RULES FOR IMPOSING SANCTIONS FOR COMPETITION RESTRICTING PRACTICES - NEW CLARIFICATIONS PROVIDED BY THE PRESIDENT OF UOKIK

* **The President of the Office of Competition and Consumer Protection has provided updated information on sanctions that may be imposed on businesses for anti-competitive practices.**
* **The publication of the document is an element of the transparency policy of the Office.**
* **Entrepreneurs may learn how sanctions for the violation of legal provisions are calculated.**

**[Warsaw, 2 April 2021]** According to the Antimonopoly Act, the fine for using competition restricting practices by entrepreneurs is up to 10% of the revenue achieved in the year preceding the issuance of the decision. The Act specifies the maximum amounts of fines and the general rules for determining such amounts of fines, but to increase the transparency of its activities, the Office further explains the methodology for imposing sanctions in its documents. As part of the implementation of this policy, the President of the Office of Competition and Consumer Protection Tomasz Chróstny provided updated [information](https://www.uokik.gov.pl/download.php?id=19518) on the determination of fines in cases related to prohibited agreements and abuse of dominant position by entrepreneurs.

'*We know how important the predictability of not only regulations but also activities of state institutions is for entrepreneurs. That's why we focus on transparency and clarity. To that end, we publish information on how financial sanctions are determined for businesses that have engaged in competition restricting practices. The previous document was prepared in 2015 and it needed to be updated. The current version has been adapted to the current specificities of the cases handled by the Office. We took into consideration the image of the market, where we see more and more cases against large entities, as well as proceedings related to serious and prolonged infringements,'* says Tomasz Chróstny, President of the Office of Competition and Consumer Protection.

In determining the amount of the fine, the President of the Office of Competition and Consumer Protection will take into account the **nature of the violation** - its gravity, effects, as well as scale. On this basis, he will establish a base amount that will be used to further determine the amount of the fine. The most severe sanctions will be imposed for the collusion between competitors and abuse of a dominant position aimed at or leading to the elimination of competition on the market.

Other important premises for determining the amount of sanctions include the **nature of the market and the effects of the violation.** The President of the Office will check, among other things, whether a product is unusually important for particularly sensitive customers, as well as its importance for other sectors of the economy. Aspects such as market structure, barriers to entry, and economic potential of the entrepreneur, will also be taken into account. The amount of the fine will depend, to a greater extent, on the **duration of the violation** for which an entrepreneur is liable. In this respect, there was a noticeable shift towards a simpler mechanism for determining the amount of sanctions, ensuring that the fine is proportionate to the duration of the violation.

The President of the Office will also take attenuating and aggravating circumstances into consideration, which will be evaluated together. The fine determined at an earlier stage of the analysis may be increased or decreased by up to 50 per cent. Sanctions may be reduced, for example, as a result of the cooperation with the President of the Office during the proceedings. The list of attenuating circumstances is non-exhaustive.

Aggravating circumstances include the role of the leader or initiator of the agreement, coercion or inducement of others to participate in the agreement, a prior similar violation, and willfulness. It is important to note that the list of aggravating circumstances is exhaustive.

Finally, the President of the Office of Competition and Consumer Protection will determine **whether the sanction is adequate** under the circumstances of the particular case under review, i.e. whether there are any extraordinary circumstances that warrant a lesser sanction or whether the nature of the violation warrants a higher sanction.

The clarifications are not a legal act - they are issued based on the power granted to the President of the Office of Competition and Consumer Protection under the Act on Competition and Consumer Protection to publish information clarifying how the competition protection authority acts. The clarifications will be used by the President of the Office of Competition and Consumer Protection to determine the amount of the fine on a case-by-case basis. This is not the only document in which the Office shows how it imposes sanctions for practices that violate competition rules. In 2020, [clarifications](https://www.uokik.gov.pl/news.php?news_id=16655) were published regarding fines for executives directly responsible for violating the law.

We would like to remind you that severe sanctions can be avoided thanks to the [leniency programme](https://www.uokik.gov.pl/aktualnosci.php?news_id=13198) It gives entrepreneurs, as well as managers involved in the illegal agreements, a chance to gain the status of key witness. This allows them to avoid or reduce the sanction. The programme is dedicated to persons who cooperate with the Office and provide evidence or information regarding illegal agreements. Entrepreneurs and managers interested in the leniency programme may contact the Office by phone at 22 55 60 555, where lawyers will answer all their questions regarding leniency applications, including anonymous ones.

The Office also runs a programme of acquiring information from anonymous whistleblowers. Visit <https://konkurencja.uokik.gov.pl/sygnalista/> and fill out a simple form. The system we use guarantees full anonymity, also towards the Office.