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Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Poland

-- 2017 --

6-8 June 2018

This report is submitted by Poland to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 6-8 June 2018.

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1. Changes to competition laws and policies, proposed or adopted

1.1. New law on private enforcement of competition law

1. On 27 June 2017 the Act on private enforcement of competition law entered into force, introducing provisions of the EU Damages Directive (2014/104/EU) into the Polish law. With the new provisions in force Office of Competition and Consumer Protection (UOKiK) continues to act in the public interest by imposing fines for specific unlawful practices. However, the protection of competition is no longer the exclusive domain of the UOKiK, as a new private law route of enforcement became available, allowing the aggrieved parties to enforce their claims in an effective manner. Anyone who suffered a loss, as a result of unlawful practices, is able to bring an action, including both consumers and the counterparties or competitors of the undertakings, which have infringed the provisions of competition law. The claims are to be examined by regional courts, regardless of the value of the claim. The claims may pertain, inter alia, to the practices which the UOKiK designates in its decisions as anti-competitive agreements or abuse of a dominant position as well as to infringing activities with respect to which no proceedings or decisions of the UOKiK have been initiated or issued so far. Furthermore, those who suffered a loss as a result of infringements of competition law identified by the European Commission as well as – in certain cases – by the competition authorities of other EU Member States may also bring an action before the Polish courts. The option to bring an action is available not just to the aggrieved parties themselves, but also to their representatives – associations of consumers or undertakings. The regulations, intended to make it easier to enforce claims for damages, also include the presumption of culpability of the part of the perpetrator of the infringement as well as the presumption that the infringement of competition law is the cause of the losses incurred. All this means that the burden of proof, that no infringement of the provisions of applicable law has taken place, has been put on the defendant. Moreover, the court examining the given case is also bound by the findings, contained in the final decision of the UOKiK, in which the given practice was found to have restrictive effects on competition. The new regulation also introduced a new measure to the Polish civil law in the form of the application for disclosure of evidence. Under the new regulations, the court – acting at the request of a claimant, who substantiates his claim and undertakes to use the evidence obtained exclusively for the purposes of the proceedings in question – may order the defendant undertaking in possession of evidence such as documents or e-mail correspondence to disclose such evidence. When the party of the proceedings fails to comply with such request, the court may order such party to pay the costs of the proceedings regardless of the final outcome thereof, or even consider the facts which were to be determined on the basis of the requested materials as having been duly ascertained even of the absence thereof.

1.2. New law on counteracting unfair use of bargaining power in trade of food and agricultural products

2. Important legal changes were also introduced by the Act on counteracting unfair use of contractual advantage in trade of agricultural and food products. With its' adoption, the UOKiK received new powers as the authority designated to enforce the applicable provisions. The law itself came as a reaction to a number of unfair trading practices, which have been occurring in the food and agriculture supply chain. In Poland these issues had been resolved by the common courts of law on the basis of various regulations, including the provisions of the Act on counteracting unfair competition. This,

however, had proved insufficient. Attempts at introducing industry self-regulation had also been ineffective due to the fact, that the interested parties had ultimately failed to reach an agreement. For the reason above, it had become necessary to put these issues on the legislative footing. In order to effectively resolve disputes between suppliers and recipients of agricultural and food products, the Polish legislator have decided to introduce the concept of abuse of contractual advantage. Contractual advantage may be described as significant disparity in economic potential between two parties of a negotiation, with the weaker one lacking sufficient capacity for selling or purchasing products from other undertakings. According to the new legislation, when one of the parties of a transaction in the agriculture and food sector (both suppliers and acquirers) is subject to abuse by a commercial partner with contractual advantage, the UOKiK is entitled to take action. The powers and procedures of the UOKiK are similar to the ones specified in Polish competition law. The proceedings are initiated ex officio, and not at the request of any party of such proceedings. Any entrepreneur, however, who has a reasonable suspicion that is being subject to any practices which involve the unfair use of contractual advantage may submit a written complaint to the UOKiK. The Authority may only intervene where the total value of the turnover between the supplier and the recipient exceeded the amount of 50 thousand Polish zlotys during any of the two years preceding the year in which proceedings are initiated and where the turnover of the supplier or recipient which applies the practices in question exceeded 100 million Polish zlotys during the year preceding the year in which the proceedings are initiated. Having established unfair use of contractual advantage, the President of UOKiK is able to issue prohibition as well as commitment decisions, and impose a maximum fine of 3% of the company's turnover. The Act on contractual advantage entered into force on 12 July 2017. Implementation of the new law and application of the novel powers was one of the UOKiK's focal point in 2017.

1.3. Legislative amendments in the water and sanitation services sector

3. The UOKiK has also played a key role in legislative amendments in the water and sanitation services sector. Until 2018, there was no regulator in this sector. Some municipalities had some regulatory powers, but as non-specialized units they were not effective. In this situation, practices of abuse of a dominant position were often encountered in this market, and the UOKiK, when issuing antitrust decisions concerning this sector, practically acted as a regulator of last resort. For this reason, in 2016 the Polish Council of Ministers assigned UOKiK to draft the bill that will establish a water-sector specific regulator and form part of a major reform of the law on water. In October 2016 UOKiK submitted the draft text of the law to the ministry responsible for the amendment of the water law. The UOKiK's proposal provided the entity designated to perform the function of water specific-sector regulator will be approving water/sanitation tariffs and will be issuing opinions on regulations. The Authority actively participated in further works on the final shape of the new regulations that entered into force on 1 January 2018. According to the new provisions, the new regulator acts locally, through established branch offices. It is important to emphasise that this entity is not fixing the ultimate price for water and sanitation services. It only ensures the prices are neither excessive, nor unjustified.

1.4. Other relevant measures, including new guidelines

1.4.1. Whistle-blower programme

4. Looking ahead, the UOKiK's biggest challenge remains the prosecution and detection of cartels. In order to reach that goal, in April 2017 UOKiK launched a pilot whistle-blower programme. This new investigative instrument provides an anonymous channel to report illegal practices. Within the framework of the programme a dedicated hotline and email address have been set up for anyone who wishes to inform about a possible breach of competition law. In 2017, the Authority received about 1800 notifications (790 emails, 1000 phone calls and 5 meetings), out of which a number pertained to possible competition infringements. the programme is regarded as effective one. It should be further developed and promoted. The UOKiK also intends to work on legislative changes, which would incorporate the concept of a whistle-blower into the provisions of antitrust law on a permanent basis.

2. Enforcement of competition laws and policies

2.1. Actions against anticompetitive practices

2.1.1. Summary of activities of competition authority and courts

5. In 2017 UOKiK received 397 notifications, launched 87 preliminary and 9 antitrust proceedings. The antimonopoly proceedings included:

- Horizontal agreement: 3
- Abuse of dominant position: 6
- Control of execution of the decision: 1

6. As a result of the aforementioned proceedings, in 2017 the President of the Office issued 19 decisions concerning anticompetitive conduct. Furthermore, the UOKiK also counteracted anticompetitive practices with soft interventions, which basically consist in educating undertakings on the best practices to follow when complying with competition law provisions and calling on them to voluntarily stop applying competition-restrictive practices. Such actions are a proof of the Authority's policy of transparency and open dialogue with the business community, which also includes enforcement of competition law through negotiations. By sending an official letter, the UOKiK calls upon the parties to cease anticompetitive practices. This form of direct communication with undertakings enables the UOKiK to swiftly react to market distortions and restore fair competition without the need to carry out a formal and usually time-consuming antitrust procedure. In times when the market environment alters quickly, it is necessary for the competition authority to dispose of adequate tools, which will allow for a prompt intervention. In 2017 the UOKiK sent 57 requests asking undertakings to withdraw competition restricting practices. In 29 cases the undertakings voluntarily abandoned challenged practices, proving efficacy of a competition authority may be achieved by other means as well.

Table 1.

Decisions	Number of decisions	including	
Concerning competition-restricting practices including	19	Fines totalled 136.9 million	Commitment decision: 1
• Horizontal agreements	13		Concerning bid-rigging: 7
• Vertical agreements	0		Conducted pursuant to TFUE: 1
• Abuse of dominant position	6		Leniency: 3

Table 2.

Other activities	
Soft measures: UOKiK contacted undertakings without instituting proceedings (so called „soft calls")	57
Unannounced inspections (no search warrant)	8
Dawn-raids (with search warrant)	9
Statement of objections in the antimonopoly proceedings	11

Court decisions in antitrust matters in 2017:

7. Entrepreneurs may lodge appeals against UOKiK's decisions and complaints about the UOKiK's resolutions to the Court of Competition and Consumer Protection at the Regional Court in Warsaw (SOKiK). Appeals against decisions of the Court of Competition and Consumer Protection may be heard by the Warsaw Court of Appeals. It is also possible to file a cassation complaint to the Supreme Court.

8. The statistics of judgements in antitrust proceedings are as follows:

Table 3. Statistics of judgements in antitrust proceedings

	Court of Competition and Consumer Protection	Court of Appeal	Supreme Court
Court decisions in antitrust matters in 2017	13	30	8
• Vertical agreements	7	4	2
• Horizontal agreements	5	16	1
• Abuse of a dominant position	1	10	5

Table 4. Conclusions of the judgements of the Court of Competition and Consumer Protection in competition cases

Conclusions of the judgements of the Court of CCCP	Total
Overruling the decision of the President of UOKiK	6
Changing the decision of the president of UOKiK	2
Dismissing the enterprise's appeal	5

2.1.2. Description of significant cases

9. UOKiK quashed an arrangement between manufacturers of wood-based panels used to produce furniture

10. Last year's UOKiK's enforcement portfolio includes a decision dismantling a cartel operating in wood-processing industry. During the proceedings, the Authority established that five manufacturers of wood-based panels used to produce furniture were fixing prices over the period of nearly four years. They also exchanged sensitive information, e.g. about planned price increases and sales volumes. As such activities may result in increased prices being paid by their business partners, and since the furniture industry generates approximately 2% of Polish GDP, the illicit agreement exerted a significant negative impact on the country's economy. The outcomes of the agreement had the potential to indirectly harm consumers, as higher costs of wood-based panels could have affected the prices that end-users pay for furniture. The agreement enabled the entrepreneurs to eliminate the uncertainty as to behaviour of their competitors. This allowed them to lower the level or rivalry and to boost their bargaining position in relation to the buyers. The evidence, required to initiate the proceedings, was obtained by the Authority during a dawn raid at the entrepreneurs' premises. Details concerning the illicit agreement were also supplied by Swiss Krono – the company that took advantage of the leniency programme and received total immunity. Fines imposed on other participants of the cartel exceeded, in total, 135 million Polish zlotys. Since the evidence gathered in this particular case has proved, that the practices, relied upon by manufacturers of wood-based panels, could have impacted trade between EU Member States, the investigation was also conducted under the EU law, and the draft decision was consulted with the European Commission.

Bid rigging on public transport

11. Furthermore, during the course of the year UOKiK continued to carefully monitor the market for possible bid-rigging practices. In 2017 the number of detected competition infringements in tender proceedings amounted to 7. In one of the case, two undertakings have attempted to unduly influence the results of tender proceedings concerning the public transport network in the city of Zgorzelec. The Authority initiated proceedings in the present case following complaints received from the District Police Headquarters in Zgorzelec. Following the analysis of the materials obtained, the UOKiK concluded that two undertakings: Bieleccy from Bogatynia and FHU Bielawa from Leśna (Dolnośląskie province) have engaged in collusion. Both of these undertakings took part in the public procurement proceedings. The aggrieved party in the case in question was the organiser of the tender – the Zgorzelec Municipal Commune. The undertakings have applied a mechanism of bid submission and retraction. The bids they submitted were the two most advantageous in the entire proceedings. The winner of the tender subsequently retracted

its bid, in order for the contracting authority to be forced to select the second-best (and therefore more expensive) bid submitted by the second of the two colluding undertakings. The difference between the two bids amounted to more than PLN 300 thousand. This may have been the total loss incurred by taxpayers if the local government failed to notice the irregularities present. The penalty imposed upon the undertakings for engaging in bid rigging practices amounted almost PLN 130 thousand. The decision is not final and may be appealed against to a court of law.

Collusion concerning ISO certificates

12. Dekra Certification (Dekra) and Istituto Italiano del Marchio di Qualita (IMQ) are offering, inter alia, management system certifications services. They act in the capacity of independent, duly authorized entities providing written statements confirming that a given product, process or service conforms to the specific standards or to the applicable legal regulations. An accidental meeting of the managers of competing companies marked the beginning of a collusion that lasted several years. Institutions, organizations or local governments that intended to purchase the certification service usually submitted a request for proposals to several entrepreneurs. They often approached companies that they intended to establish or continue cooperation with, and requested that another certifying body be identified that could also be asked to submit its bid. Dekra and IMQ agreed that they would recommend each other to those customers whom one of the companies was willing to acquire or maintain. They also agreed that the other bid (referred to, under the collusion agreement, as a "counter bid") would be higher. For example, if an RFQ was received by Dekra, the company recommended IMQ, and the entrepreneurs were jointly deciding about the price charged by the latter, with the said price exceeding the one proposed by Dekra. The same mechanism was relied upon in situations in which IMQ was requested to recommend another entity. The entrepreneurs have also divided the customer base between them. First and foremost, they informed each other about customers that should receive a higher counter bid from the other entrepreneur. In some cases they were agreeing, in the first place, which entities the services would be sold to, and only then were they exchanging information about the expected prices that were to facilitate the acquisition of new business partners. Information about the collusion was gathered while searching, together with the Police, the companies' premises in Kraków and Wrocław, and also as a result of cooperation with the entrepreneurs under the leniency programme. Both undertakings decided, in the course of the investigation, to cooperate with the President of UOKiK and requested that their financial penalties be waved or reduced.

Dawn raids conducted by UOKiK

13. A search of company premises is a tool which is used in situations, where it is suspected that the given entity is in a possession of evidence which may be relevant to the case. A search may only be conducted if the UOKiK obtains the approval of the court. The UOKiK needs to seek the approval of the court in every single case, where it intends to carry out a search. In the course of a search, the undertaking is under an obligation to grant the inspectors access to its buildings and premises as well as to make available all documents and data carriers. A search is usually conducted in the presence of Police officers. In 2017, UOKiK used this option 9 times in order to obtain the necessary evidence.

UOKiK searched premises of Grupa Allegro (e-commerce platform)

14. UOKiK wants to determine whether the activities of Grupa Allegro may have amounted to competition-restricting practices. The search was ordered in connection with the explanatory proceedings initiated by the UOKiK on June 21 2017. The Competition Authority received numerous complaints in which various undertakings pointed out the changes made by the company to its allegro.pl sales platform. The changes in question allegedly resulted in the products sold on this platform by the Allegro online store always being listed as "best match" in search results. The Authority is trying verify whether the company is according favourable treatment to its own online store, including, in particular, by prioritising the products offered in search results.

Search of company premises - Veolia Energia Warszawa

15. The UOKiK has conducted a search of the company premises of Veolia Energia Warszawa. The Authority took action in order to verify whether the undertaking may have been applying competition-restricting practices. The search formed part of the ongoing preliminary proceedings. The proceedings in question pertain to the actions of undertakings which engage in the thermal energy production, supply and trade and are intended to verify whether the undertakings in question may have been applying competition-restricting practices. The employees of the UOKiK have examined paper documents and data stored on electronic storage devices; in addition, they have also accepted explanations from the company representatives.

Court decisions in antitrust matters

16. Apart from the case law of the Competition Authority, Polish antitrust law is also shaped by rulings of the judiciary. In 2017, the Polish Court of Competition and Consumer Protection rendered a significant resolution, concerning rules on searches conducted by UOKiK. In this resolution of 7 March 2017 the court emphasized that the powers which the Office for Competition and Consumer Protection can exercise during dawn raids should not be interpreted broadly and that it is strictly bound by the scope of the inspection outlined in the search warrant. Thus, the Authority is not empowered to copy or print documents that go beyond the scope of the warrant. According to the aforementioned resolution, UOKiK's inspectors cannot review copied electronic evidence for the first time at their own premises without the presence of the inspected company's representatives. Instead, the Authority has to perform a proper search at the inspected company's premises. The court stated that, in the case in question, inspectors had collected evidence that was outside the inspection's scope, and such an approach could have violated legal professional privilege. The court concluded that the practice of copying the contents of hard drives, laptops, personal computers or emails for further review at the Authority's premises (without the inspected company's representative) is unacceptable under the applicable law. After the judgment was issued, the Authority informed on its website that no law had been violated in the discussed case, as all electronic evidence had been kept in sealed envelopes and not been reviewed by inspectors. So it should be emphasized that the Court accepted our practice when it comes to working binary copy. However, UOKiK has modified its approach in line with the court's guidelines and now reviews electronic evidence at the premises of inspected companies.

Act on contractual advantage in practice

17. As it was mentioned above, in 2017 UOKiK gained new powers in the field of combatting unfair practices in the food supply chain. First months of the new law's implementation proved to be start-up time with several preliminary proceedings following farmers' and food processors' notifications or media reports. In order to protect sources of information and identities of the notifiers, all of them were launched ex officio.

18. In the very first proceedings, UOKiK examined the raw milk supplies market. In the course of the proceedings, a dozen of Polish biggest dairies were sent a request for information. The analysis was based mostly on the documents submitted by the companies, such as standard supply agreements and statements by the milk producers' organizations. Among issues that attracted our attention were matters such as exclusivity of supplies to only one diary, contract termination periods, clarity and unambiguity of its provisions, especially those specifying farmers' consideration (e.g. how the prices were being determined and which parameters taken into account).

19. Similarly to antitrust cases, UOKiK is entitled to conduct unannounced inspections of the premises of any entrepreneur, allegedly involved in unfair trading practices defined in the Act on contractual advantage or being in possession of information related to the case. First such inspection was conducted in September 2017. The Authority's officers visited premises of four companies active in the industrial apples supply market: three apples collection centres and one apple processor.

20. After the abolition of sugar production quotas in the common market in the end of 2016/2017 marketing year, certain modifications to the sugar beets supply conditions were observed. UOKiK decided to investigate whether the new contracts are fair for agricultural producers, especially regarding transparency of price calculation. The south of Poland was of special concern because of very limited possibilities of the sugar beet producers to change the buyer.

21. The autumn brought media signals that retail chains may try to take advantage of the situation in the butter market. The increases in butter prices were considered by experts an effect of some global phenomena – e.g. a higher demand in the USA and a lower supply in New Zealand and Australia. Nevertheless, chain stores were believed to exert pressure on butter manufacturers to sell it cheaper and keep a high margin themselves. Therefore, UOKiK decided to check the reasons for the sudden increase in prices and why the pace of returning to their initial level is so slow. Since October 2017, UOKiK conducted five preliminary proceedings, in the course of which it asked large chains - Lidl Polska, Jeronimo Martins, Tesco Polska, Auchan Polska, Carrefour Polska - for their correspondence with butter suppliers and also to reveal buying and selling prices of butter.

22. Due to short time of application of the Act, none of the above mentioned proceedings were concluded nor decisions issued by the end of 2017.

23. In addition to these enforcement actions, UOKiK has been also actively promoting the new law. Representatives of the Authority took part in several meetings with food producers from various sectors, such as bottled water producers, mill sector/flour producers, cereal producers, dairies organizations and fruits and vegetables producers.

24. The number of notifications and market signals has proved that adoption of the Act was necessary to solve substantial problems within the food supply chain. Whereas, there are civil law instruments that may be used by food suppliers to protect their interests against unfair buyers (or vice versa), they proved to be not fully satisfactory and

effective. One significant reason is the 'fear factor' of smaller players in the food market. They are afraid of commercial retaliation and terminating cooperation by important buyers, in case they individually bring a legal action before the court (e.g. for delayed payments or unexpected delivery cancellation). The new law make it possible to solve problems more globally, without revealing the identity of an informant. According to the Act, powers of the Authority and procedures are almost the same as in antitrust cases, and that makes the law easier to execute by competition law enforcers.

Table 5. The statistic of our activities concerning contractual advantage in 2017

Preliminary proceedings	10
Proceedings concerning the unfair use of contractual advantage in the trade in agricultural and food products	0
Searches during preliminary proceedings	4
Notifications	19
Soft measures/Soft calls	13

2.2. Mergers and acquisitions

25. According to the provisions of applicable laws concerning control of concentration, a transaction is subject to notification to the antitrust authority if it involves undertakings whose aggregate turnover generated in the preceding year exceeded EUR 1 billion worldwide or EUR 50 million in Poland. The maximum amount of the fine for failure to notify the UOKiK of the intended concentration is 10% of the turnover of the given undertaking generated during the year preceding the year in which the decision in question is adopted.

26. The amendment to the Act on competition and consumer protection, that entered into force in in January 2015, has streamlined merger control procedures. Instead of the previous two-month deadline all cases followed, a two-step procedure is now in place. It allows UOKiK to issue decisions in simple cases within a month, while taking an additional four months to resolve more complex cases or those that require additional market analysis.

27. Summing up merger control in 2017, UOKiK instituted 228 merger and acquisition (M&A) cases and issued 206 decisions. Average length for completing merger control proceedings was maintained at a satisfactory level and for the first stage of the procedure amounted to 40 days. Within this period, no transaction was prohibited; 205 received the green light for their implementation; and one was cleared with conditions. In 2017, out of 228 merger and acquisition (M&A) cases, 11 were marked for further analysis within Phase II. Furthermore, The President of UOKiK imposed fines which totalled 914 000 PLN for not providing information and notifying intention to concentrate.

Table 6. Merger cases handled by UOKiK in 2017 including:

New proceedings	Total
Preliminary proceedings	0
Concerning control of concentration	4
Types of conclusions reached in merger cases in 2017	
Types of conclusions reached in merger cases in 2017	
Consents to concentration	205
Conditional consent	1
Decision imposing a fine for failure to notify intention to concentrate	3
Decision imposing a fine for underatking's failure to provide information	1
Discontinued merger proceeding	2
Notification withdrawn	13
Proceedings examined in the second stage	11
Average length of proceedings (days)	40
UOKiK issued opinions on the proceedings conducted by the European Commission with regard to the impact of concentration on the Polish market	346

2.2.1. Summary of significant cases

Empik – Platon

28. Empik is a company which engages in the sale of goods such as books, newspapers and magazines, music, films, multimedia, electronic equipment and tickets for cultural events. Platon, on the other hand, is a book wholesaler and distributor. Both undertakings run their business on a nationwide scale.

29. The information and data pertaining to the size of the relevant markets as well as the shares of the undertakings involved in the concentration scheme and their competitors were based solely on the estimates made by the applicant. The President of the Office considered it necessary to verify the information in question, since the absence of reliable and publicly available data made it impossible for the concentration scheme to be assessed in an appropriate manner.

30. The analysis of the evidence gathered showed that no significant restriction of competition will result from the contemplated concentration scheme. The aggregate shares of the undertakings involved in the concentration scheme on the markets on which such concentration would have an impact were not considered to be large enough to pose a threat to their competitors. After the concentration scheme is completed, Empik will still have to compete against other undertakings. For the above reasons, the UOKiK approved the concentration.

Approval for concentration: shops at airports

31. The President of UOKiK cleared the takeover of control over Inflight Service Poland by Lagardere Duty Free.

32. The acquiring undertaking belongs to Lagardere Group whose subsidiaries operate in the following business areas: publishing, media, advertising, and travel retail. It

owns shops at 12 Polish airports. Inflight Service Poland owns retail facilities at Warsaw-Modlin Airport.

33. The proceedings conducted by the UOKiK demonstrated that the concentration scheme in question shall not result in a restriction of competition. According to the existing case law, the UOKiK assumed the geographic market in this case was limited to individual airports. This means that competition between shop owners takes place within the area of a single airport. Since the company being acquired operates at an airport where the Lagardere Group is not present, the merger shall not lead to a change in market structure and restriction of competition.

Conditional consent for concentration: PGE - EDF Polska

34. The parties to the transaction are involved in production, sale and distribution of electrical power. EDF produces most of the energy in the Elektrownia Rybnik (Rybnik Power Station).

35. The Authority decided to proceed to the second stage. It was necessary to carry out market research. It covered the largest entrepreneurs operating in the power sector. UOKiK also asked for the opinions of the Energy Regulatory Office and the Polish Power Exchange.

36. The analysis of the collected material has shown that the transaction can limit competition. That is why the Authority sent to the entrepreneur so called competition concerns concerning the transaction. UOKiK pointed out that PGE could gain dominant position in the electrical power production and distribution market. This in turn could translate into a drop in turnover on the Polish Power Exchange and negatively affect the retail market.

37. UOKiK argued that sales through the Polish Power Exchange limit the strength of the largest players in the market, for example, by enabling wholesale purchases of electrical power by smaller companies. Meanwhile, the amount of energy that large power companies sell on the stock market is decreasing. PGE company takeover of EDF Polska may cause further decline. As a result, PGE will be able to sell most of the power within its own capital group, and this could hinder purchase of energy by its competitors who do not have their own production sources.

38. In response to the Authority's concerns, the company proposed a condition. UOKiK agreed that the implementation of the entrepreneur's proposal would offset the transaction's negative effects on the competition.

39. According to the imposed condition, in the period 2018-2021, PGE will have to sell all the energy produced by Elektrownia Rybnik (Rybnik Power Station). This quantity can decrease only in case when the whole PGE group becomes obliged to sell more energy. Moreover, the condition will not apply if the power station ceases to belong to PGE.

Benefit Systems did not take over Calypso Fitness

40. Benefit Systems offers sports and recreation services to employers under fringe benefits scheme. It also operates - through its subsidiaries - several dozen fitness clubs, e.g. in Wrocław, Poznań and Warsaw. With the MultiSport card customers may attend clubs owned by the company, as well as its partners. Calypso operates, among other things, several dozen fitness clubs, e.g. in Warsaw, Tri-city and Poznań.

41. In this case, the Authority conducted a market study. The question about the influence of concentration on the market was asked both to entities which conduct

business activity on the market of sports and recreation packages offered to employers, as well as to fitness clubs and employers who order packages for their employees.

The study conducted by the Authority showed that the concentration could result in a significant restriction of competition on the market of sports and recreation packages offered to employers. Moreover, following the acquisition, Benefit Systems would own the largest number of chain fitness clubs in Poland. Thereby, it would gain the power to influence the behaviour of club customers.

42. For this reason, UOKiK raised competition concerns. Subsequently, Benefit Systems withdrew its application for the take-over of Calypso Fitness. It means that the proceedings were discontinued.

Failure to notify intended concentration of undertakings

43. The Competition Authority initiated proceedings against Bać-Pol after receiving information that one of its subsidiaries commenced a concentration scheme without seeking approval from the UOKiK. The analysis subsequently conducted by the Competition Authority confirmed these speculations. In 2012, the company known as Sezam-Śrem took over the control of a part of the property of another company called Klementynka. Both undertakings were grocery wholesalers. Since in 2015 Sezam-Śrem became a part of Bać-Pol, it was the latter company against which the proceedings were initiated. Before 2015, Sezam-Śrem was merely a subsidiary of Bać-Pol.

44. Despite the absence of a written takeover contract, the UOKiK was able to determine that Sezam-Śrem acquired key assets from Klementynka (agreements and contracts with suppliers and key customers, core workforce and goods earmarked for immediate distribution) as well as all the relevant business secrets (including information on prices paid by counterparties, customer and creditor lists as well as payment deadlines). In the end, the UOKiK imposed a fine in the amount of PLN 527 thousand on Bać-Pol for the failure to submit a notification on intended concentration to the Authority.

3. The role of competition authorities in the formation and implementation of other policies, e.g. Regulatory reform, trade and industrial policies.

45. UOKiK not only enforces competition law but also performs its mission by taking part in legislative procedures concerning effective protection of competition and consumers interests. This task is mainly accomplished by drafting legal acts and participating in inter-departmental consultations. In 2016 UOKiK was involved in works on 1589 projects and opinions on the acts drafted by the Parliament. The Authority's experts were analysing the documents trying to identify how the new regulations could possibly influence competition and consumers.

46. In 2016 UOKiK contributed to the law- making process by conducting the legislative works on (i.a:)

- draft law amending Civil Code and Code of Civil Procedure and Act on Consumer Rights;
- draft law amending Telecommunications Act;
- draft law on Entrepreneur Law Act.

4. Resources of competition authorities

4.1. Resources overall (current numbers and change over previous year)

4.1.1. Annual budget

Table 7. Annual budget

2016		2017	
PLN	USD	PLN	USD
66,796 mln*	17.203 mln	71,020 mln	19.194 mln

* mln: million

4.1.2. Number of employees

Table 8. Number of employees

1 January 2016	31 December 2016	1 January 2017	31 December 2017
462	498	496	498

Table 9. Staff's role

	2016	2017
Lawyers	189	193
Economists	91	72
Others	131	233 (all other staff combined)

4.2. Human resources applied to:

- enforcement against anticompetitive practices: 120
- merger review and enforcement: 16
- advocacy efforts: ca. 99

4.3. Period covered by the above information: 2016-2017

5. Summaries of or references to new reports and studies on competition policy issues

5.1. Information and educational activities

5.1.1. UOKiK receives award on ICN competition advocacy contest

47. UOKiK contributed to the creation of a competitive water market by means of an advocacy action. On 13 July 2016 the UOKiK published the 'Guidebook on the Water and Sanitation Services Market'. The aim was to raise awareness of applicable rules of competition law among providers, supervisors and users of water and sanitation services. The publication provided general information on competition protection law and policy, taking into consideration the specificity of the water-sanitation market. It outlined typical infringements committed in the water and sanitation services sector, covering irregularities in contract design and enforcement and the most problematic issue identified by the UOKiK — building networks and connecting them to customers. In order to clearly illustrate the issues at hand UOKiK presented specific infringements that have been the subject of its decisions. The goal was for the guidebook to be as user-friendly as possible and accessible to a large audience, not to professionals only. Ever since the publication of the guidebook, UOKiK has been informed about new practices on the market. This shows that UOKiK' advocacy initiative was a success, as it not only spread knowledge on competition rules, but also pushed consumers to report illegal activity to UOKiK. UOKiK's publication was also recognized internationally by winning best implemented advocacy strategy at multiple levels in the competition advocacy contest, organized in 2017 by the ICN and the World Bank Group.

5.1.2. UOKiK organizes a series of workshops

48. In addition to the proceedings, UOKiK also continued its advocacy efforts and organised, in the framework of a project "Knowledgeable Contracting Authority - Competition Law in Public Procurement Tenders", a series of workshops for employees of public administration bodies to equip them with knowledge on bid-rigging practices and give them practical tips for their detection. This advocacy measure was met with positive feedback. Along with 32 trainings organized all over Poland with participation of nearly 1,400 employees of governmental and self-governmental administration bodies, the e-learning platform www.szkoleniazmu.uokik.gov.pl was created. The platform is not only used to deepen the knowledge and practical skills acquired at trainings to identify and combat bid rigging. It is also an educational tool for those who could not benefit from stationary trainings.

49. When conducting antitrust proceedings, UOKiK relies a great deal on economic analysis. When needed, antitrust or merger case-handlers have at their disposal economic experts working in the Department of Market Analysis. In this light, UOKiK decided to launch a public discussion on the role of economics in competition law, planning workshops on this topic. The first meeting took place on 8 February 2017 and tackled practical use of economic analysis in antitrust cases.

50. The next workshop was held on 25 April 2017 and focused on the newly adopted directive on private enforcement. More specifically, the participants debated on the use of economic tools when performing an assessment of damages incurred as a result of competition law infringements.

51. During the other workshop, organized on 13 October 2017, its participants discussed the new Act on counteracting unfair use of contractual advantage in trade of agricultural and food products, as well as the experiences and legal solutions of other European countries in this regard.