Organisation for Economic Co-operation and Development

DAF/COMP/WP3/WD(2026)17

Unclassified

English - Or. English

3 November 2026

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Working Party No. 3 on Co-operation and Enforcement

Private Enforcement of Competition Law – Note by Poland

7 December 2026

This document reproduces a written contribution from Poland submitted for Item 3 of the 144th meeting of Working Party 3 on 7 December 2026.

More documentation related to this discussion can be found at: oe.cd/peocl.

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Poland

1. Introduction

1. In this contribution prepared by the Polish Office of Competition and Consumer Protection (UOKiK), we share our observations on private enforcement of competition law in Poland.

2. Implementation of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union

2. In Poland, the provisions implementing Directive 2014/104/EU[1] (hereinafter referred to as the "Directive") entered into force on 27 June 2017. On that date, the Act of 21 April 2017 on Claims for Damages Caused by Infringement of Competition Law (Journal of Laws, item 1132)—hereinafter referred to as the "Act"—became effective.

3. The provisions of the Polish Act reflect the standards set out in the Directive, including, in principle, those that establish a minimum level of protection. The legislator opted to introduce specific, tailored regulations in only a few of the areas where such discretion is permitted.

4. For instance, the Act extended the presumption of harm—which, under the Directive, applies only to cartels—to all infringements of competition law (including vertical agreements and the abuse of a dominant position)[2].

5. Under Polish law, a party that causes damage is liable for compensation based on the principle of fault, with such fault being presumed. In matters not addressed by the Act, the provisions of the Civil Code concerning torts apply.

6. Unfortunately, unlike the regulations in force in some EU Member States[3], Poland has not opted to introduce a presumption regarding the quantum of damages—specifically, a presumption set at a fixed percentage of the cartel-inflated prices. Such a presumption—in the context of damages resulting from cartels—could significantly facilitate the pursuit of claims by injured parties, thereby increasing the "attractiveness" of private enforcement.

7. The Polish Act establishes the exclusive subject-matter jurisdiction of regional courts (sąd okręgowy) as courts of first instance. These are not, however, courts specialized in antitrust matters; rather, they are general civil courts that adjudicate a wide range of disputes arising from civil-law relationships. Furthermore, a procedure has been introduced

[1] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union

[2] Art. 17(2) of the Directive / Art. 7 of the Act

[3] Only a few Member States provide for a statutory presumption regarding the amount (see Romania: 20% overcharge; Hungary and Latvia: 10%), and these presumptions are rebuttable.

to allow for the transfer and consolidate hearing of cases by a single court in instances where proceedings concerning the same infringement are pending before multiple courts.[4]

8. In Poland, there are no dedicated class action mechanisms for pursuing claims for damages resulting from competition law infringements. The Directive itself leaves member states with discretion in this regard (Recital 13 of the Directive's preamble). Examples of cases resolved in other European countries—particularly those that provide for "opt-out" class actions—may point to a need for reform regarding how class actions function in Poland. At present, such mechanisms are not, in practice, being utilized for antitrust-related damages.

3. The functioning of private enforcement in Poland

9. Preliminary data from the European Commission indicate that, across EU member states, approximately 70% of all private enforcement cases are "follow-on" actions, 76% of which are based on European Commission decisions. Only 12 out of the 3,300 lawsuits identified by the Commission are based on decisions by National Competition Authorities (NCAs) or rulings from other jurisdictions[5].

10. In Poland, we have not identified any follow-on actions based on decisions issued by the President of UOKiK. This is undoubtedly linked to the length of the appeal proceedings against the UOKiK's decisions before Polish courts. Many decisions finding a breach of competition law—issued several or even over a decade ago—have yet to become final, as the judicial proceedings remain ongoing.[6]

11. "Follow-on" lawsuits brought before Polish courts primarily concern the European Commission's decision of 19 July 2016 in case AT.39824 – Trucks (summary of the decision: OJ EU 2017, C 108, p. 6). In several such cases, the President of UOKiK submitted an "important view on the case" (an "amicus curiae" opinion) to the courts, in which he presented available information regarding the progress of similar cases before courts in other countries, and explained the specific principles for calculating damages resulting from infringements of competition law. In these opinions, the President of UOKiK also referred to rulings by the Court of Justice concerning the limitation periods for claims.

[4] Pursuant to Art. 13 of the Act: 1. Where proceedings for damages caused by the same infringement of competition law are pending in the first instance before several courts, any of these courts may request the other courts to transfer the cases to it for the purpose of joint hearing and adjudication, provided that considerations of expediency—in particular, the need to avoid conflicting judgments—justify such a transfer. 2. A court that receives a request from another court to transfer a case shall do so, unless the principles of procedural economy in the proceedings pending before it preclude such a transfer.

[5] Presentation of DG COMP during ECN Plenary meeting

[6] For instance, the decision issued on December 30, 2009 (case no. RKT 44/2009), concerning a collusive agreement restricting competition in the domestic wholesale market for doors, has still not become final and binding. In some cases, the wait for the first court hearing spans several years; for example, in the case concluded by the decision of December 3, 2020 (case no. DOK-5/2020), the first hearing before the court of first instance has yet to take place. Perhaps the most striking example of the protracted nature of judicial proceedings is the case involving an appeal against the decision of December 29, 2006 (case no. DAR-15/2006), which concerned collusion regarding interchange fees (involving Visa, Mastercard, and others) and is currently being reconsidered by the court of first instance.

12. Regarding decisions issued by the Polish NCA, we have identified only a few cases based on our own decisions—decisions that are not yet final, or, in one instance, a decision that was overturned after the injured parties had already filed their lawsuits. Formally, these are "stand-alone" lawsuits, as the lack of a final decision—or the fact that a decision has been overturned—means that the NCA's decision cannot serve as a binding preliminary finding for civil courts. However, the injured parties were compelled to file lawsuits, as the provisions of the Act (following the regulation set out in the Directive) mandate that the Act's substantive provisions—including those concerning statutes of limitations—apply only to damages resulting from infringements of competition law that occurred after the Act entered into force.[7]

13. The existing case law of Polish courts regarding private enforcement lawsuits does not inspire optimism. Known judgments have dismissed claims on the grounds that they are time-barred; notably, the approach previously taken by courts of first instance in determining the commencement date of the limitation period has generally not been consistent with the case law of the Court of Justice of the European Union. In two such cases—pending before the Court of Appeal in Poznań following appeals filed by the plaintiffs against unfavorable first-instance rulings—the President of UOKiK submitted amicus curiae opinions. In both cases, the judgments of the courts of first instance—which had deemed the plaintiffs' claims time-barred—were set aside by the appellate court, i.e., the Court of Appeal in Poznań. The reasoning provided in these appellate judgments suggests that the court took into account the clarifications presented by the President of UOKiK in the submitted amicus curiae opinion.[8]

14. In this context, the judgment of the Court of Justice in case C-21/24 Nissan Iberia SA[9] may be of particular significance for parties seeking damages for competition law infringements that occurred prior to the entry into force of the Act, where such claims are based on decisions by the President of UOKiK that have not yet become final. The Court of Justice ruled that the starting point of the limitation period—that is, the moment at which a person who considers himself or herself to have been harmed becomes aware of the information necessary to enable him or her to bring an action ("a tempore scientiae")—does not begin to run until the decision of the national competition authority has become final.

4. The relationship between public and private enforcement of competition law. Leniency applications.

15. The relationship between public and private enforcement can be assessed at least from two different perspectives.

16. From the standpoint of a competition authority, the most frequently noted and discussed issue is the negative impact that the growth of private enforcement may have on the effectiveness of leniency programs. Indeed, a undertaking granted immunity from fines

[7] Subsequent case law from the Court of Justice has corrected the validity of such an assessment; however, at the time the lawsuits were filed, this was a circumstance that the injured parties could not have foreseen.

[8] Judgment of 7 October 2024 in case I AGa 279/22 and judgment of 15 June 2023 in case I AGa 262/22.

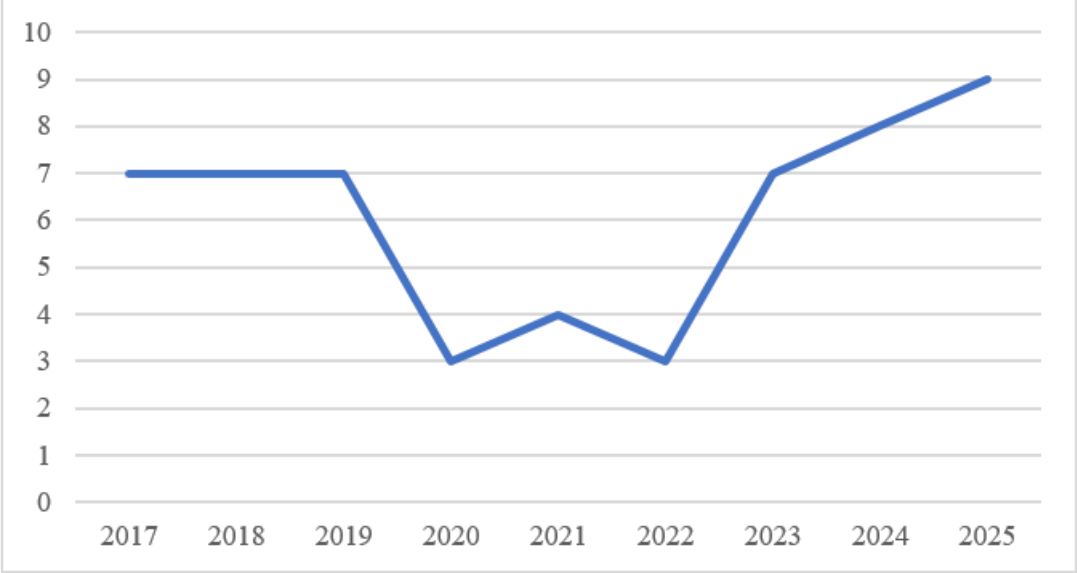
[9] Judgment of the Court of Justice of 4 September 2025, Case C-21/24, Nissan Iberia SA, ECLI:EU:C:2025:659

in antitrust proceedings—for which a competition authority's decision establishing an infringement may become final sooner than for other undertakings—could become a prime target for litigation; this is acknowledged in the Directive itself (recital 38 of the preamble).[10]

17. It has been suggested that an increase in private enforcement actions across EU member states correlates with a decline in leniency applications submitted to national competition authorities (NCAs).

18. In Poland, no such clear trend is evident; in fact, we have recently seen a resurgence in the number of leniency applications. In 2025, the number of such applications reached its highest level in recent years (nine applications). As of October 27, 2026, UOKIK has received 4 applications.

Figure 1. Number of leniency applications submitted to the President of the Office between 2017 and 2025



Source: own study based on internal data

19. The lack of a strong correlation between the number of leniency applications and private enforcement actions may stem from the fact that such actions are relatively rare in Poland. This is undoubtedly due to the significant practical difficulties involved in pursuing these claims before Polish courts. On the other hand, the investigative activity of the President of UOKiK—specifically the conducting of dawn raids—clearly encourages the affected undertakings to submit leniency applications; indeed, the majority of such applications are filed under these very circumstances. In the long term, however, a decline in the number of such submissions may prove inevitable as the framework for private enforcement becomes more robust.

[10] It is therefore appropriate to make provision for undertakings which have received immunity from fines from a competition authority under a leniency programme to be protected from undue exposure to damages claims, bearing in mind that the decision of the competition authority finding the infringement may become final for the immunity recipient before it becomes final for other undertakings which have not received immunity, thus potentially making the immunity recipient the preferential target of litigation.

5. Potential synergy between public and private enforcement

20. Therefore, with a view to achieving a synergistic effect between private and public enforcement, we believe it may be necessary to revise the provisions of Directive 2014/104/EU regarding the liability of a leniency applicant (immunity recipient) for antitrust damages. The current framework, which provides only for a partial limitation of a immunity recipient's liability for damages, may discourage undertakings from submitting such applications.

21. It may be worth considering more extensive limitations on the liability for damages of an undertaking granted immunity from fines. One proposal could be to establish, as a general rule—in addition to existing limitations—that a leniency applicant's liability for damages is merely subsidiary. Ensuring that a leniency applicant is held liable for damages—including toward its direct or indirect purchasers (or suppliers)—only when those parties are unable to obtain compensation from other members of the cartel, could help revive interest in the leniency program. Such an approach would not result in the leniency applicant being unduly "privileged" compared to other cartel participants; at the same time, it would sufficiently safeguard the interests of the injured parties, who would be required to seek redress from the assets of other cartel participants first, turning to the immunity recipient's assets only if that proves impossible.

6. Possible involvement of NCAs in strengthening private enforcement

22. The discussion regarding the interplay between public and private enforcement should not focus solely on the impact that damages claims may have on the effectiveness of leniency programs. The significant harm caused by the operation of cartels—affecting other businesses, consumers, and often the budgets of public entities—should be fully compensated, and national competition authorities (NCAs) can play a role in this process.

23. Consequently, another perspective from which the relationship between public and private enforcement can be viewed involves the competition authority taking proactive steps to strengthen the position of injured parties who are pursuing damages claims before national courts for harm resulting from competition law infringements.

24. In the context of Poland, this interaction is currently most clearly manifested through the submission of amicus curiae opinions by the President of UOKiK to courts hearing cases involving claims for damages caused by competition law infringements.

25. We also see an opportunity for the President of UOKiK to become more involved in private enforcement. Most obviously, this could take the form of submitting a greater number of amicus curiae opinions to the courts.

26. However, this is contingent upon an increase in the number of such cases in Poland. In our view, steps should be taken to educate or encourage entrepreneurs, lawyers, and legal representatives so that such lawsuits are actually filed in Poland. Legal awareness in this area still appears to be too low in Poland.

27. Furthermore, we do not have official knowledge of ongoing cases of this nature before courts in Poland. It would be beneficial to develop tools for the continuous monitoring of the filing and progress of such cases in the courts. With this information, and acting on his own initiative, the President of UOKiK could "address" specific issues raised in a lawsuit, allowing the court to consider the National Competition Authority's opinion at an early stage of the proceedings.

28. Since some private enforcement cases before Polish courts are formally "stand-alone" actions, injured parties seeking redress face significant difficulties in proving that a competition infringement occurred, as well as in establishing the fact and extent of the damage suffered.

29. A natural area in which the President of UOKiK could support aggrieved parties by submitting an amicus curiae opinion is the assessment of the conduct challenged in a lawsuit as a violation of competition law. It may also be helpful to draw the courts' attention to the practical difficulties that private entities—which lack investigative powers—face in proving such violations. Civil courts are accustomed to adjudicating primarily on the basis of direct evidence and may not always be attuned to the specific challenges involved in proving the existence of an unlawful collusion.

30. Another area that presents significant practical difficulties in litigation is the requirement to demonstrate harm, and in particular, the quantum of that harm. Even when an injured party possesses accounting records or evidence showing the prices paid, proving the exact amount of "overcharges" remains exceptionally difficult. In practice, it is unlikely that a court could determine the amount of an overcharge without the involvement of expert witnesses. However, in Poland, there are very few specialists in this field, and those who do exist are frequently retained as private experts by the very entities that committed the violations.

31. The provisions of the Directive allow for the competition authority to assist a national court in determining the quantum of damages, should the national competition authority deem it appropriate[11]. Polish law, naturally, also provides for such a possibility.[12] In practice, however, the President of UOKiK may be unable to assist courts in calculating damages, as the evidence gathered during antitrust proceedings is, as a rule, focused on establishing the infringement itself—specifically, the existence of an agreement. In the case of agreements that are prohibited by their very object, the President of UOKiK does not analyze the potential effects of the practice, and certainly does not determine the extent of the damage suffered by individual undertakings.

32. In practice, Polish courts also do not apply provisions that would allow them to order the competition authority to disclose evidence contained in the files of antitrust cases. We received one such inquiry from a court regarding the possibility of transferring specific documents from the files of an investigative proceeding. The President of UOKiK expressed a willingness to cooperate with the court by making the available evidence accessible; however, under Polish law, this requires a separate court order, which we have requested. To date, no such order has been received.

7. Outlook for the future

33. In our view, a rapid development of private enforcement in Poland is unlikely, primarily due to the protracted nature of appellate proceedings in court regarding decisions

[11] Art. 17(3) of the Directive: Member States shall ensure that, in proceedings relating to an action for damages, a national competition authority may, upon request of a national court, assist that national court with respect to the determination of the quantum of damages where that national competition authority considers such assistance to be appropriate

[12] Article 31(2) of the Act: At the request of a court, the President of the Office of Competition and Consumer Protection or a competition authority of another European Union Member State may provide assistance to the court in determining the quantum of damages, provided that the evidence collected and the information held by said authority allow for such assistance.

issued by the President of UOKiK. "Stand-alone" actions—those brought in cases where the President of UOKiK has not issued a decision—seem improbable, particularly concerning damages resulting from anti-competitive agreements. In practice, an injured party would be unable to independently establish that an infringement has occurred. Instances where an injured party could obtain evidence of a conspiracy involving their counterparty are likely to be rare, unless the party seeking damages is another participant in the same infringement—a possibility established since the Court of Justice's judgment of 20 September 2001 in case C-453/99 (Courage v Crehan)[13]. A different assessment might apply to claims for damages caused by the abuse of a dominant position, as both the existence of such a position and its abuse are generally easier for injured parties to detect and prove. However, for various reasons, injured businesses may be reluctant to enter into a dispute with a counterparty. While this barrier may be less significant for injured consumers, they are generally unlikely to pursue litigation due to the relatively low value of the damages involved. In this context, strengthening the role of private enforcement would require reforms to the framework for collective redress in Poland—specifically by adopting a model similar to the representative actions currently provided for only in cases involving breaches of consumer protection laws. Consequently, private enforcement can currently be viewed not so much as an alternative or a supplement to public enforcement of competition law, but rather as a follow-on to it. From the perspective of those who infringe the law, private enforcement can serve as a powerful deterrent, discouraging companies from engaging in such violations; however, for this to be the case in Poland, it is essential to ensure that judicial proceedings are conducted expeditiously and that there is confidence in the effectiveness of such lawsuits.

[13] Judgment of the Court of 20 September 2001 in case C-453/99, Courage Ltd v Bernard Crehan ECLI:EU:C:2001:465