece of evidence which allows or significantly facilitates the issuance of the decision. Moreover, it may enclose the description of the unlawful agreement, indicating, inter alia:</p> <ul style="list-style-type: none"> - the undertakings, which concluded the agreements, - products or services, to which the agreement refers, - the territory covered by the agreement, - the purpose of the agreement, - the circumstances of the agreement completion, - the role of a particular participants,

	<p>- duration of the agreement,</p> <p>- the information if the leniency application has been submitted to the European Commission or to the antimonopoly agency of other EC Member State</p> <p>The undertaking shall attach to the request also the following documents:</p> <p>1) declaration on discontinuation of its participation in the prohibited agreement, specifying the date of discontinuation;</p> <p>2) declaration that the undertaking submitting the request was not the initiator of the agreement conclusion and did not induce other undertakings to participate in the agreement.</p> <p>The undertaking may attach to the request also other evidence or information, if it deems them advisable or necessary.</p>
<p>J. Are there distinct procedural steps within the leniency program?</p>	<p>According to the Regulation, the President informs the entrepreneur whether the motion is correct and meets the requirements of Art. 109 of the Act on competition and consumer protection. Then, further verification of the motion takes place. If there is more than one motion the President checks the order of submission.</p>
<p>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?</p>	<p>If on the basis of the request analysis the President of the Office finds that the undertaking may meet the conditions specified in Art. 109 of the Act, the President of the Office immediately notifies the undertaking about this in writing. In the notification, the President of the Office also informs that the acknowledgement whether the above conditions are met is preliminary and will be subject to verification during the antimonopoly proceeding, and instructs about the legal effects of failure or undue cooperation with the President of the Office.</p> <p>The notification stating that the entrepreneur has met preliminary requirements making him eligible for the leniency programme does not mean that the entrepreneur is guaranteed immunity from or reduction of a fine. The applicant's attitude (e.g. information and evidence he presents) shall be verified during the proceedings.</p>
<p>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?</p>	<p>Legal basis- Art. 109 of the Act and upon the decision of the President of the OCCP.</p>
<p>M. Does your legislation have a marker system? If yes, please describe it.</p>	<p>Yes, due to the marker system, the undertaking may save its place in the queue of applicants for immunity. The entrepreneur may submit an abridged leniency application, if as of the moment of submission of the application he does not possess a</p>

	<p>complete set of the information required. The abridged leniency application should contain a description of the agreement. This description should indicate at least:</p> <ul style="list-style-type: none"> - entrepreneurs who concluded the agreement (name, registered office, address); - products or services to which the agreement refers; - territory covered by the agreement; - duration of the agreement; - purpose of the agreement (e.g. fixing minimum reselling prices, market partitioning); - whether the application has also been submitted to competition protection authorities of other Member States or European Commission (if yes, it is necessary to indicate the competition protection authority to which the application has been submitted as well as the date of submission of the application). <p>Submission of the abridged leniency application guarantees the entrepreneur a specific position in the queue only in case when the application is completed. The applicant shall be requested in writing to complete the application with the specified information on the appointed date. The length of the period for the completion of the application shall be determined pursuant to individual circumstances of the case.</p>
<p>N. Does the system provide for any extra credit⁴ for disclosing additional violations?</p>	<p>No</p>
<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>According to Art. 70 of the Act on competition and consumer protection any information and evidence received by the President of the Office under the procedure of Article 109, including information on the undertaking's request for renouncement of imposing a financial penalty or reducing thereof (leniency), shall not be rendered accessible, however the President of the Office shall provide the parties concerned with access to such information and evidence, prior to issuing a decision. The provision shall not apply, if the undertaking moving for leniency agrees in writing to rendering accessible the information and evidence.</p>
<p>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</p>	<p>Appealing from the decision of the President of the Office rejecting 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 shall be subject to an appeal to the court of consumer and competition protection, lodged within two weeks from the date of delivering the decision'.</p>
<p>Q. Contact point where a</p>	<p>All the entrepreneurs who wants to submit leniency application</p>

⁴ 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>leniency application can be lodged:</p>	<p>should address the Department of Competition Protection: tel. +48 22 55 60 299, fax +48 22 826 10 33, e-mail: leniency@uokik.gov.pl. For more information about the programme please call our helpline: (+48 22) 55 60 555</p>
<p>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?</p>	<p>There is such a possibility, but only in the course of the proceeding. For instance when the entrepreneur did not provide the President with the evidence, did not cooperate duly. The decision of the OCCP President is subject to appeal to the Court of Competition and Consumer Protection, lodged within two weeks from the date when the decision has been delivered. In the case where the appeal against decision is lodged, the President of the Office shall without delay remit it to the Court of Competition and Consumer Protection together with the case files.</p> <p>Where the President of the Office considers the appeal to be justified, she/or he may – without remitting files to the court – abrogate or change decision in its entirety or in part, about which he/she informs without delay the party concerned by sending a new decision, which may be appealed.</p>
<p>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p>	<p>Polish antimonopoly system does not allow for the ‘affirmative leniency’.</p>

7. Investigative powers of the enforcing institution(s)⁵

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information,⁶ searches/raids⁶, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>Pursuant to Article 50(1) of the Act on competition and consumer protection companies are obliged to provide the OCCP with “all necessary information and documents” upon the President of the OCCP’s request. The scope of the information that is to be provided or documents to be disclosed, as well as the deadlines for complying with the obligation are, in each case, specified in the OCCP’s request. No court order is needed.</p> <p>According to Article 51 of the Act, what may serve as documentary evidence in proceedings before the President of the OCCP is either an original document or its certified copy. The documents must be in Polish, if they had originally been drawn up in some foreign language they must be translated into Polish and certified by a sworn translator.</p> <p>A company may apply to the President of the OCCP to limit to the indispensable minimum the right to access the evidence</p>
---	---

⁵ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

⁶ “Searches/raids” means all types of search, raid or inspection measures.

	<p>included in the case files, if rendering the evidence fully accessible could entail revealing business secrets or any other secrets protected in law (Article 69 of the Act). Furthermore, the employees of the OCCP and the Trade Inspection, or any other persons taking part in an inspection, are legally bound to protect any business secrets or other secrets protected in law that they might come across in the course of the proceedings (except for the information on the fact of instituting the proceedings and the fact of issuing the decision finalising the proceedings and the findings of the proceedings) (Article 71 of the Act).</p> <p>During the proceedings the President of the Office may hold a hearing.</p> <p>The President of the Office may address territorially competent regional court to examine witnesses and obtain an expert opinion, where it is supported by the character of the evidence or consideration of significant inconvenience or significant costs of obtaining the evidence.</p> <p>As for inspections, during the proceedings the President of the OCCP, an employee of the OCCP or of the Trade Inspection authorised by the President of the Office may perform an inspection at a company involved in the proceedings. No court order is needed in such a case, the authorisation document issued by the President of the OCCP is enough. Pursuant to Article 63 of the Act, an inspector “is entitled to:</p> <ol style="list-style-type: none"> 1) enter the premises, buildings, rooms or other quarters and means of transportation belonging to the inspected person; 2) request to render accessible files, books and all kinds of documents or data carriers related to the subject of the inspection as well as duplicates and extracts thereof and also to make notes; 3) require from [the inspected person or a person authorised by him/her, or in their absence, the employee of the inspected person, etc.] to provide oral explanations relevant to the subject of the inspection”. <p>In justified cases, the course of the inspection and particular activities performed within the proceedings, upon a prior notice given to the inspected person, may be recorded by means of video or audio devices.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>In the course of the inspection, the inspector may perform a search, however, this can be done only on the basis of court order. The court competent in such cases is the Court of Competition and Consumer Protection in Warsaw. The court issues the order on the President of the OCCP’s application. There is no right of complaint against the court’s decision.</p> <p>With regard to any cases not regulated in the Act on competition and consumer protection the relevant provisions of the Polish Code of Criminal Procedure (Journal of Laws, No. 89, item 555, as amended) on search apply accordingly.</p> <p>The inspected person or an individual representing him/here/it, and the owner of a dwelling (living quarters), room, real estate, or means of transportation that are subject to a search, is</p>

	<p>obliged to cooperate with the inspectors, i.e. provide them with any information that they demand, make it possible for the inspectors to enter the land and buildings, premises or any other rooms or areas and means of transportation and give them access to all files, books or registers, and any other documents or other data carriers. They may refuse to provide the information or co-operate in the course of the inspection/search only if this would expose them, their spouse, ascendants, descendants, siblings, relations in the same line or to the same degree, as well as any persons being related thereto by adoption, custody or <i>ad hoc</i> guardianship, or a person being related thereto on the basis of cohabitation, to criminal liability.</p> <p>Also, the President of the OCCP may issue a resolution on the seizure of any files, books, documents of any type, or any other IT data carriers, as well as any other objects that may constitute evidence in the case, for a period of time indispensable to carry out the inspection, being not longer, however, than 7 days.</p> <p>The inspector summons the person being in a possession of the objects to hand them over voluntarily and. In the case of a refusal, the inspector may carry out a collection according to administrative execution procedure.</p> <p>The resolution on the seizure of objects is subject to a complaint of the persons whose rights have been infringed. The lodging of a complaint does not suspend the enforcement of the resolution.</p> <p>The objects subject to seizure, handed over, collected or found during the inspection, after being examined and entered into the protocol of seizure, should be taken away or deposited with a trustworthy person and have to be produced on each request of the authority performing the inspection.</p> <p>The protocol of seizure must indicate the case to which the seizure or search is related, the exact time of initiating and terminating the action, a detailed list of objects that have been seized and, where appropriate, their description. Moreover, the protocol must contain a reference to the President of the OCCP's resolution on the seizure. Apart from the protocol, the executor of the seizure must also produce a receipt specifying what and by whom has been retained.</p> <p>The retained objects must be returned immediately after it has been found that they are redundant in terms of the ongoing proceedings, or if, following a complaint, the Court of Competition and Consumer Protection revokes the President of the OCCP's resolution concerning the seizure.</p>
<p>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)?</p>	<p>Pursuant to Art 73 of the Act:</p> <ol style="list-style-type: none"> 1. Information received in the course of the proceedings may not be used in any other proceedings based on separate provisions, subject to Paragraphs 2 to 4. 2. The provision of Paragraph 1 shall not apply with: <ol style="list-style-type: none"> 1) penal proceedings exercised by a public-complaint procedure, or fiscal penal proceedings; 2) other proceedings exercised by the President of the Office;

	<ol style="list-style-type: none"> 3) sharing information with the European Commission and competition authorities of the European Union Member States, under Regulation No. 1/2003/EC; 4) sharing information with the European Commission and competent authorities of the European Union Member States, pursuant to Regulation No. 2006/2004/EC; 5) providing the competent authorities of the European Union Member States with information which may indicate that any separate provisions have been infringed. <ol style="list-style-type: none"> 3. The President of the Office shall provide regulatory authorities involved in the market of telecommunications and postal services, as well as management of fuels and energy, hereinafter referred to as "regulatory authorities" with information, including results of research and market analyses required in proceedings conducted by these authorities, save for information: <ol style="list-style-type: none"> 1) for which the confidentiality obligation results from international commitments, in particular information obtained in the course of proceedings instituted pursuant to Article 81 or 82 of the EC Treaty; 2) obtained from the undertaking in connection with the application of Article 109 of the Act. 4. The regulatory authorities shall be obliged to protect the information obtained pursuant to Paragraph 3, in particular the information may not be used in other proceedings than those conducted by the regulatory authorities. The provisions of Articles 69 and 71 shall apply accordingly. 5. Information received in the course of proceedings from a competition authority of a Member State of the European Union may be used in the course of the said proceedings under the terms upon which such information has been provided by that authority, inclusive of not availing oneself of the information in order to impose any sanctions upon certain persons. 6. The President of the Office shall notify the parties concerned, of having included in the pool of evidence the information obtained in the course of any other proceedings exercised by him.
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>According to the Polish law the court warrant cannot be challenged.</p>

8. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases:</p>	<ul style="list-style-type: none"> - Everyone shall be entitled to submit, in a written form, on his or her own initiative or upon request of the President of the Office, explanations concerning the essential circumstances of a given case; - The party may adduce witness evidence - The party may propose the experts to seek their opinion. The expert may be also a legal person specialised in the relevant field; - Until the termination of the activities of an expert, each party may request him/her to be excluded from the proceedings for the same reasons as may be invoke to exclude the employee of the Office. The party lodging a request to exclude an expert after the works have been initiated has an obligation to give an appearance of verisimilitude that the reason justifying the exclusion arose thereafter or was unknown to the party beforehand; - The party has the right to legal representation before the Office; - The party may have access to documents in the possession of the Office with certain restrictions (in case that rendering such evidence accessible would entail a risk that the enterprise's business secret, and/or any other secrets being liable to protection under the relevant separate provisions, may be revealed and if so is required by the public interest. - When issuing the decision terminating the proceedings, the President of the Office shall take into consideration only the charges to which parties could assume their position; - The party may appeal from the decision of the President of the Office to the Court of Competition and Consumer protection. - The party has certain rights in the course of the inspections lead by the representatives of the Office (e.g. the individual inspected may refuse to provide information or co-operate in the course of an inspection exclusively whenever this would expose him or her, or his or her spouse, ascendants, descendants, siblings and/or relations in the same line or to the same degree, as well as any persons being related thereto by adoption, custody or ad hoc guardianship, or, a person being related thereto on the basis of cohabitation, to criminal liability).
<p>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?</p>	<p>There is no difference between business secrets on the basis of their way of collection. The President of the Office may, upon a request or on an <i>ex officio</i> basis, and by way of a resolution, limit to an extent indispensable the right to have access to evidence being attached to the records of proceedings, in case that rendering such evidence accessible would entail a risk that the business secret, or any other secrets being liable to protection under the relevant separate provisions, may be revealed.</p> <p>The Office employees shall be obliged to protect the business secret as well as any other secrets being liable to protection under the relevant separate provisions, of which they have become aware in the course of the proceedings. However, the provision shall not apply to information proving generally accessible, information regarding the institution of proceedings, as well as any information regarding the issuance of decisions</p>

	finalising the proceedings and their accompanying findings.
--	---

9. Limitation periods and deadlines

<p>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?</p>	<p>Proceedings in cases of application of competition restricting practices shall not be instituted where since the end of the year in which they were abandoned one year have elapsed.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision in the merits?</p>	<p>The antimonopoly proceeding in cases of competition restricting practices shall be completed no later than 5 months as of the date of their institution (Art. 92 of the Act).</p>
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions?</p>	<p>Two weeks</p>

10. Types of decisions

<p>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.</p>	<p>Pursuant to the provisions of Polish Act on Competition and Consumer Protection, the President shall issue:</p> <ol style="list-style-type: none"> 1. Decision assessing the practice as restricting competition and requiring it to end 2. Decision assessing the practice as restricting competition and declare it discontinued, if the undertaking no longer applies the practice 3. Commitment decision, in the event that, in the course of antimonopoly proceedings, it has been rendered plausible – on the basis of the circumstances of a given case, information comprised in the application or one forming the basis for instituting ex officio proceedings – that the ban of competition restricting agreements has been infringed, whereas the entrepreneur or association of entrepreneurs being charged with having infringed the said ban has agreed to take or discontinue certain actions aiming at preventing those
--	--

	<p>infringements, then the President of the Office may, by way of a decision, impose upon the entrepreneur or association of entrepreneurs an obligation to exercise the undertaken commitments. In the decision the President of the Office may determine the final date(s) for realisation of the commitments, as well as may impose upon the entrepreneur or association of entrepreneurs an obligation to provide, within fixed date(s), information regarding the degree of implementation of the assumed commitments.</p> <p>4. Decision imposing a fine</p>
<p>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).</p>	<p>The same decisions (see point 10.A.)</p>
<p>C. Can interim measures⁷ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁸.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>Yes, the President of the OCCP may order the immediate termination of the infringement. The entrepreneur must accept the decision. If, in the course of antimonopoly proceedings, it has been rendered plausible that any further use of the practice being objected against may cause serious and hard-to-remove threats to competition, the President of the Office may, prior to the conclusion of the antimonopoly proceedings, and by way of a decision, impose on the undertaking being alleged to be using a given practice, an obligation to omit acting in a certain manner, in order to prevent those threats. Lodging of an appeal shall not stay execution of the said decision (Art. 89 of the Act).</p>

11. Sanctions for procedural breaches (non-compliance with procedural obligations)⁹

<p>A. Grounds for the imposition of procedural sanctions / fines:</p>	<p>The President of the Office may also impose upon the undertaking, by way of a decision, a financial penalty being an equivalent of up to EUR 50 000 000, if the undertaking, even if unintentionally:</p> <p>1. has quoted any untrue data or specifics,</p>
--	---

⁷ 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].

⁸ Only for agencies which answered “yes” to question 2.C. above

⁹ 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>2. has not provided information as demanded by the President of the Office, provided untrue or misleading information,</p> <p>3. has not co-operated in the course of the inspection being carried out</p>
B. Type and nature of the sanction (civil, administrative, criminal, combined):	Administrative
C. On whom can procedural sanctions be imposed?	Entrepreneurs and association of entrepreneurs
D. Criteria for determining the sanction / fine:	A notorious non-compliance with the procedural obligations
E. Are there maximum and / or minimum sanctions / fines?	Up to 50.000.000 Euro

12. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):	Administrative decisions which can be imposed on entrepreneur or association of entrepreneurs.
On whom can sanctions be imposed?	
B. Criteria for determining the sanction / fine:	<ul style="list-style-type: none"> - notorious behaviour infringing the prohibition of practices restricting competition - the effects of the specific practice on the market - duration of the practice
C. Are there maximum and / or minimum sanctions / fines?	The President of the Office may impose upon the entrepreneur, by way of a decision, a financial penalty being not in excess of ten per cent (10%) of the revenue earned in the accounting year preceding the year within which the penalty is imposed.
D. Guideline(s) on calculation of fines:	<p>Publicly available rules of setting financial sanctions by the President of the OCCP for infringements of competition law are applicable as of 1 January 2009.</p> <p>Guidelines on setting fines for competition-restricting practices are available at:</p> <p>http://www.uokik.gov.pl/en/press_office/press_releases/art143.html</p>

<p>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?</p>	<p>The execution of the fine imposed by the President of the Office shall be suspended until validation of the decision about its imposition.</p>
--	---

13. Possibilities of appeal

<p>A. Does your law provide for an appeal from a decision that there has been a violation of a 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>Yes, the Act provides a possibility of an appeal from the decisions both on procedural and on the merits of the case grounds. The provisions of the Code of Civil Proceedings concerning proceedings in economic cases shall apply to the proceedings in cases of appeal against decisions of the President of the Office</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 13/A is affirmative]</p>	<p>The decision of the President of the Office is subject to appeal to the Court of Consumer and Competition Protection, lodged within two weeks from the date when the decision has been delivered.</p>