DECISION OF THE PRESIDENT OF UOKiK CONCERNING COLLUSION ON WARSAW HEAT MARKET. FIRST PENALTY FOR MANAGER

* **Market allocation, as well as price and tender fixing resulting in higher heat prices in Warsaw.**
* **Nearly PLN 120 million in penalties have been imposed by Tomasz Chróstny, the President of UOKiK, on Veolia Polska group companies for these practices. A manager who was directly responsible for violating applicable regulations has been penalised for the first time as well.**
* **The remaining participants of the collusion scheme, i.e. PGNiG group companies, have avoided a penalty by taking part in the leniency programme, informing about the collusion and providing significant evidence to support the case.**

**[Warsaw, 7 December 2020]** Warsaw’s heating system is the largest of its kind in all of European Union. The key players include the following entities: PGNiG Termika – as far as generation of heat is concerned, and Veolia Energia Warszawa - in terms of distributing heat and selling it to end-users, such as housing co-operatives, homeowner associations, businesses, schools and offices.

**What did the collusion consist in?**

According to information gathered by UOKiK, the entrepreneurs concerned concluded a competition-restricting agreement that was in effect from 2014 to 2017. However, the beginnings of their unlawful cooperation date back to 2012-2013. It was then that Veolia announced its intentions to erect a combined heat and power plant in Warsaw, and PGNiG Termika started to operate proactively on the heat market, taking over individual customers of Veolia.

- *The operators decided they would keep out of each other’s way and allocated the market between them. PGNiG Termika focused on generating heat, while Veolia Energia Warszawa concentrated on selling it. Both companies were also aligning their tendering and pricing strategies -* says Tomasz Chróstny, President of UOKiK.

In line with the arrangements made, Veolia gave up its intention to erect a combined heat and power plant in Warsaw. In exchange for that, PGNiG Termika undertook to discontinue selling heat to end users. The companies decided also that PGNiG Termika would not participate in tenders concerned with supplying heat. Furthermore, the entrepreneurs were jointly determining the structure of tariffs for end customers. Lack of competition was beneficial for both companies, as they no longer had to fear losing their strong position on the market on which they played a dominant role.

- *As a result of the arrangements made, end users were forced to pay more for heat than they would on a competitive market. The customers included not only representatives of the business sector or institutions, but also housing co-operatives and homeowner associations. This means that as a result of the collusion, residents of Warsaw were paying excessive rates for heating their homes* – adds Tomasz Chróstny, President of UOKiK.

Although all direct arrangements were reached between PGNiG Termika and Veolia Energia Warszawa, the mother companies of both economic operators, i.e. PGNiG and Veolia Energia Polska, participated in the collusion as well. They were the ones that initiated the agreement, were aware of the ensuing illegal arrangements and approved of these.

**Penalties for managers - the first decision of this type**

For the first time in the history of UOKiK, financial penalties have also been imposed on employees managing the companies and being in charge of the illegal arrangements. The ability to implement such penalties was first introduced to the Polish law in 2015. The President of the Authority decided that the then-President of the Management Board of Veolia Energia Warszawa, and his counterpart at PGNiG Termika, intentionally restricted market competition, inter alia by actively participating in arrangements concerning the scope and the implementation of illegal practices.

**PLN 500 million saved by cooperating with UOKiK**

- *The proceedings were initiated by PGNiG Termika, as it decided to take advantage of the leniency programme and reported the collusion scheme to UOKiK, presenting details of the arrangements made. With the evidential value of the materials submitted and the full-scale cooperation with the Authority taken into consideration, I decided to waive the imposition of the monetary penalty on PGNiG group companies and on their manager, in compliance with the idea behind the leniency programme. This allowed the whistle-blowers to avoid nearly PLN 500 million in penalties -* concludes Tomasz Chróstny, President of UOKiK.

PGNiG Termika submitted crucial evidence proving existence of the collusion. The evidence comprised, inter alia, e-mail correspondence. The information obtained served as a basis for conducting a search at the seat of Veolia Energia Warszawa, during which further evidence was obtained. In the course of the procedure, PGNiG Termika continued to submit other important pieces of information, both upon request and on its own accord. The application submitted by PGNiG Termika covered also PGNiG and its President of the Management Board between 2014 and 2016. Without the submission of the said application and their cooperation with UOKiK, the entities would face penalties of over PLN 486 million.

The President of UOKiK imposed, on the other side to the collusion scheme, penalties of nearly PLN 120 million, including:

* PLN 92,208,077.56 imposed on Veolia Energia Warszawa,
* PLN 27,546,221.35 imposed on Veolia Energia Polska,
* PLN 200,000 imposed on Jacky Lacombe holding the position of the President of the Management Board of Veolia Energia Warszawa when the collusion scheme was in effect.

The decision is not final and may be appealed against to court.

**Would you like to avoid a penalty? Are you aware of a collusion scheme? Contact the Office of Competition and Consumer Protection**

We encourage entrepreneurs and managers interested in taking advantage of the leniency programme to contact UOKiK. By calling a dedicated number of 22 55 60 555, you will be able to talk to UOKiK lawyers, who will answer all of your questions related to leniency applications - also those asked anonymously.

The Authority offers a programme allowing it to acquire information from anonymous whistle-blowers. Visit <https://konkurencja.uokik.gov.pl/sygnalista/> and fill out a simple form. The pan-European system we rely on guarantees full anonymity, also towards the Authority’s staff.

**The President of the Authority would also like to remind the public that anyone who has suffered a loss as a result of a breach of competition law may file a civil lawsuit against any of the entities that have violated the law.** When filing a claim, it is necessary to indicate the amount of compensation sought. 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. 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.