

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Poland****-- 2019 --****10-12 June 2019**

This report is submitted by Poland to the Competition Committee FOR INFORMATION.

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Poland

Executive Summary

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

1.1. Summary of the new legal provisions of competition law and related legislation

1. In 2019, Polish Office of Competition and Consumer Protection (hereinafter referred to as “UOKiK”, “Office”) received new powers by changes in *the Act on Competition and Consumer Protection* (hereinafter referred to as “ACCP”). Due to changes in the ACCP, the key amendments were:

- **Fiscal secrets access.** The President of the UOKiK will be able to exercise the right as a part of proceedings within the scope of competition and consumer protection and unfair use of contractual advantage. This will make it easier for the President of the UOKiK to estimate and impose penalties for infringements. Their amount depends on the company’s turnover from the previous year. The new regulations may also be helpful in determining whether an entrepreneur is currently conducting business activity during the process of enforcing a penalty and in proceedings concerning so-called financial pyramid schemes.
- **Extended powers.** Extending the powers of the President of the UOKiK to access banking secrets. An analysis of data obtained from banks will help to determine whether there is a significant material disproportion between parties, for example a supplier of agricultural products and a processor or a shop.
- **New penalties.** In 2019, the UOKiK received new powers following changes in the ACCP. The amendment adjusts Polish law to the EU’s regulation on unjustified geo-blocking (Regulation 2018/302 of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers’ nationality, place of residence or place of establishment within the internal market). Based on the above, President of the Office is in a position to impose fines for violations of geo-blocking prohibition as well as has a right to intervene in two situations: firstly, in B2B relations, where the Office may initiate antitrust proceedings if it suspects that geo-blocking restricts competition and secondly, in B2C relations in case of infringement of collective consumer interests. Both in this case and in the case of infringement of collective consumer interests that the UOKiK may impose financial penalties of up to 10 per cent of the company’s previous year's turnover.

1.2. Other relevant measures, including new guidelines.

2. New measures connected with daily work of the UOKiK are aimed to provide close cooperation between state authorities (i.e. Polish Financial Supervision Authority). The Office will be able to share information obtained in the course of its investigations. This will make combating violations of the law committed by companies in the financial sector faster and more effective.

3. Implementing changes within the Office, by empowering the President of the UOKiK to have greater flexibility in allocating tasks within the Office (the headquarters, branch offices and laboratories).

4. In order to clarify to the entrepreneurs all the issues associated with dawn-raids, in December 2019 the President of UOKiK issued new guidelines on conducting dawn-raids. Dawn raids may be conducted both at the premises of the entrepreneurs involved in the violation of competition rules, as well as the premises of market participants who are not party to an anticompetitive agreement, although may possess relevant evidence for the proceedings.

1.3. Government proposals for new legislation.

5. The Council of Ministers has adopted a bill amending *the Act on the organisation of certain agricultural markets* and *the Act on Contractual Advantage* (hereinafter referred to as “ACA”). The new regulations, inter alia, prohibit the sale of agricultural products below the reference price. This index will be published once a year and will apply to selected products. The UOKiK from now on can intervene where a large trader exploits its position with regard to smaller suppliers. On basis on the ACA, an entrepreneur from the agri-food industry that breaks the law will be fined up to 3 per cent of its turnover. The main purpose of the new regulations and the Office’s actions is to quickly improve the situation of weaker parties operating in the agri-food sector, e.g. farmers. It is also possible to oblige a company to change its practices, in order to improve the situation of its counterparties. Changes in regulations will also contribute to fair distribution of margins between producers, intermediaries and stores.

6. In April 2019, the Directive of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (hereinafter referred to as “Directive”) was adopted. It will strengthen the position of suppliers which will be further reinforced. The list of unfair practices will be expanded. The Directive introduces a blacklist of practices which will be in all cases automatically prohibited in all agreements. This includes, but is not limited to, buyers cancelling the delivery of perishable products at a short notice, refusing to confirm the terms of the contract in writing, demanding payments not related to the sale of products or threatening to retaliate if the supplier exercises their statutory rights. Practices referred to as grey practices are also listed. They will not be automatically prohibited but cannot be used unless they have been agreed in advance and explicitly included in the contract. This includes, among other things, charging additional fees from suppliers for promotions, storage and new product launches. In addition, the list of goods covered by the Directive on contractual advantage may be extended to include products that are not intended for human consumption, such as feed, seeds and live animals.

2. Enforcement of competition laws and policies

7. In 2019, the total amount of all penalties imposed by decisions of the President of the UOKiK was: PLN 424,924,214.94. The total amount of competition-related penalties was: PLN 185,680,102.94. The amount of competition-related penalties constitutes 43.7 per cent of the total amount of all penalties imposed in 2019. Also the UOKiK initiated 56 proceedings to determine whether the case is antitrust, and 14 antitrust proceedings. The

Office received 7 leniency applications and issued 287 decisions in the area of competition, including:

- 266 consents (conditional and unconditional) for concentration;
- 12 antitrust decisions (except for interim decisions) including 11 decisions on horizontal agreements;
- 1 decision imposing a penalty in relation to antitrust and 3 decisions regarding mergers
- 5 decisions related to contractual advantage.

2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1. Summary of activities of Competition authority;

8. In 2019, the President of UOKiK conducted a number of investigations and dawn raids on undertakings whose conduct may have had an impact on trade between the EU member states and hindered the proper functioning on the internal market what triggered the application of EU competition law. The above-mentioned proceedings concerned, i.a. the following markets: dietary supplements, energy, transport, IT and postal.

Investigations undertaken:

Proceedings against Marketing Communications Association (Stowarzyszenie Komunikacji Marketingowej – SAR)

9. The Office initiated the proceeding against a Polish trade association, filing two charges: connected with persuading agencies not to apply for contracts in which no rejection fee was offered and against the organisation of unauthorised exchange of information between agencies associated in SAR. The proceedings bring together over 130 entities engaged in broadly understood marketing services. The Office's objections concerned, among other things, arrangements for participation of branding agencies in competitions (also called tenders by marketing agencies and customers). SAR provided a special electronic platform where marketing agencies posted information on tenders they intended to partake. If the same tender was reported on the tendering platform by several agencies, SAR joined them in a common “tendering room”. Knowledge of competitors' behaviour could have restricted competition between agencies associated in SAR.

Proceedings regarding price fixing in the market of dietary supplements – Solgar Polska

10. *Solgar Polska* is a distributor of dietary supplements (vitamins, herbs, micronutrients) produced by the American company called *Solgar*. They are sold in stationary outlets (mainly in pharmacies), and online. The Office conducted a dawn raid at the company's headquarters and obtained evidence, including e-mail correspondence, that the enterprise could have set minimal resale prices with its retailers. As a result, consumers could not buy these products at a price lower than the top-down price. *Solgar Polska* monitored how set prices were applied and intervened if the supplements were sold at lower prices. *Solgar* asked retailers to adjust their prices. *Solgar* denied them the possibility of ordering supplements on preferential terms, and in some cases terminated the cooperation

agreement. *Solgar's* retailers could not sell supplements at lower prices. The Authority brought charges against both the company and its managers, as the ACCP prohibits practices undertaken by *Solgar*.

Proceedings against a cartel of car sellers - DBK, ESA Trucks Polska, TB Truck&Trailer Serwis, Van Tilburg-Bastianen Groep and WTC

11. The Office initiated proceedings against the following companies: *DBK, ESA Trucks Polska, TB Truck&Trailer Serwis* and *Van Tilburg-Bastianen Groep* and *WTC*. The authority has also levelled charges against nine high-level managers. During dawn raids carried out at companies, the Office seized extensive evidentiary material. The UOKiK found evidence that enterprises agreed on joint action where enterprises had agreed together that each of them would sell DAF trucks in a given area and they would not compete for clients in other regions of Poland. They described their cooperation as a “deal”, “pact” or “collusion”. In addition, price information could be exchanged between them.

Charges against entities in the thermal energy market - Veolia Energia Polska, Veolia Energia Warszawa, PGNiG Termika and PGNiG

12. The Office initiated proceedings against the following companies: *Veolia Energia Polska, Veolia Energia Warszawa, PGNiG Termika* and *PGNiG*. The UOKiK has also levelled charges against high-level managers, who took an active part in the above mentioned settlements. The Office found evidence that the companies jointly agreed on heat prices and that they would not compete against each other. Moreover, the Office found that the companies participated in the division of the thermal energy market in Warsaw.

Proceedings against companies in the passenger transport market – Przedsiębiorstwo Komunikacji Samochodowej (PKS), Rafbus

13. The UOKiK initiated explanatory proceedings after being notified by the bus company *Rafbus*. *Rafbus* accused its competitor *PKS* of abusing its dominant position on the local passenger bus transport market. The analysis showed that *PKS* had not applied the alleged practice. The Office discovered that *PKS* divided the market together with the entity that filed the complaint, among others *Rafbus*. The findings of the Office and information provided by *Rafbus* indicate the undertakings which met at *PKS* headquarters and determined on which routes they would operate, so as not to compete with one another. Thus, they could charge higher ticket prices on allocated routes than in the case of mutual competition for passengers. The Office imposed a fine of more than PLN 95,000 on *PKS*. By contrast, *Rafbus* avoided a financial sanction as the Office took into account that, although unknowingly, the undertaking voluntarily provided information about the illegal agreement.

Proceedings against companies in the bicycle market - AMP, Merida, Trek Bicycle Corp., Cossack, Aspire Sports

14. The first proceedings refer to *AMP Polska*, a distributor of bicycle accessories made by various manufacturers, as this company might have been following the practice of dual pricing (i.e. the practice of making online retailers pay more for the same products than sellers in traditional stores). *AMP* might have offered its business partners, who did not have a brick-and-mortar store and wanted to sell products online only, a separate, less favourable discount system. In addition, it could have prohibited them from selling products on online auction sites. The second company investigated is *Merida Polska* – a

sole distributor for *Merida*, a bicycle manufacturer. The company could have illegally affected prices that sellers charge at Polish stores. The enterprise could have refused to cooperate with partners who sell bikes online at lower prices than those suggested in *Merida's* current offer. In the next three proceedings, the Office examined the practices of the following companies: *Trek Bicycle Corp.*, *Cossack* and *Aspire Sports* with suspicions that they attempted to restrict online sales with regard to distributors who sell their products in online and traditional stores. Thus, consumers could lose an opportunity to purchase bicycles on terms favourable to them and at a better price.

Proceedings on the charge of dominant position abuse - Allegro

15. *Allegro* acts as an intermediary platform in electronic commerce, at the same time it competes on this platform with other sellers, in particular through its own online store known as the *Official Allegro Store*. Based on the above, the authority decided to initiate an investigation and conduct a dawn raid at the premises of *Allegro*. The Office brought a charge of abuse of a dominant position against the company. *Allegro*, by using its high market status, favoured its own sales activity compared to the sales activity conducted by other sellers on its platform. Firstly, the company might have used information on the platform's operation, including the relevancy algorithm, unavailable to other sellers, in order to better position and display its own offers in the search results according to the relevance criterion. Secondly, some sales or promotional features were only available to the *Allegro Official Store*, and other sellers were unable to use them. Suggesting the right search phrase could serve as an example here: when consumers were searching for a particular product via search engines, they received an automatic message suggesting they went to the *Official Allegro Store*. Thirdly, the platform owner had an option of using special promotional banners on an exclusive basis, which increased interest in its own offers on the platform. Those actions could have adversely affected the competitive situation of independent online stores whose products may have been less visible on the platform compared to *Allegro's* offers. Consequently, products offered for sale by independent sellers may have been less frequently chosen by consumers.

Proceedings regarding bid rigging in a tender organized by Poczta Polska

16. The most common form of rigging involves putting bids in and retracting them. If bids made by participants in a collusion are the most advantageous, then the winning bidder withdraws from signing the contract so that the ordering party has no other option but to choose a higher bid made by another party to a deceitful agreement. According to the regulations, entrepreneurs entering a bid should prepare their offers on their own, regardless of any family ties whatsoever. Affiliated entrepreneurs may participate in the same bid procedure, but only if they run independent businesses. They are not allowed to agree on their bids. Proceedings concern a tender organized by *Poczta Polska* for subcontractors who were to provide courier and postal services on its behalf. First proceedings concerned a case in which the lowest bid was submitted by an enterprise under the name of *Aneta Kubiaczyk AK Trans*. Despite several calls, the company did not complete the missing documentation, which meant that the contract could not be signed. Such an action was aimed at awarding the contract to an enterprise under the name *Kubiaczyk Jacek Przedsiębiorstwo Usługowe*, which offered a price higher by almost PLN 50,000. *Poczta Polska* excluded both entrepreneurs from the tender procedure, suspecting bid rigging, and notified the UOKiK about it. The Office's investigation showed that the purpose of this action was to award the contract to the other entrepreneur. Therefore, the Authority imposed fines on both colluding parties in the total amount of nearly PLN 13,000.

Proceedings concerning bid rigging - Firma Transportowo Turystyczna „Jakubas” Krystyna Jakubas, Firma Transportowo Usługowa Magdalena Jakubas and Euro Bus Marek Jakubas

17. The Office has launched an investigation into bid rigging against three entrepreneurs who competed in tenders for the transport of students to schools. The Office suspected that they may have used a bid rigging and withdrawal mechanism. If their proposals were the most advantageous, then the winner of the tender would withdraw from signing the contract. This could have been an intentional measure which was supposed to lead to selection of a more expensive bid by the municipality.

Proceedings concerning bid rigging in a tender organized by the municipality of Tarnobrzeg

18. The lowest bid was made by an entrepreneur operating under the name of *Janusz Kurek Firma Budowlana J&S*. Once the bid results were announced, the company withdrew from signing the contract. Thus, the municipality chose a company called *Brimat* which offered a price higher by nearly PLN 315,000. The ACCP prohibits competing parties from colluding to choose a winner of a bidding process. The most common form of collusion involves the competitors agreeing in advance who will submit the winning bid. Typically, when the lowest bid made by one participant of the collusion is awarded a contract through a process, the winning bidder withdraws from signing a contract, thereby making the ordering party choose a higher bid submitted by another party to the deceitful agreement.

Proceedings concerning bid rigging in a tender organized by Katowicki Holding Węglowy (KHW) – Soltur, Trans-Jan

19. The UOKiK's decision concerned companies colluding in a tender for transport of materials in one of the Silesian mines. Their aim was to have the tender cancelled and to sign a sole-source contract. The Office questioned actions taken by these entrepreneurs in a tender which was called for the transport of loose materials, mining machinery or coal dust between stockpiles inside the mine. During the bid procedure, the entrepreneurs began to make the same offers in an electronic auction. When it had ended without the winner being announced, they made identical additional offers. As a result, *KHW* signed two emergency contracts with the participants of the collusion. The Office imposed fines on both colluding companies, broken down into just under PLN 147,000 to be paid by *Trans-Jan* and nearly PLN 17,500 by *Soltur*.

Dawn raids conducted:

Dawn raid in the IT sector - Dell

20. The UOKiK conducted a dawn raid at the offices of companies from the IT sector. The actions of the Office were related to an ongoing investigation as part of which the Office is verifying whether any restrictive agreements have been concluded between Polish companies of the *Dell Technologies* corporation: *Dell* and *EMC Computer Systems Poland* and their business partners. It concerns the sale of *Dell* and *Dell EMC* brand products, including IT servers and disk arrays used to store, administer and share processed data. The Office suspected market sharing practices. Companies and state institutions which wanted to buy IT equipment could have been assigned to individual vendors. Thus, they may not have been able to obtain a cheaper offer from other *Dell* distributors, even if they

approached them. It is also possible, that the manufacturer may have disciplined partners who did not comply with the agreements.

Dawn raids in the pharmaceutical industry and the healthcare sector of the IT industry - Kamsoft, OSOZ & PEX Pharma Sequence

21. Due to complaints, the President of the UOKiK decided to initiate a dawn raid on the premises of three enterprises operating pharmacies that wanted to sell certain drugs at special prices. Those pharmacies may have been forced to use a specific IT system or other third-party systems integrated with it. Moreover, the integration of these systems could cause problems. Additionally, some drugs on special offer were difficult to find, so the fact that selected pharmacies had them for sale at reasonable prices made them more attractive to consumers. The actions described in complaints could have dual consequences. On the one hand, they could restrict competition between pharmacies and be harmful for those who did not have the required software and thus could not sell selected drugs at special prices. On the other hand, they could adversely affect market situation of producers of information systems other than those specified above, as their offer became less attractive to pharmacists.

Dawn raids *in the automotive market* – Iveco, CTC, Exmot & Uni-Truck

22. The UOKiK inspected the office of the *Iveco* truck manufacturer and dealers of its vehicles *CTC*, *Exmot* and *Uni-Truck* under suspicions related to the market division, price fixing and coordination of actions in a public call for tenders. The purpose of this operation was to find and secure evidence of illegal agreements between entrepreneurs. The dawn raid was conducted as part of the explanatory proceedings. However, if the suspicion of the violation were to be confirmed, then the collusion could have affected the portfolios of the manufacturer's contractors. Collusion regarding market division could have led to an increase in prices of Iveco trucks prices and costs for transport companies, and thus to higher prices of goods transported.

Dawn raids *in companies responsible for road cleaning* - V&T, Master Odpady i Energia & An-Eko

23. The UOKiK had its suspicions as to the tender for “*winter road maintenance, post-winter road clean-up and keeping roads clean and well-kept in the summertime*” in Tychy in the years 2015-2018. A consortium of two companies, submitted the most favourable and at the same time the lowest bid. However, they did not complete the necessary documents and thus failed to sign the contract. The Office suspected that this was a deliberate action aimed at making the contracting authority choose a higher bid made by another consortium consisting of those companies. The Office conducted a dawn raid on their premises and found evidence that the consortium might have been involved in organizing collusive bidding schemes.

Dawn raid *in the market of nail design products* - *Nesperta*

24. The dawn raid in the offices of the manufacturer of nail design products and accessories took place as part of an investigation carried out by the UOKiK. The purpose of the dawn raid was to reveal and secure evidence of an illegal agreement between the producer and distributors, consisting of fixing set or minimum selling prices. This is a preliminary stage in the Office's work and there are no proceedings being conducted against specific companies.

2.1.2. Summary of activities of courts:

Inco Group – File number: VII Aga-1205/18

25. The first judgement refers to a decision from November 2011. The Office conducted an inspection combined with a dawn raid in the *Inco Group*. During the inspection, the company's representative deliberately deleted from the computer a file containing data that could have a high evidential value in the proceedings. The UOKiK imposed a fine on the enterprise in the amount of over PLN 2 million. In October 2018, the Court of Appeal dismissed the company's appeal against the UOKiK's ruling. According to the Court of Appeal, deleting a file by an employee was a proof of deliberate lack of cooperation with the Office. The Court emphasized that the file was deleted after the inspection had started, which was indicative of an intentional action and the fine was commensurate with the act committed.

PKP Cargo – File number: XVII AmA-45/16

26. The second judgement concerns a decision from 2015, when the President of the Office discovered abuse of dominant position by *PKP Cargo*. The company prevented the development of competition on the domestic rail freight market by refusing to sign what is known as special contracts with enterprises which were its competitors. Thus, they could not take advantage of preferential price conditions resulting from special contracts that provided for tariff discounts. The UOKiK imposed a fine on *PKP Cargo* in the amount of more than PLN 14 million. In October 2018, the CCCP dismissed the enterprise's appeal. The Court pointed out that the use of the alleged practice was demonstrated by the fact that *PKP Cargo* posted on its website the disputed terms of selling freight transport services. The position of the company on the market made its contractors accept the terms without the possibility of negotiating them. The terms applied to all contractors, both current and potential ones. The Court found no grounds to reduce the fine imposed on the enterprise.

The Swatch Group (Poland) Ltd. – File number: XVII AmA-18/16

27. In December 2015, the President of the UOKiK issued a decision in which he stated that the enterprises in Polish watch retail industry made an agreement restricting competition in the years 2005-2015. The main objection of the UOKiK was to set minimum commodity prices. Therefore, President of the Office imposed fines on the following companies: *The Swatch Group (Poland) Ltd.*, *MAX-TIME*, *Firma Handlowo Usługowa 'Płonka'*, *The Kraków Jewellery Salon W. Strojny and Vistula Group SA*. The above mentioned entrepreneurs appealed against the decision. Finally, in the statement of reason for the judgement, the Court stated it had no doubt that the parties had made an agreement restricting competition and sustained the fines for three of five enterprises.

2.1.3. Description of significant cases, including those with international implications

28. To see more important matters (also with international implications), go to section 2.2.2.

2.2. Mergers and acquisitions

2.2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws;

29. The Office notified 298 mergers in 2019. 257 mergers were cleared in phase I and 9 mergers were cleared in phase II. The UOKiK distinguishes between so-called “phase I” and “phase II” proceedings. Phase II took on average about 282 days and they were investigated in cases:

which were particularly complicated;

in which it appeared from the information contained in the notification of intent to concentrate or from other information, including information obtained by the President of the Office in the course of conducted proceedings, that there was reasonable probability of competition being impeded on the market as a result of the concentration; or

where a market study was required (Art. 96a (1) of the ACCP). In the cases mentioned, the time limit for concluding the proceedings is extended by 4 months by way of a resolution, which shall not be subject to complaint. The resolution shall include a statement of reasons.

2.2.2. Summary of significant cases

Proceedings against Gazprom and 5 international entities responsible for financing Nord Stream 2

30. Since April 2018, the Office has been analysing the case, conducting precedent-setting antitrust proceedings. The Office brought allegations against six companies suspected of finalizing the transaction of financing Nord Stream 2, despite the lack of consent from the Office. These were entrepreneurs belonging to international groups: *Gazprom, Engie, Uniper, OMV, Shell* and *Wintershall*. During the investigation, the Office asked the companies for documents and data regarding contracts concluded with *Gazprom*. The Office was interested in information about gaseous fuels, in particular transmission, distribution, sales, supply or storage contracts. These data were necessary in the ongoing antitrust proceedings, in which we check whether *Engie* and 5 other entities formed a joint undertaking without consent from the Office. Unfortunately, *Engie* persistently and unreasonably refused to provide the Office with the requested documents and materials. This caused a significant delay in conducting activities related to financing the construction of the *Nord Stream 2* gas pipeline.

31. The UOKiK imposed a fine of PLN 172 million on *Engie* as a result of the lack of cooperation in proceedings against *Gazprom* and entities responsible for financing *Nord Stream 2*. In setting the amount of the penalty imposed on *Engie*, the President of the Office took into account the importance of this information for the ongoing proceedings, as well as the intentional conduct of the company.

Proceedings concerning the takeover of BillBird by CRE Polskie ePłatności

32. The transaction was reported to the Office at the beginning of February 2019, and the investigation showed that there is a risk of restriction of competition. Parties offered mobile phone top-ups (so-called pre-paid service), pre-paid energy meter top-ups and supported various types of payment transactions. An analysis of the second stage of the proceedings has shown, inter alia, that the *pay-safe-card* is one of many types of electronic

money available to consumers to pay online. Therefore, the President of the UOKiK considered that the transaction would not significantly restrict competition and approved the concentration.

Proceedings on the acquisition of control over NEF Battery Holdings by ZAP Sznajder Batterien

33. The UOKiK approved the takeover of *NEF Battery Holdings* by *ZAP Sznajder Batterien*. Considering the high total share of concentration participants in the lead-acid battery recycling market. The Office referred the case to the second stage of proceedings and conducted a market research. During the proceedings, *ZAP Sznajder Batterien* decided to close down the battery recycling plant. This decision had its consequences, namely that the concentration would neither affect the competition nor would it have adverse effects on consumers.

Proceedings on the acquisition of control over Cinema 3D by Multikino

34. The Office gave consent to *Multikino* taking over *Cinema 3D*. *Multikino* runs 32 cinemas in 27 cities, while *Cinema 3D* owns 12 cinemas in 12 cities. The analysis showed a threat to competition, which is why the Office voiced reservations about the concentration. The UOKiK gave conditional consent. The buyer must be accepted by the Office. It cannot belong to the same capital group as *Multikino* does and will have to have sufficient financial resources, knowledge and experience to run a movie-theatre complex. The purchase agreement must contain a clause which guarantees that the investor will conduct cinema operations until 2026. In addition, *Multikino* will have to submit a report on the fulfilment of this condition to the Office.

Proceedings on the acquisition of control over Arge Paliwa and Arge Nieruchomości by the BP Europa

35. The Office issued an approval for acquisition, by *BP Europa*, of control over *Arge Paliwa* and *Arge Nieruchomości*. *BP Europa* conducts operations consisting of wholesale and retail sale of fuels. *Arge Paliwa* conducts such operations as well. *Arge Nieruchomości* mainly manages, leases and sells its own real estate. The analysis of the collected material in the proceeding showed that the transaction may limit the competition. Both *BP* and *Arge* companies have fuel stations on both sides of the S52 expressway in Cieszyn. They are the first ones that drivers see after entering Poland and the last ones before leaving. After concluding the concentration, *BP Europa* could achieve a dominant position in this market. In reply to the accusations, the company proposed a condition. According to it, *BP* will have to sell two fuel stations near Cieszyn. The new owner will be an independent investor. The President of the UOKiK accepted this proposal and obliged the entrepreneur to submit the notification on fulfilling the condition within 30 days of the date of its fulfilment.

Proceedings on the acquisition of control over ACP Europe & Eurocylinder by Air Products & Chemicals

36. The UOKiK has, under certain conditions, agreed to *Air Products & Chemicals* taking over *ACP Europe and Eurocylinder*. The former produces and sells liquid carbon dioxide to breweries and companies making carbonated beverages and frozen foods. The latter sells technical gases in cylinders to the HoReCa sector that consists of hotels, restaurants and café (or catering) companies. *ACP Europe* has five production plants in

Poland. The President of the UOKiK decided to hedge the concentration under several conditions to avoid such negative effects.

37. Below we present the most important ones:

- Within the deadline set by the Office, *Air Products* will sell production assets that will enable CO₂ production in quantities not less than 76,650 tons.
- The production assets must be purchased by an independent investor, outside the *Air Products Group*.
- *Air Products* will offer Polish wholesale customers contract extension.
- *Air Products* will not refuse to sell liquid CO₂ without an objective justification.
- *Air Products* will not charge prices higher than maximum ones set according to a special formula from Polish wholesale customers.

Proceedings on the acquisition of control over Dolnośląska Grupa Apteczna (DGA) by Panathea

38. The transaction participants operate on the pharmaceutical market. *Panathea* belongs to the Dalferon capital group and is the owner of a chain of pharmacies and dispensaries in 8 provinces. *DGA* runs 17 pharmacies and one dispensary in 4 provinces. The preliminary investigation showed that the planned transaction may adversely affect some of the local markets of retail sale of pharmaceutical products in some provinces. For that reason, having analysed the application, the UOKiK referred the takeover to the second stage of proceedings. The investigation showed that the consent to the concentration would mean a restriction of competition in some towns, since the total estimated share of both companies would exceed 40 per cent. Based on the above, the President of the UOKiK has agreed to *Panathea* taking control over the *DGA*. However, the transaction may take place on condition that two pharmacies will be sold. The buyer of the pharmacies must be accepted by the Office and it cannot belong to the same capital group. Moreover, the purchase contract must contain a clause ensuring that the investor will provide pharmacy services in those provinces. In addition, *Panathea* will have to inform the President of the UOKiK that this condition was met within 30 days of its fulfilment.

Proceedings on the acquisition of control over Tomsol by BP Europa

39. The President of the UOKiK agreed to give its consent to the takeover of a part of *Tomsol's* assets by *BP Europa*. There was a risk of restriction of competition in this case, but a detailed analysis ruled out such a risk. The transaction was reported to the UOKiK in January 2019. Its participants conducted wholesale and retail sales of fuels, engine oils and car accessories. As a result of the merger, *BP Europa* was to acquire *Tomsol's* fuel stations. In the course of the proceedings, the Office decided that the transaction could have resulted in a restriction of competition in Koszalin. Both companies have stations in this area in close proximity. It was therefore necessary to carry out market analysis in this case. However, the analysis of the effects of the merger showed that the transaction would not lead to a significant restriction of competition. The market investigation showed that the combined shares of *BP Europa* and *Tomsol in Koszalin* will not exceed the threshold which the antitrust law links with dominance. In addition, merger participants face strong competition from other entrepreneurs in this market, which will effectively counterbalance the combined potential of both companies.

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

40. The amendment adjusts Polish law to the EU's regulation on unjustified geo-blocking (Regulation 2018/302 of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market). It prohibits traders from discriminating against customers on the grounds of nationality, place of residence or business. The amendment clarifies who in Poland is responsible for the enforcement of these regulations. The UOKiK is to intervene in two situations. Firstly, in business-to-consumer relations in case of infringement of collective consumer interests. Secondly, in business-to-business relations, the Office may initiate antitrust proceedings if it suspects that geo-blocking restricts competition. In other situations, such as compensation in individual consumer cases, common courts will have jurisdiction to settle such disputes. The President of the UOKiK will gain access to fiscal secrets. They will be able to exercise the right as part of proceedings within the scope of competition and consumer protection and unfair use of the contractual advantage. This will make it easier for the President of the Office to estimate and impose penalties for infringements. Their amount depends on the company's turnover from the previous year. Directive 2019/1 of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (ECN+). The Office conducts internal works on the implementation of the provisions of the ECN+ Directive. The purpose of the provisions we are working on is to provide the President of the UOKiK with new tools and powers to guarantee:

- independence in the enforcement of EU competition law;
- effective collection of evidence;
- effective punishment;
- coordinated leniency programme;
- active cooperation between national antitrust authorities and the European Commission.

4. Resources of competition authorities

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

4.1.1. Annual budget (in your currency and USD):

The UOKiK's annual budget, according to the Budget Act, after changes:	PLN 78,506,736.00	USD 20,675,990.52
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4.1.2. Number of employees (person-years):

- Economists – 39;
- Lawyers – 90;
- other professionals – 5;

- support staff – 11;
- all staff combined – 145;

4.2. Human resources (person-years) applied to:

4.2.1. Enforcement against anticompetitive practices

41. There were 148 people at the Office who worked on competition enforcement.

4.2.2. Merger review and enforcement

42. There were 15.5 full-time equivalents but, due to staffing fluctuations, not all full-time jobs were filled throughout the year.

4.2.3. Advocacy efforts

43. The UOKiK's staff is in frequent contact with representatives of the government, specific-sector regulators and the parliament. The most important tutorials in 2019 concerned:

1. Transposition of Directive (EU) 2019/1 of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market;
2. Transposition of the Directive (EU) 2019/633 of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain;
3. Ride-hailing platforms and taxi services;
4. Insurance sector and the problem of claim settlements;
5. Waste management;
6. Telecommunication sector, deregulation of bit-stream access and local loop unbundling markets, new regulations, obligations for cable TV operators;
7. Wood industry and the rules of wood selling ;
8. Digital export - opportunities and prospects for Polish enterprises;
9. Transposition of the ECN + Directive;
10. Public procurement in road and rail sectors;
11. Agriculture – supply of products and reference prices;
12. Energy sector – electric energy price gouging in the business sector, situation at the Polish Power Exchange.

44. As part of the advocacy activities, in 2019 the Office undertook the following:

Events

45. The Office organised free events for lawyers, economists, judges, entrepreneurs and representatives of public administration and foreign antitrust authorities:

- June 5 - a workshop dedicated to vertical agreements took place under the series "*Economics of competition law*". The meeting was devoted to the discussion i.a. on the examples of collusion between entrepreneurs operating at different levels of

trade in the context of the European Commission's decisional practice and their economic aspects. The special guest was Marieke Scholz, Deputy Head of Unit at DG Competition of the EC.

- December 10 - we hosted an international conference "*Combating business cartels effectively - practice and challenges*" as part of the World Competition Day. During the meeting, practical issues related to combating bid-rigging were discussed. In addition, the participants reflected on the resolutions of effectively acquiring evidence of infringements of competition law. We highlighted the practical issues of the application of the search procedure and other investigative measures and the challenges connected with the electronic communication. The representatives of different institutions gained an interdisciplinary perspective on these topics and confirmed the importance of joint actions in the field of combating bid-rigging and business cartels.

Online training

46. The UOKiK continued free training in the field of bid-rigging through an e-learning platform "szkoleniazmowy.uokik.gov.pl". Since the beginning of its launch in 2017, over 4,100 participants have registered and undertaken a training. The platform contains 5 lesson modules, thanks to which the organisers/participants of tenders can learn what collusion is, how to detect it, who to notify in case of suspicion that bid-rigging is taking place.

Whistle-blower platform

47. In 2019, we further developed our whistle-blower programme. Advocacy activities were undertaken to promote an external on-line platform which was then officially launched in December 2019. The website "konkurencja.uokik.gov.pl/sygnalista" enables individuals to report any anticompetitive practices on an anonymous basis. It contains a simple form to be filled in and a package of information on the procedure and the nature of infringements which can be notified to us.

Competition for the best master's and doctoral dissertation

48. The Office organises an annual competition for the best master's thesis and every 3 years for the best doctoral dissertation devoted to the subject of competition protection. Its main aim is to draw the attention of graduates of law and other faculties - e.g. economy, administration or management - to the issues concerning competition protection. In 2019, the Office gave awards to a total of three master theses and honourable mentions to two. One doctoral dissertation received the first prize.

Cooperation with the media

49. The UOKiK regularly informs the public about its activities by publishing press releases on its website and releasing them to the media. In 2019, there were 56 messages which concerned matters related to competition protection. The Office also organises press conferences for media representatives - last year we hosted 10 such meetings with regard to competition issues.

4.3. Period covered by the above information:

50. The above information concerns the period from 1 January 2019 to 31 December 2019.

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

5.1. Waste market

51. Lack of competition, higher fees for waste processing and storing are the main reasons for the increase in waste management prices in the last two years. The Office analysed the situation in all municipalities with the city status in Poland. The goal was to investigate how significant the price increases were and to determine their effects. The result was a report called “*The Report on Market Research on Services Related to Municipal Waste Management in Municipalities in the Years 2014 – 2019*”. This analysis showed that the increase in charges paid by residents for waste management began in 2017, and then the prices kept increasing every year. In the years 2018–2019, over 60 per cent of municipalities with the city status raised or intended to raise prices. However, in none of the municipalities did the charges reach the maximum level set on *the Act on Maintaining Order and Cleanliness in Municipalities*. Currently, this charge amounts to almost PLN 34 for sorted waste and twice this amount for unsorted waste. The most common reason for an increase was the higher price offered by a winner of the waste management bidding procedure. Undoubtedly, this is due to legal changes that came into force in 2012. Until then, the property owner could freely choose a company dealing with the collection, transport, treatment and disposal of waste. Following the changes in legislation, it is the municipality that decides on such a company. It chooses one entity providing waste management services across its entire territory or its part. Another reason for the increases in waste disposal charges was the increase in waste management costs. Main factors include higher marshal’s fee for waste storage and an increase in the number of raw materials that must be sorted. Local authorities often mentioned an increase in the costs of the *Regional Municipal Treatment Plants* and incorrect waste sorting. According to the Office, regardless of the analysis and responses provided by municipalities, one more factor should be noted, namely an increase in waste management prices throughout Europe resulting from the ban on plastic waste imports introduced by China. No more than 5 per cent of municipalities considered unfair practices of entrepreneurs as the main reason for rising prices. Nevertheless, the Office is constantly monitoring the waste management market in terms of abusing dominant position or conducting prohibited agreements.

5.2. The UOKiK for agriculture

52. The UOKiK checked how much food producers, agents and retailers earned on vegetables and fruit. It turned out that in extreme cases a farmer receives only a dozen or so percent of the price that consumers pay at stores. The Office checked the prices of a selected product batch at a store, and then, based in invoices, reached agents and ultimately – farmers. The Office analysed products sold in five popular chain stores. The examination was carried out by the Provincial Trade Inspectorates. The inspectors checked prices of fruit and vegetables and holiday rates. This study showed that in most cases there are several agents between farmers and stores, and their activity has a significant impact on the final price of products sold at chain stores.