HAVE YOU SUFFERED A LOSS DUE TO ANTI-COMPETITIVE PRACTICES? YOU MAY CLAIM COMPENSATION

* **Individuals injured by anti-competitive practices may seek redress in the courts.**
* **President of UOKiK Tomasz Chróstny also reminds that it is of no relevance to the case whether the decision on legal infringement was issued by the European Commission and the seat of the company infringing the law is located in other EU countries is irrelevant.**

**[Warsaw, 30 July 2020]** In 2016 the European Commission issued [a decision on the trucks cartel](https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A52017XC0406%2801%29). According to it, Daimler, MAN, Scania, Iveco, DAF and Volvo-Renault fixed the vehicle prices to be applied in the European Economic Area (EEA). The cartel operated between 1997 and 2011.Numerous companies that have suffered a loss due to the cartel's operations now claim compensation from involved truck manufacturers. Such cases are also pending before the Polish courts.

President of UOKiK Tomasz Chróstny reminds that those affected by anti-competitive agreements can claim compensation in Polish courts, even if the registered seats of companies that infringe the law are located in third EU countries and the decision was issued by the European Commission. This was the case with the price collusion of truck manufacturers.

- *All injured by restrictive practices in Poland may claim compensation before a Polish court. This applies not only to the truck cartel, but also to other cases. Our position is based on national and EU legislation and the ruling of the Court of Justice of the European Union* - explains President of UOKiK Tomasz Chróstny.

**Legislation and case law**

Compensation may be claimed by e.g. a contractor or a competitor of the trader who violated competition law, as well as consumers. The injured parties may also seek redress through their representatives, such as business or consumer organisations. The lawsuits may concern, inter alia, practices prohibited by Polish and EU regulations - restrictive agreements or abuse of a dominant position.

Those who suffered a loss as a result of infringements of competition law identified not only by UOKiK but by the European Commission may bring an action before the Polish courts. This is confirmed by EU case-law. Under the [Regulation of the European Parliament and of the Council (EC) No. 1215/2012 dated 12.12.2012 on jurisdiction and the recognition and enforcement of judgments](https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A32012R1215) in civil and commercial matters, an entity with its registered seat in one Member State can be sued in the courts of another EU country where the harmful event occurred.

[In last year's ruling](http://curia.europa.eu/juris/document/document.jsf;jsessionid=93B836C48A839744282D7B11A860F63A?text=&docid=216540&pageIndex=0&doclang=PL&mode=lst&dir=&occ=first&part=1&cid=10703518), the Court of Justice of the EU referred directly to the trucks cartel case. The CJEU concluded that the place of damage should be understood as the market of the Member State affected by the infringement. Since the prohibited agreement concerned price fixing, in this case it will be the place where prices were distorted. It was the area of the European Economic Area, therefore claims can be pursued in any EEA country, including Poland.

Claims may be pursued under the Act on private enforcement of competition law, which entered into force in 2017.

- *The Polish Private Enforcement Act is an implementation of the EU Directive which aimed at facilitating the recovery of claims not only in cases of violation of domestic law. This means that Polish regulations are not limited to practices identified in the decisions of UOKiK. Everyone who thinks they have suffered damage due to a breach of competition law can claim their rights before a civil court. These regulations also serve as a warning to those who infringe or intend to infringe competition law. In addition to the fine imposed by UOKiK, they will have to reckon with the obligation to pay damages -* says President of UOKiK Tomasz Chróstny*.*

**Support for competition protection authorities**

In the course of the proceedings, victims to competition infringements who seek damages may apply to the court during the proceedings to order the defendant, a third party or a competition authority to disclose evidence. As regards the trucks cartel, the European Commission or the participants in the collusion will possess the relevant evidence. If it is UOKiK that issued the decision, the court may refer to the Office in this respect. The authority which issued the decision may also, at the request of the court, assist in estimating the amount of the incurred loss.

In the proceedings that have already been pending, the President of UOKiK may also present an important view on the case. It may, for example, concern the above-mentioned position regarding the competences of Polish courts in the case of infringements identified by the European Commission.

**Procedure for pursuing claims**

Anyone who has suffered loss as a result of a breach of competition law may file a civil lawsuit against any of the entities that have broken the law. The district courts have jurisdiction in this respect.

The loss mainly affects traders and consumers who purchased the products affected by the infringement. When filing a claim, it is necessary to indicate the amount of compensation claimed. In determining the amount due, consideration should be given to the counterfactual scenario, i.e. what the market situation would have been like in the absence of the infringement. As a rule, the loss shall be the excess price paid as a result of the anti-competitive practices. To illustrate this issue based on the example of the truck manufacturers' cartel, it had to be established what would have been the price of the vehicles purchased by the claimant in the absence of the agreement established between the manufacturers.

The following may be helpful in quantifying the loss: [Communication](https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A52013XC0613%2804%29) and [Practical Guide](https://ec.europa.eu/competition/antitrust/actionsdamages/quantification_guide_pl.pdf) on quantifying harm in actions for damages based on breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union issued by the European Commission.

As regards pursuing claims due to international infringements, such as the truck manufacturers' cartel, rulings of other countries' courts in similar cases concerning the same infringement may also be of assistance. In the case of the trucks cartel, there are currently around 350 cases pending before the German courts alone, primarily before the courts in Stuttgart and Munich. Some rulings have already been issued in part of the case confirming the liability of the vehicle manufacturers towards the plaintiffs and that the standard 15% damage caused by the cartel actions shall apply until a different amount of loss is proven[[1]](#footnote-1). The Spanish courts, in turn, indicated the amount of loss resulting from the infringement at a level ranging from 5%[[2]](#footnote-2) to 15%[[3]](#footnote-3) of the vehicle’s price.

1. Cases number 30 O 124/18, 30 O 88/18, 30 O 38/17 before the District Court in Stuttgart (Landgericht Stuttgart), Case number 18 O 8/17 before the District Court in Hannover (Landgericht Hannover). [↑](#footnote-ref-1)
2. Case number 982/2019 before the Provincial Court of Pontevedra (Audiencia Provincial de Pontevedra), case number 1126/2019 before the Provincial Court of Valencia (Audiencia Provincial de Valencia). [↑](#footnote-ref-2)
3. Case number 170/2018 before the Commercial Court of León (Juzgado de lo Mercantil de León), Case number 720/2018 before the Commercial Court of Bilbao (Juzgado de lo Mercantil No. 1. 1 de Bilbao). [↑](#footnote-ref-3)