

Unclassified

English - Or. English

27 May 2024

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Poland

-- 2023 --

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

JT03544530

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Poland

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

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

1.1.1. Amendment of the Act on Competition and Consumer Protection - implementation of the ECN+ Directive.

1. The important phase in the field of legislation was our journey toward aligning Polish competition regulation with Directive (EU) 2019/1, known as the Directive ECN+ (on 20 May 2023, legislation amending the Competition and Consumer Protection Act (the “Act”) entered into force). This directive, aimed at empowering competition authorities across EU member states, including UOKiK, represents a crucial step toward enhancing enforcement capabilities and strengthening the internal market. While some provisions of this directive were already part of Polish law, additional measures were needed to fully comply with EU standards.

2. It introduced a number of changes regarding searches, it also changed the way in which fines are imposed on entrepreneurs who do not cooperate with UOKiK at the stage of collecting evidence or provide false information and commit violations related to inspections and searches. After the law is amended, the penalty is up to 3 percent of the turnover achieved in the year preceding the issuance of the decision. Periodic fines have also been introduced. They amount to 5 percent of the entrepreneur's average daily turnover in the year preceding their imposition. Such sanctions threaten, among other things, for each day of delay in implementing the authority's decisions or related court rulings. There have also been changes to the leniency program. One of them is the exclusion of criminal liability for participation in collusive bidding for entrepreneurs who apply for a reduction or waiver of the penalty.

3. Under the amended law, everyone is now obligated to provide UOKiK with requested information or documents. Previously, only entrepreneurs or their associations were obliged to do so.

4. A pivotal aspect of our legislative efforts revolves around ensuring the independence and efficacy of regulatory bodies like UOKiK. To this end, the amended law introduced the tenure of UOKiK President, who are elected now for five years. Proposals to extend the tenure of the UOKiK President and establish safeguards against arbitrary dismissal underscore our commitment to fostering a stable and autonomous regulatory environment. Moreover, the introduction of turnover-based fines for procedural infringements and periodic fines signifies a significant shift toward more robust enforcement mechanisms, aligning with the EU's pursuit of fair competition.

5. The implementation of the Directive ECN+ means also better international cooperation, facilitating collaboration among competition authorities across borders. By aligning our enforcement practices with EU directives, we enhance our collective capacity to combat anti-competitive behavior and uphold the principles of fair competition. This approach is particularly crucial given the increasingly transnational nature of competition issues.

6. Our actions focused on the importance of the EU approach also mean that we have adopted a regulation regarding the exemption of certain types of vertical agreements from the prohibition of anti-competitive agreements. This regulation, modeled after the EU's

VBER, provides a significant facilitation for Polish entrepreneurs, as it allows them to apply a single standard in organizing their distribution systems both in the domestic and European markets. Additionally, work is underway on a regulation exempting specialization agreements and research and development (R&D) agreements. These efforts are crucial for ensuring consistency and harmonization of Polish competition law with EU frameworks, promoting fair competition, and supporting entrepreneurship development in Poland and at the European level.

7. Work is underway to develop regulations that facilitate the application of DMA principles, ensuring clarity and effectiveness in enforcement within the Polish legal framework. Furthermore, efforts to include rules for monitoring gatekeepers' adherence to DMA regulations in Polish legislation will improve local enforcement and lessen the European Commission's workload, aiding smoother EU-wide implementation. The rise of digital platforms has transformed how businesses operate, presenting new challenges for competition enforcement. Furthermore the head of our authority takes part in the High Level Group that assists the European Commission in developing a policy towards digital markets.

2. Enforcement of competition laws and policies

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

2.1.1. Summary of activities of:

Competition Authorities;

8. In 2023, UOKiK adopted 9 decisions. All of them regarded anticompetitive agreements (6 cases concerned bid rigging in public tenders, 2 RPM and 1 horizontal agreement). The fines imposed by UOKiK amounted to PLN 45,783,387.82. The highest penalty was imposed on Dahua Technology Poland and distributors of its products (cameras and security electronics) for an RPM and market-sharing and amounted to over PLN 37 million. We also issued an infringement decision in the context of remuneration-setting for speedway racers – the case can be seen as part of labour antitrust.

9. In 2023 we received 7 leniency applications. We opened 32 preliminary proceedings and 3 antitrust proceedings alleging competition-restrictive practices.

10. We analysed, inter alia, how distribution in the gaming industry works – our investigations in that regard concern both potential anticompetitive vertical agreements and abuse of dominance by leading market players. Furthermore, we have recently looked closer at allocation of customers within distribution systems. Among others, we analyse how Dell's distribution system works.

11. A large and stable number of dawn raids still remains one of UOKiK's priorities. In 2023 UOKiK secured court authorisations to search undertakings in 9 cases and also conducted 3 inspections (44 searched companies, 6 inspected companies). In 2023 we managed to further surpass our track record in terms of the number of locations that are simultaneously searched. The case in question concerned the sector of tractors and agricultural machinery – we are investigating possible collusive contacts in this area, in particular with regard to such brands as Massey Ferguson, Valtra, Fendt, Class, New Holland, Case, Stayer. Furthermore, when it comes to dawn raids, we were also active in

relation to consumer electronics and other newer types of products. In 2023, this concerned a search conducted at the Polish premises of Xiaomi.

12. In addition, due to our high activity in relation to dawn raids, we issued 4 decisions concerning failure to cooperate in the course of dawn raids and the total amount for these fines was PLN 11,250,000.00

13. In 2023, we also moved to further stages some of our pending cases, this includes in particular Iveco trucks. Iveco, its dealers, and a group of managers received a Statement of Objections from us concerning price-fixing and market-sharing. In total, we presented statements of objections to 22 parties in just one case concerning collusive contacts with regard to selling Iveco trucks.

14. It is also worth mentioning that compared to the preceding year, the number of signals reported as part of the whistle-blower programme increased more than sixfold. UOKiK received 15545 signals in the previous year, while there were 2396 a year before. This is related to the constant promotion of communication channels with NCA, as well as increased awareness of whistleblowers.

15. An overview of the most significant cases mentioned above, along a review of other relevant cases, is provided below in section 2.1.2.

Courts;

16. 14 of our decisions were upheld, 2 of our decisions were overturned.

17. 1 of our decisions was overturned partially and 1 was changed as to the penalty.

18. Following successful outcomes of our litigation in 2022, we maintained a positive track record in 2023. We managed to finally close two of our older court cases: one concerning PGNIG (state-owned gas company), and another concerning Jubiler (jewelry retailer).

19. The PGNIG litigation concerned our 2012 abuse of dominance decision. We found that PGNIG engaged in exclusionary conduct. The litigation in this case was complex (the case reached the Supreme Court, to be then sent back to lower courts, and to reach the Supreme Court again). Within this lengthy procedure, the fine that we imposed on PGNIG was lowered, however the Supreme Court ultimately confirmed that we were right to find that PGNIG abused its market position. The case shows that we are persistent in proving our cases before courts and defending our decisions – this includes state-owned enterprises.

20. As regards Jubiler, the case concerned a luxury watches RPM agreement. The Court of Appeals confirmed our findings and conclusions that we had reached in a 2013 decision. This was in fact the second time the Court of Appeals was hearing Jubiler – the case returned to the Court of Appeals for another hearing, after an earlier judgement had been set aside by the Supreme Court. The ruling in this case confirms once again our policy with regard to RPMs – a policy that has been consistent for more than two decades, and which pre-dates the increase in RPM investigations in the European Union, following the European Commission's decisions in 2018.

21. When it comes to newer cases, three of them are particularly noteworthy. First, we obtained a court confirmation of our 2017 decision concerning a wood-based panels cartel. Wood-based panels are used to manufacture furniture. At this point, the case was confirmed by the first instance court. Likewise, the first instance court also confirmed our 2020 decision concerning market-sharing agreement by leading fitness clubs in Poland. Finally, we succeeded in our appeals procedure concerning Solgar. The case concerned an RPM with regard to dietary supplements. The first instance court annulled our decision, but

following an appeal, the Court of Appeals confirmed that we were right to find an infringement and to order Solgar to cease it insofar it has not done so.

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

22. One of the crucial cases concluded in 2023 is Dahua case. Dahua Technology Poland, one of the country's largest manufacturers of electronic monitoring equipment, has entered into collusion restricting competition with its distributors. Entrepreneurs set prices and divided the market among themselves. Dahua is an exclusive importer and wholesale distributor of the Dahua brand - a well-known global manufacturer of electronic monitoring equipment (including IP and HDCVI cameras, DVRs, video intercoms or gate and doorman stations). The company sells these products to its distributors who deal with further wholesale or retail resale in on-site stores and on the Internet. The investigation showed that Dahua entered into an anti-competitive agreement with distributors of its products. Fines were imposed on six of them, as well as on seven managers, who were found as directly responsible for the unauthorized arrangements. Total sanctions amounted to almost PLN 37 million.

23. In another important decision, a penalty of PLN **5.2 million was imposed on Polish Automobile and Motorcycle Federation (PZM) and Ekstraliga Żużłowa in relation to** determination of maximum remuneration rates for speedway racers competing in Polish leagues, which have been found as an act of violation to the competition regulations. Ekstraliga Żużłowa (Speedway Extra League), under the agreement with PZM, manages speedway racing contests at the top league level in Poland. PZM, on the other hand, is the organiser of the contests at a lower level - in the first and second speedway racing leagues. PZM was found as responsible for the adoption of regulations governing speedway contests which provided for maximum remuneration rates that sports clubs participating in speedway racing league contests are allowed to pay to their athletes, while the Ekstraliga Żużłowa took part in the development of the said regulations. As a consequence of the regulations implemented, no Extra League sports club and other speedway racing league was able to offer remunerations above a pre-determined level to the athletes. Such limits were imposed in 2013 and were in force until the contests held in 2014 season. The actions assumed by PZM and Ekstraliga Żużłowa might have also affected the standing of sports clubs and athletes from other countries. Polish contests are considered one of the best in the world. There are a lot of foreigners in Polish sports clubs as well as a number of Polish athletes perform in foreign sports clubs. As a result, the athletes' earnings in Extra-League and other league clubs may serve as a benchmark also in other countries. Therefore, the agreement between PZM and Ekstraliga additionally involved a violation of 101 of the TFEU.

24. In 2023, we also closed our investigation in relation to Merida, exclusive distributor of the Merida bikes in Poland. The case concerned Merida's agreements with its distributors which included provisions that prohibited distributors from selling online. For 6 years, the Merida company prohibited its distributors to sell bikes online. A store offering bikes in a traditional shop could only present Merida products on its website and provide a functionality to place orders remotely. Following the rules implemented by Merida, no on-line transaction could have been completed and no goods could have been dispatched to customers. A customer wishing to collect their bike had to visit a traditional store. Moreover, Merida prohibited to its distributors to sell bikes via auction websites. Thus, the arrangements among Merida and its distributors actually aimed at a full prohibition to sell bikes of this brand via the Internet. During the investigation it was established that the

restriction of online sales has caused the actual, territorial market division. The fine imposed on Merida amounted to PLN 2,4 million.

2.2. Mergers and acquisitions

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

25. There were 321 merger filings received between 1 January and 31 December 2023.

26. 299 mergers were cleared in phase I and 11 mergers were cleared in phase II. The UOKiK distinguishes between so-called “phase I” and “phase II” proceedings. An in-depth review is defined as one that takes place when a case is transferred to the phase II. Such transfer is initiated when the case is complex and requires market inquiry or preliminary assessment shows competition issues that need to be investigated. According to Article 96a of the Act of Competition and Consumer Protection (hereafter: Competition Act), UOKiK may initiate phase II in cases:

1. which are particularly complicated,
 2. in which it appears 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 is reasonable probability of competition being impeded on the market as a result of the concentration, or
 3. where a market study is required.
27. In 2023, the average number of days that in-depth merger reviews lasted 379 days.

2.2.2. Summary of significant cases.

Pure and flavored vodka market

28. Sunray Holdings, based in Luxembourg, has obtained approval from the President of UOKiK to acquire control of Amidel Polska and Polmos Bielsko-Biala (decision DKK-160/2023). The companies are engaged in the marketing of pure and flavored vodka. The Office conducted a market study, which included the concentration participants' largest contractors. After analyzing the impact of the concentration on the flavored vodka marketing market in Poland, the Office determined that it would be small. This is due to the insignificant market position of Polmos Bielsko-Biala on this market. Similarly, the acquisition of Polmos Bielsko-Biala by Sunray Holdings would not lead to an increase in Sunray Holdings' market position or a decrease in the competitive pressure exerted by Polmos Bielsko-Biala with respect to the pure vodka marketing market. UOKiK also took into account that the merger participants are not the closest competitors. President of UOKiK also examined how realistic a scenario could be for Sunray Holdings to raise prices of pure vodka for consumers, and found such a scenario unlikely.

Household goods market - pouches, bags, packaging

29. The President of UOKiK gave its consent to Sarantis Polska's acquisition of control over Stella Pack Europe (decision DKK-297/2023). The companies' activities overlapped in the production and sale (marketing) of certain household products, including garbage bags and food packaging products. In addition, both entrepreneurs manufactured products for wholesalers and retailers, which are then offered by these entities under their own brand names.

30. As part of the investigation, UOKiK surveyed 11 product markets, addressing questionnaires to more than 100 entities. The questionnaires were sent both to manufacturers, competing with the merger participants in the marketing of individual household products, and to retail chains and wholesalers that sell under their own brand products of the same category as the merger participants.

31. The analysis of the evidence showed that the concentration will affect the national markets for the marketing of: plastic bags, ice bags and paper bags. However, it did not reveal any significant competition risks arising from the implementation of the proposed transaction.

Conditional approval in the market for the sale of roof tiles

32. The President of UOKiK has given conditional approval for a concentration in the market for the sale of ceramic and cement roof tiles. Wienerberger may acquire Terreal Holding on the condition that it continues to license the Creaton brand to Creaton Polska (decision DKK-227/2023). The entrepreneurs are owners of tile brands that are popular on our market. Wienerberger is the owner of the Koramic brand, Terral Holding held the rights to the Creaton brand and granted licenses to Creaton Polska. According to the condition imposed, Wienerberger is to provide further licensing to Creaton Polska of the Creaton trademark. The license is free of charge and covers all permitted uses, including the production, distribution and advertising of clay and cement roofing tiles, roofing underlays and accessories, and photovoltaic products.

Conditional approvals for pharmacies

33. Gemini Polska received approvals for the acquisition of Apteka Wrzeszcz (decision DKK-206/2023) and Apteka Trójmiasto (decision DKK-207/2023), subject to the sale of 3 pharmacies. Gemini Polska, at the time of the concentration, owned 96 own pharmacies and was the organizer of a franchise network of 180 pharmacies. Apteka Wrzeszcz operated 16 pharmacies in 9 cities. Apteka Trójmiasto had 20 pharmacies in 12 cities. All pharmacies owned by the acquired companies belonged to the franchise network organized by Gemini Polska and were run under the “Gemini” banner.

34. In the course of the investigation, UOKiK assumed that the pharmacies were competing with each other within a kilometer area. Moreover, the analysis showed that although the acquired pharmacies belong to the franchise network of the acquiring company, they are in competition with Gemini Polska's own pharmacies.

35. According to the condition imposed in the decision regarding Apteka Wrzeszcz, Gemini Polska had to sell one pharmacy located in Gdansk. On the other hand, the condition for the acquisition of Apteka Trójmiasto was the sale of one pharmacy in Starogard Gdanski and one in Suwalki. The buyer could not belong to the same capital group as Gemini Polska and had to be approved by the President of UOKiK. The investor had to guarantee in the contract that it would continue pharmacy operations at that location.

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

36. UOKiK evaluates drafts of legal acts in terms of their impact on competition in the relevant markets and compliance with competition law. In this manner, UOKiK cooperates with government, parliament representatives and other public bodies.

37. In the field of enforcement, UOKiK cooperates with sector- specific regulators on regular basis.

4. Resources of competition authorities

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

38. **Answer:** As per the Budget Act of 2023 the planned budget for UOKiK was PLN 135,171,000.00 giving an increase of 6,2% per cent compared to PLN 127,329,490.78 in 2022. However, due to the reasons listed below, the planned budget of 2023 needed to be increased to PLN 137,680,284.00:

- grants for financing state tasks in the field of consumer protection delegated to associations
- tasks related to national defence

Table 1. Annual budget (in your currency and USD)

UOKiK annual budget, according to the Budget Act, after changes:	PLN 137 680 284,00]	USD (29.12.2023) 34 988 636,34
-budget for competition law and policy:	PLN 44,178,125.57	USD (29.12.2023) 11,226,969.64

4.1.1. Number of employees (person-years)- staff that work on competition enforcement in 2023

- Economists - **49**
- Lawyers - **102**
- other professionals – **7** (data scientist)
- support staff - **9**
- all staff combined – **167**

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

4.2.1. Enforcement against anticompetitive practices

39. There were **167** people working on competition enforcement at the Office. Of this total, **71** individuals were directly involved in dealing with cases concerning abuse of dominance and anticompetitive agreements under Articles 101 and 102 TFEU and their national counterparts.

4.2.2. Merger review and enforcement;

40. There were **25** people at the Office who worked on merger review and enforcement.

4.2.3. Advocacy efforts.

41. There were **27** people working on Advocacy efforts.

4.3. Period covered by the above information- The above information concerns the period from 1 January to 31 December 2022. :

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

Survey on thermal coal

42. The study of the market for the distribution of hard coal, particularly for households, conducted in 2022-2023, was aimed at collecting information on the hard coal market and analyzing the state of competition. It focused on the analysis of the market for hard coal (thermal coal) consumed by consumers. The need for the study arose from the sharp rise in prices and decline in the availability of this type of hard coal in Poland. After February 24, 2022, there was a sharp increase in the price of hard coal for consumers - the prices of popular types of coal, such as eco-pea, exceeded PLN 3,000 per ton. This increase was due to very low coal stocks in Poland, as well as the fact that large price increases had already begun in global markets a few months earlier (rising from around \$100 per ton in June 2021 to over \$200 in October 2021). Thermal coal in Poland is not homogeneous. Various divisions can be applied, e.g. by type, class, sorting. The study showed that the market for retail sales of thermal coal to customers is highly fragmented. In addition, as part of the coal market survey, the contracts concluded by producers and importers with distributors were analyzed. In one case it was discovered that Przedsiębiorstwo Wielobranżowe Atex Sp. z o.o., engaged in the import, distribution and wholesale and retail sale of hard coal, was able to impose the resale prices. As a result of this conduct, distributors working with Atex could not sell to consumers cheaper than at predetermined prices. In December, 2022 the President of the UOKiK initiated proceeding against PW Atex Sp. z o.o in relation to said practice.

Limestone market survey

43. The main objective of the survey was to assess the risk of threats to the state of competition in the covered markets. The study of the lime market covered the following markets: ground lime, lump lime and hydrated lime. The period from January 1, 2015 to December 31, 2021 was used as the time horizon for the study. Among other things, the investigation determined the geographic and product scope of the market, analyzed the behavior of both suppliers and customers of lime products, changes in the level of average prices over the period covered by the study, and the entity structure of the various markets.

Survey on the photovoltaic market in Poland

44. As of 2019, a very rapidly growing share of photovoltaic installations in total electricity production was recorded in Poland. Regulations allowing prosumers to settle favorably with electricity system operators, which were introduced during the period covered by the study, as well as fiscal and financial solutions encouraged more consumers to set up photovoltaic installations. The aim of the study was to determine the structure of the market for photovoltaic panels in Poland. The survey covered Polish panel manufacturers and Polish entrepreneurs who import and distribute panels of foreign brands. It was found that the photovoltaic panels offered for sale in Poland in 2021 were mostly (more than 96%) of foreign production. The structure of the market was determined on the basis of the volume of power of panels sold by individual entities. Observation of the structure of the market for the sale of photovoltaic panels throughout the study period showed a steadily increasing number of entities marketing the panels. In addition, the study analyzed public procurement proceedings for the installation of photovoltaic installations

organized by municipalities in the Lubelskie and Podkarpackie Voivodeships. The entities selected in the proceedings carried out work in municipal facilities and in private buildings, the owners of which were beneficiaries of programs financed by aid funds. Both manufacturers and distributors of photovoltaic panels joined the proceedings, but the largest group consisted of installation companies. Overall, the survey found that between 2018-2021, there were more than 9,000 entrepreneurs engaged in the installation of photovoltaic systems.