



Office of Competition and Consumer Protection

REPORT ON ACTIVITIES 2012

Warsaw 2013

General information

The President of the Office of Competition and Consumer Protection (UOKiK) is a central body of government administration. The powers of the President of UOKiK are defined in the Act of 16 February 2007 on competition and consumer protection (Journal of Laws of 2007 No. 50, item 331, as amended). The priority activities of the Office in 2012 were mainly set out in two government documents - *Competition Policy for 2011-2013* and *Consumer Policy for 2010-2013*. The activities of UOKiK are financed from the state budget.

The scope of activities of UOKiK

elimination of competition-restricting practices	mergers and acquisitions control	protection of collective consumer interests	market surveillance and general product safety	participation in the legislative process with a view to creating a legal environment which promotes the development of competition and ensures the effective protection of consumer interests
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Selected key data on the activities of UOKiK in 2012	
budget – PLN 55 million	number of employees – 465

The total of fines imposed on undertakings – PLN165.9 million

competition-restricting practices PLN 94.7 million	failure to cooperate during the inspection PLN 10 thousand	practices violating collective consumer interests PLN 68 million	failure to notify the intention of concentration or implementing a concentration without the required consent of the President of UOKiK PLN 907 thousand
failure to execute or delay in decision execution PLN 1.8 million	failure to provide information PLN 300 thousand	non-compliance with general product safety PLN 135 thousand	

The website of UOKiK www.uokik.gov.pl:

- current activity, press releases and comments of the President of UOKiK,
- base of decisions issued by the President of UOKiK,
- Polish and EU legal acts,
- guidelines and clarifications concerning e.g. commitment decisions and rules for calculating the volume of fines for unlawful practices of undertakings,
- information on the *leniency* programme,
- questions and answers relating to the protection of competition, market inquiries, merger control and consumer rights,
- registers maintained by the President of UOKiK,
- recordings of on-line transmissions of major events,
- one million users, over 5 million viewings.

The data contained in this report as of 31 December 2012

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Foreword

Entrepreneur - don't collude! - this was the guiding motto of UOKiK in 2012. A broad educational campaign under this slogan was addressed to managers, members of managing bodies, entrepreneurs and students. The campaign consisted of a series of press articles, radio and television broadcasts. It was designed to raise public awareness of activities which may be regarded as inconsistent with antitrust law. The campaign was also conducted on the Internet with support of a large number of business portals. Another area of our focus was public procurement and the necessity to enhance our effectiveness in preventing and eliminating bid-rigging.

UOKiK's involvement in the fight against cartels resulted in the detection of nearly 20 prohibited agreements. Some of them were eliminated with the help of undertakings who decided to cooperate with the Office within the *leniency* programme. The year 2012 saw a considerable increase in the number of *leniency* applications. UOKiK received 16 applications, compared with only 30 applications received during the first eight years of that programme (2004-2011) in Poland.

Court decisions, education, sector inquiries or judicial review of decisions of UOKiK are not the only results of our activities last year. One of our priorities was the amendment to the Act on competition and consumer protection. Public debate on proposed changes involved all stakeholders concerned. Draft assumptions for that Act were adopted by the Council of Ministers on 20 November. In December, the draft of amended provisions was submitted for social and inter-ministerial consultations.

Another focus of our activities last year was the protection of consumers on the financial market and beyond. Apart from current activities of judicial nature, we took under scrutiny undertakings offering individual pension accounts as well as credit and loan lenders. The results of our inspection were presented to the public.

Furthermore, we made efforts to ensure the safety of football fans travelling to Poland and Ukraine for the European Football Championships. We carried out an inspection of standard forms of agreements used by air and railway undertakings and entrepreneurs operating in car rental services in Poland. We also worked together with the Ukrainian consumer organization "Pulse" to make consumers aware of their rights.

The summary of 2012 would not be complete with no mention of the involvement of UOKiK in international cooperation. In September, we organized the 2nd International Competition Law Forum. Its participants included the Vice-President of the European Commission. Our guests last year were among others experts on state aid, who took part in our State Aid Days, as well as economists who attended the annual meeting of the Chief Competition Economist Working Group of the European Commission. In 2012, we began intensive preparations for the annual conference of the International Competition Network (ICN), which will be hosted by UOKiK in April 2013.

I believe that this publication will provide readers with insights into the activities of the Office and their results in 2012.

I hope you will enjoy reading this report!

Małgorzata Kresnodłowska-Tomkiel

KEY ACHIEVEMENTS

Scope	Achievements	Detailed information
Amendment to the Act on competition and consumer protection	In 2012, the Office intensified its work on amendments to the Act on competition and consumer protection. The amendments are mainly associated with the concentration control procedure. They also introduce new mechanisms for the elimination of anti-competitive agreements from the market. The assumptions for that Act were adopted by the Council of Ministers in November 2012. In December, UOKiK submitted the draft for consultations.	 Chapter 1
A year of combating bid-rigging - <i>Entrepreneur - don't collude!</i> (<i>Przedsiębiorco, nie zmawiaj się!</i>)	<i>Entrepreneur - don't collude!</i> was a slogan of an educational campaign organized by UOKiK in 2012. The Office regularly published information on the radio, television, in the press and on the Internet to make the public aware that anti-competitive agreements, such as price cartels, market division or bid-rigging are illegal and that, in the long term, it does not pay to become involved in such activities. Such advice was also conveyed to future managers - students of five institutions of higher education in Warsaw. The involvement of UOKiK in the fight with cartels resulted in the detection of 19 unlawful agreements.	 Chapters 2 and 8
An increase in the number of leniency applications	The year 2012 saw a considerable increase in the number of undertakings willing to cooperate with the Office under the <i>leniency</i> programme. In 2012, UOKiK received a record number of <i>leniency</i> applications (16), as compared with only 30 applications received in the eight previous years of that programme.	 Chapter 2
Gas market inquiry	UOKiK exercised its scrutiny over the markets which were being liberalized. In 2010, it carried out an analysis of the rail market, in 2011 - of the electricity market and in 2012 we had a closer look at the gas market. The results of this analysis were presented to the public during a debate with representatives of the government, entrepreneurs and gas consumers. The report <i>Directions for the development of competition and consumer protection on the gas market in Poland</i> constituted an important contribution to the ongoing debate on the best possible scenario for the liberalization of the gas market in Poland.	 Chapter 2
Protection of consumers on the financial market	UOKiK monitors practices of undertakings operating on the financial market. In 2012, inspections were carried out among entrepreneurs offering individual pension accounts as well as credit and loan lenders. In addition, the President of UOKiK looked into the activities of shadow banking companies offering loans and highly profitable investments. The President of UOKiK was also actively involved in the educational campaign <i>Don't be cheated. Check before you sign!</i> .	 Chapters 5 and 8
Municipal waste collection market study	With a view to amending the Act on maintaining cleanliness and order in municipalities, UOKiK examined the situation on that market. The results of the analysis were presented in the report entitled <i>Competition in the Polish market of reception and management of communal waste</i> . UOKiK examined the situation in over 1000 municipalities. In addition, it analysed the surveys carried out among nearly 300 undertakings. The results of the analysis were presented during a debate with experts.	 Chapters 2 and 8

1. Legislative work

The involvement of UOKiK in legislative work is very important for the creation of a legal environment which stimulates the development of competition and ensures the effective protection of consumer interests. In view of the above, UOKiK helps the government to draft legislation and takes part in inter-departmental consultations. In 2012, UOKiK analysed, in total, over 2.1 thousand projects of different rank and opinions on acts drafted by the Lower House of Polish Parliament (*Sejm*), evaluating their possible impact on competition and consumers.

In 2012, the Office initiated works on the following drafts:

- Assumptions and the Act amending the Act on competition and consumer protection,
- Assumptions and the Act amending the Act on consumer credit and the Act on liability of collective entities for acts prohibited under penalty,
- Regulation of the Council of Ministers amending the Regulation on the submission of reports on the award of state aid and information on negative decisions on such aid using the SHRiMP application,
- Regulation of the Council of Ministers amending the Regulation on reports on the award of state aid, information on negative decisions concerning state aid and reports on arrears of undertakings in the payment of benefits due to the public finance sector,
- Regulation of the Council of Ministers amending the Regulation on the content of the information submitted by entities applying for *de minimis* aid,
- Regulation of the Council of Ministers repealing the Regulation on the safety and labelling of textile products,
- Regulation of the Council of Ministers on detailed rules for the maintenance of the register of products not satisfying the essential, detailed or other requirements,
- Regulation of the Council of Ministers on the introduction of the measures set out in the provisions on general product safety with respect to flail-type cutting attachments for portable hand-held brush cutters, which give rise to serious risks for users,
- Regulation of the Council of Ministers on the introduction of measures set out in the provisions on general product safety with respect to products containing biocide dimethylfumarate (DMF).

In 2012, the Office was also involved in the work on the following drafts:

- Assumptions for the Act amending the Public procurement law,
- Energy Law,
- Gas Law,
- Act on renewable energy sources,
- Regulatory clarification of home reversion schemes,
- Act amending the Telecommunications Law and some other acts,
- Act amending the Act on fuel quality monitoring and scrutinizing system.

The amendment to the Act on competition and consumer protection (also referred to as the Polish Competition Act - PCA)

Following the experiences gained by UOKiK during its work in the European Competition Network (ECN), the Act on competition and consumer protection requires a number of amendments. The most important areas which should be amended include the procedures for merger control, the *leniency* programme, inspections and searches at the premises of undertakings. Another aim of these amendments is to introduce completely new measures such as *settlements* or *remedies*. In addition, UOKiK proposes to introduce liability on the part of natural persons for infringements of the prohibition referred to in Article 6 (1) points 1-6 of the Act on competition and consumer protection and Article 101 of the Treaty on the Functioning of the European Union (hereinafter referred to as TFEU). The proposed amendments are primarily aimed at making counteracting anti-competitive agreements more

effective and to streamline the procedure for processing of applications relating to the control of concentrations. In addition, the amendment introduces two instruments which provide the weaker market participants - consumers - with a more effective protection. On the one hand, the new solutions will ensure more effective protection of competition, on the other hand, they will provide undertakings who committed an infringement with a chance to correct the unlawful practice. Public discussion on the amendment to the antitrust law was launched during the conference organized by UOKiK at the University of Wrocław in March 2012 (see Chapter 8).

In the middle of the year, the Office organized consultative conferences (lasting four days in total). We invited nearly 140 organizations of undertakings to take part in public consultations. The assumptions for the Act were adopted by the Council of Ministers. In December 2012, a draft of amended provisions was submitted for consultations.

Draft Acts - Gas Law, Energy Law and on renewable energy sources

The comments of the Office concentrated mainly on issues associated with potential granting of state aid, including the reduction of burdens on energy-intensive companies, the use of instruments protecting vulnerable consumers or subsidized tariffs, as well as the award of certificates of origin of electricity from high-efficiency cogeneration (CHP) and renewable energy sources. Other concerns of the President of UOKiK regarded the possibility of extending the powers of conciliation courts, operating at the Trade Inspection, in order to enable them to handle cases associated with energy and gas laws. In the opinion of the Office, such cases should be examined by bodies which have the authority, practice, knowledge and experience to deal with such matters and which are equipped with comprehensive legal tools. Having the above in mind, the President of UOKiK proposed to establish a conciliation court falling under the authority of the President of the Polish Energy Regulatory Office. The work on these draft acts was not completed before the end of 2012.

The proposal to regulate home reversion schemes

The President of UOKiK submitted a number of comments on the proposal of the Minister of Economy on the regulation of home reversion schemes. The Office expressed its doubts concerning, *inter alia*, the proposed solutions to be applied when an undertaking fails to perform its obligations associated with the payment of specific benefits to consumers. Other doubts related to measures proposed to secure the interests of consumers in the event of insolvency of the undertaking. Furthermore, UOKiK challenged the provisions on the preliminary contract, stating that they were not detailed enough. In the opinion of UOKiK, the content of the promissory contract must be clarified. The comments of the Office were accepted. The proposal of the Minister of Economy was submitted for Parliamentary scrutiny in December 2012.

In 2012, UOKiK also drew up: *Clarifications on issuing the commitment decision in cases of competition restricting practices and practices infringing collective consumer interests*¹ and *Clarifications concerning the assessment by the President of UOKiK of the notified concentrations*². The above guidelines are not legally binding, but they explain the procedures which the Office follows in the areas concerned.

¹ http://www.uokik.gov.pl/news.php?news_id=3610

² <http://uokik.gov.pl/download.php?id=979>



“Competition-restricting practices lead to a slowdown in economic growth, which is particularly acute in times of economic contraction. This is why we are increasingly committed to the elimination of unlawful behaviour of undertakings from the market. One of the aims of the ongoing reform of the Polish antitrust law is to improve the effectiveness of the fight with cartels”.

— Małgorzata Krasnodębska-Tomkiel, President of UOKiK

2. Competition protection



As stated in *Competition Policy for 2011-2013*, the core objective of activities of the President of UOKiK is to detect and eliminate unlawful agreements and to protect competition on local markets. The above document also puts emphasis on enhancing the functioning of the merger control system, developing methods of obtaining evidence in antitrust proceedings and increasing the functionality and transparency of procedures in antitrust proceedings.

By protecting competition, the Office counteracts practices that can distort fair competition between undertakings. The basic instrument used for this purpose is the conduct of antitrust proceedings against competition-restricting practices.

Branch Offices of UOKiK also play an important role in detecting unlawful behaviour of undertakings. Infringements of antitrust laws at the local level may have insignificant impact on the economy as a whole, but they can adversely affect both undertakings and consumers in a given region.

In addition, the President of UOKiK is entitled to control concentrations of undertakings to prevent the creation of an entity with a market power threatening to or eliminating competition.

Apart from monitoring the market and controlling behaviours of undertakings, the objectives of competition policy are achieved by promoting the principles of free competition and disseminating knowledge in this respect (the so-called *competition advocacy*) among all economic operators and state authorities. As part of these activities, the President of UOKiK develops and makes available reports and clarifications, which help undertakings to pursue their business activity in compliance with the antitrust law³. In addition, these documents are intended to increase the transparency of the activities performed by the President of UOKiK.

Competition-restricting practices

Competition-restricting practices - anti-competitive agreements and the abuse of a dominant position - lead to distortions of free market mechanisms. Such agreements lead to an artificial restriction of competition by depriving companies of incentives to engage themselves in innovation-driving processes connected with technological development of products and more efficient production methods. This results in the increase of prices, deterioration of the quality of goods, reduction of employment, difficulties in entering the market and distribution of goods and services. Prohibited market practices of dominant entities, which abuse their position by e.g. excessive or

³ Examples of reports compiled by UOKiK: *Guidelines on setting fines for competition-restricting practices*, *Guidelines of the President of the Office of Competition and Consumer Protection on the leniency programme*, *Guidelines on the criteria and procedure of notifying the intention of concentration to the President of UOKiK*. The above documents are available at: <http://www.uokik.gov.pl/home.php>



predatory pricing, in order to eliminate their competitors from the market, may likewise have a negative effect on competition.

Upon detection of an anti-competitive practice, the President of UOKiK may impose on the undertaking a maximum fine of 10 % of its revenue or issue the so-called commitment decision. In the latter case, the initiative is left to the undertaking, who is required to propose specific solutions to put an end to violations or aimed at removing their negative effects. If the law infringement has been rendered plausible and the President recognizes the content of commitment as relevant to obtain the above objectives, the President of UOKiK may accept the proposed solutions, revoking the infringement decision, and resign from imposing a fine.

Moreover, in the case of competition-restricting agreements, the offending undertaking may apply for immunity from fine or reduction of financial sanction under the *leniency* programme.

Antitrust proceedings concerning competition-restricting practices are initiated *ex officio*. However, the allegation of applying a prohibited practice may also be notified to the President of UOKiK in writing. Last year, the Office received **438** notifications and, as a result, it instituted **176** explanatory proceedings and **54** antitrust proceedings.

	Instituted in 2012	Pending in 2012, but instituted in previous years	Completed in 2012
Antitrust proceedings (in total)	112	35	93
Antitrust proceedings concerning horizontal agreements ⁴ including:	13	5	9
conducted pursuant to Article 101 of the TFEU ⁵	1	0	0
Antitrust proceedings concerning vertical agreements ⁶ including:	18	5	11
conducted pursuant to Article 101 of the TFEU	0	0	0
Antitrust proceedings concerning the abuse of a dominant position including:	81	25	73
conducted pursuant to Article 102 of the TFEU	0	1	1
Proceedings on the imposition of a fine on the undertaking ⁷	6	1	4
Explanatory proceedings	290	179	303

⁴ The parties to horizontal agreements are companies which compete with one another, operating at the same level of trade. Horizontal agreements are concluded primarily to restrict competition between them by applying e.g. price fixing.

⁵ Whenever the practice concerned may affect the trade between EU Member States, the antimonopoly proceedings fall within the scope of EU competition rules (Articles 101 and 102 of the TFEU) and may be also dealt with by EU legislation.

⁶ Vertical agreements are concluded between non-competing undertakings operating at a different level of trade, e.g. between a producer and distributor or between a wholesaler and a retailer.

⁷ The statistics include: proceedings on the imposition of a fine for failure to execute or improper execution of the decision by the President of UOKiK (also controlled by the President of UOKiK), failure to provide information, provision of false/misleading information or the lack of cooperation during an inspection/search.

Decisions issued in 2012

	Horizontal agreements	Vertical agreements	The abuse of a dominant position
Decisions regarding the practice as competition-restricting and ordering its discontinuation	3	4	19
Decisions regarding the practice as competition-restricting and stating that it has been discontinued	5	6	11
Commitment decisions	0	1	37
The total	8	11	67
Decisions imposing a fine ⁸	0	3	1
Decisions on discontinuing the proceedings including:	1	0	6
finding no competition-restricting practice	1	0	3
other reasons	0	0	3
Proceedings discontinued by way of ruling	0	0	0

Changes to the Act on competition and consumer protection

One of the primary objectives of the amendments to the antitrust law is to increase the effectiveness of combating competition-restricting agreements, *inter alia* by introducing the liability of natural persons. As proposed by the Office, sanctions will be imposed on members of executive staff or managerial bodies of undertakings whose act or omission led to the conclusion of an unlawful agreement. A list of practices for which a natural person will be held liable is based on an exhaustive list of actions contained in Article 6 (1) points 1-6 of PCA. In addition, the Office proposes to introduce *settlements* - an instrument which will be available to undertakings against whom antitrust proceedings are pending in connection with a competition-restricting practice. If the offending undertaking helps the Office to establish the facts of the case, its fine will be reduced by 10 %. In addition, the amendment introduces a list of remedies. In the case of a decision stating that the anti-competitive practice has indeed taken place, the undertaking concerned will be required to commit itself to taking specific actions from that list to restore normal competitive conditions in a quick and effective way. Another amendment involves the separation of inspections from searches.

Furthermore, the amendments relate to the *leniency* programme, which constitutes a very important instrument in the detection and elimination of anti-competitive agreements from the market. It clarifies the existing provisions and introduces the so-called *leniency plus* system into the Polish legal order.

2.1. Competition-restricting agreements

The antitrust law prohibits agreements whose object or effect is to eliminate, restrict or otherwise impede the market competition, especially by way of price fixing, bid-rigging and agreements aimed at dividing the markets of sale and purchase⁹. However, the law provides for limited exceptions to the general ban - the so-called agreements of minor importance and block exemptions¹⁰.

Selected decisions of the President of UOKiK issued in 2012:

■ Bid-rigging by consortium members (decision RLU-38/2012)

The primary objective of public procurement is to provide contractors with access to public funds under competitive and transparent conditions. At the same time, the legislator permits cooperation of several undertakings within the framework of the so-called consortium if they are unable to execute a contract on their own. In principle, such

⁸ The statistics include: proceedings concerning the imposition of a fine for failure to execute or improper execution of the decision by the President of UOKiK (also subject to control by the President of UOKiK), failure to provide information, provision of false/misleading information or the lack of cooperation during an inspection/search.

⁹ An example of the catalogue of competition-restricting practices can be found in Article 6 (1) of PCA.

¹⁰ See Articles 7 and 8 of PCA. The website of UOKiK provides access to regulations of the Council of Ministers concerning the exemption of certain agreements from the prohibition on competition-restricting agreements.

agreements of economic operators are permitted by law. However, when their actual purpose is to eliminate or restrict market competition, the antitrust law does apply.

The Municipal Property Management (*Zarząd Mienia Komunalnego*, ZMK) from Białystok was found to have violated the antitrust law during a tendering procedure for the collection and transportation of waste. UOKiK established that MPO and Astwa - the two companies that had previously operated the equipment of ZMK, submitted a joint tender as a consortium, because, as they claimed, their technical facilities were insufficient to compete for the contract on their own. The collected evidence demonstrated, however, that the cooperation of MPO and Astwa - consisting in the use of equipment (e.g. refuse collection lorries) - was in fact non-existent. It was evident that the companies had established the consortium to maintain their current market shares in disregard of the mechanisms of competition. Given the fact that the agreement set a precedent in the existing case law of UOKiK, the Office decided not to impose a fine. Neither of these companies appealed against that decision before the end of 2012.

■ **The collusion of a producer of lubricant products and distributors (decision DOK-9/2012)**

Since 2003, Orlen Oil had required its trading partners to sell Platinum products (including engine oils) at minimum prices. The distributors were not allowed to offer these products below the rates specified by the manufacturer, reduced by a discount. The fine imposed on Orlen Oil for entering into a prohibited agreement amounted to nearly PLN 2 million. The decision is not final.

■ **Collusion on the market of dietary supplements (decision DOK-7/2012)**

Another company which concluded an agreement with its distributors was Akuna Polska - a seller of dietary supplements on a network marketing basis. For over 10 years, it was fixing resale prices at which its distributors were obliged to resale products to consumers. In addition, its trading partners were forbidden to choose their contracting parties at their discretion. For applying a competition-restricting practice, the President of UOKiK imposed on Akuna Polska a fine of approx. PLN 160 thousand. The decision is not final.

2.2. The *leniency* programme

The *leniency* programme is addressed to repenant participants of anticompetitive agreements (both vertical and horizontal), who voluntarily decide to discontinue the unlawful practice and cooperate with UOKiK in establishing the facts of the case. The evidence obtained from undertakings (entities operating closest to the market) provides UOKiK with a reliable source of information on possible distortions of competition.

The *leniency* programme is to increase the detection of cartels. The advantages of cooperation with the authorities - immunity from fines or their reduction - are to encourage undertakings to cease practices violating the rules of fair market competition¹¹.

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012
Number of <i>leniency</i> applications submitted to UOKiK	0	2	3	6	3	6	8	2	16

Selected decisions of the President of UOKiK issued in 2012 under the *leniency* programme:

■ **Collusion on the furniture market (decision RBG-19/2012)**

As found in the proceedings carried out by UOKiK, IMS Sofa - a manufacturer of furniture - imposed minimum resale prices on its trading partners. It also admonished distributors who wanted to use lower rates. In the course of the proceedings, IMS Sofa submitted a *leniency* application. As the initiator of the infringement, however, it could not obtain full immunity from its fine, but only its reduction. Finally, the fine amounted to nearly PLN 330 thousand.

■ **The cartel of taxi-drivers in Grudziądz (decision RBG-29/2012)**

UOKiK received a notification of an agreement concluded by seven taxi companies from Grudziądz which fixed prices of their services. The information about the cartel was received by the Office from one of the colluding competitors,

¹¹ More details available on UOKiK's website: http://uokik.gov.pl/leniency_programme.php

who submitted a *leniency* application. The company obtained the total reduction of its fine by cooperating during the inspection. In December 2012, the decision of UOKiK was appealed against.

■ **Collusion on the market of wood-based panels (decision DOK-8/2012)**

For over 10 years, a manufacturer of wood-based panels had been fixing the minimum wholesale resale prices of its products in cooperation with its authorized representatives and wholesalers. The collusion affected the market of particle and fibre boards used mainly in the furniture industry. Due to the fact that Kronopol - the initiator of the collusion - submitted a *leniency* application and cooperated in the course of inspection, its fine was reduced by 30 % and amounted to nearly PLN 14 million. The decision is not final.



2.3. The abuse of a dominant position

Essentially, an abuse of a dominant position consists in an unlawful action taken by one undertaking or a group of undertakings resulting in restriction of independence of trading partners and competitors and imposing less favourable terms in dealings with them than in conditions of effective competition¹².

According to the Act on competition and consumer protection, an undertaking has a dominant position when its market share exceeds 40 %. However, every case is examined by the President of UOKiK on an individual basis and the final criterion for regarding a given undertaking as a monopolist is its actual market power, not only the market share (%).

Selected decisions issued in 2012 by the President of UOKiK:

Abuses on the gas market

■ **decision DOK-1/2012**

The proceedings conducted by the President of UOKiK revealed that the Polish oil and gas mining company - Polskie Górnictwo Naftowe i Gazownictwo S.A. (hereinafter referred to as "PGNiG") had abused its dominant market position by hindering its customers to terminate their agreements when changing the supplier. In most extreme cases, customers were required to submit a 15-month notice of termination, which, in the opinion of the Office, might have discouraged them from terminating the agreement and using the services of other entities. The President of UOKiK decided that this practice of PGNiG might have affected the trade between EU Member States, and thus might have infringed the EU law. PGNiG voluntarily undertook to discontinue the practice and the President of UOKiK accepted that commitment.

■ **decision DOK-2/2012**

As stated by the President of UOKiK in another decision relating to this undertaking, PGNiG abused its market position by unjustifiably refusing to sign a comprehensive contract for the supply of gas with NowyGaz, thus hindering that company to enter the gas retail market and compete with PGNiG as a gas trader. PGNiG was fined with PLN 60 million for the abuse of its dominant position and for having deprived consumers of the possibility to choose a different supplier. The company submitted a court appeal against that decision.

¹² A sample list of practices constituting the abuse of a dominant position can be found in Article 9 (2) of PCA

Abuses on the market of water supply and sewerage services

Municipalities performing public utility activities, e.g. refuse collection or provision of water supply and sewerage services, are undertakings within the meaning of the antitrust law. Due to their dominant position on the local market, UOKiK constantly monitors their activities.

■ decision RPZ-7/2012

One of the most common irregularities is the unlawful practice of charging service recipients with the costs of construction of a section of the network. Under the law, recipients are forced to pay for the construction of the connecting unit, the room housing the main water meter and the measuring device. In practice, however, customers are sometimes charged additional costs. One of such offending undertakings was a municipal public undertaking in Wronki (PK Wronki), which demanded an unreasonable charge for incorporation of the connecting unit in the water supply and sewerage network. The fine which PK Wronki received for abusing its market position exceeded PLN 9 thousand. The decision is final.

■ decision RŁO-8/2012

Another common mistake is unlawful calculation of the due amount for used water in case of loss or damage to the water meter resulting from consumer's fault. Such a mistake was committed by municipality of Łubnice. However, in the course of proceedings, the municipality undertook to change the clauses in standard forms of agreements. Therefore, UOKiK decided to refrain from imposing a fine. The decision is final.

Other examples of infringements of competition on local markets:

■ decision RKT-5/2012

One of unlawful practices used by Naprzód - a company from Rydułtowy - was to reserve the right to change the price of municipal services, at the same time refusing its customers to withdraw from the agreement. Under the law, whenever an undertaking changes essential contract terms, such as the price of services, the consumer has the right to withdraw from the contract without incurring any additional costs. Naprzód voluntarily undertook the commitment to remove the infringement, so UOKiK decided not to impose a fine.

■ decisions RŁO-34/2012 and RŁO-37/2012

Moreover, UOKiK was concerned about practices applied by two housing cooperatives: Spółdzielnia Mieszkaniowa im. Bolesława Chrobrego in Łódź and Konstantinowska Spółdzielnia Mieszkaniowa in Konstancin Łódzki. They refused to ensure unrestricted access to their properties for providers of telecommunications services, thus hindering them from providing services there. The housing cooperatives were fined respectively with PLN 6 thousand and PLN 16 thousand. Both entrepreneurs appealed against the decision of the President of UOKiK.

“We are planning to introduce changes in the antitrust merger control which is exercised by the President of UOKiK. The most important of them is the introduction of a two-step procedure and the submission of transaction-related objections. The latter is an instrument similar to *competition concern* existing in the EU law. Upon request of the undertaking, a part of the conditional consent may remain classified”.

— Małgorzata Krasnodębska-Tomkiel, President of UOKiK

2.4. Control of concentration

The development of investment potential of the undertaking frequently requires strengthening its market position. As a consequence, mergers and acquisitions have become a standard in modern economy. Given the growing complexity of market processes, however, public authorities are allowed to intervene in cases specified by law. Competition authorities are required to counteract consolidations potentially restricting competition or such which may cause permanent changes in the market structure.

UOKiK controls only the largest transactions which affect or may have a negative impact on competition on the Polish market. The obligation to notify the intention of concentration refers only to these undertakings, whose total turnover in the year preceding the notification exceeded the equivalent of EUR 1 billion globally or EUR 50 million in Poland.

A concentration may take different forms, including combination (merger or incorporation), taking control over another undertaking, creating one joint undertaking (joint venture) or acquiring a certain share of another entity's assets.

To respond requests of undertakings and increase the transparency of its activities, in 2012 the Office developed and published *Clarifications concerning the assessment by the President of UOKiK of the notified concentrations*. The information contained in that document enables to carry out a preliminary assessment of the intended transaction in a quicker and more precise way. The document consists of two parts. The first one concerns defining the relevant market and the second regards assessing the impact of concentration on the market. The document describes the methodology of activities taken by the Office and provides examples drawn from the existing case law. It supplements the 2010 guidelines, which set out the procedure for the submission of notifications¹³.

Having completed the proceedings, the President of UOKiK can take the following actions:





- approve the concentration - if as a result of the transaction, the market competition is not significantly restricted in particular by creating or strengthening of a dominant market position;
- issue a conditional consent - if upon fulfilment of certain conditions, the above prerequisite is met;
- issue the so-called extraordinary consent - whenever the transaction, despite its anticompetitive effect, contributes to the economic development or technical advance or has a positive impact on the national economy;
- prohibit a transaction - if it results in a significant restriction of competition on the market, in particular by creating or strengthening of a dominant position on the market.

The President of UOKiK may fine merging undertakings with up to 10 % of their revenue obtained in the preceding year if they implement a concentration, whether intentionally or not, without the prior consent of UOKiK. Such cases, however, are extremely rare. In 2012, there were only 2 such cases. In addition, the President of UOKiK issued one decision imposing a fine on an undertaking for failure to provide information during the conducted proceedings.

	Number of proceedings
Merger cases examined by UOKiK in 2012 including:	194
completed in 2012	155
Types of conclusions:	
consents to concentration	136
consents to concentrations which will significantly impede competition – waiver of merger prohibition (Article 20 (2) of PCA)	0
conditional consents	1
prohibitions	0
discontinued merger proceedings	0
ruling on the discontinuation of concentration control proceedings	0
withdrawn merger notifications	16
withdrawal of the notification	2

¹³ Guidelines on the criteria and procedure of notifying the intention of concentration to the President of UOKiK.

Selected industries and examples of merger control decisions of the President of UOKiK:

Industry		Number of cases	Examples of decisions
IT services, Internet and television		19	<ul style="list-style-type: none"> consent to the takeover of Centrum Komputerowe ZETO by Asseco Poland (decision DKK-14/2012) consent to the takeover of Agito by MIH Allegro B.V. (decision DKK-20/2012) consent to the takeover of Stream Communications by Multimedia Polska (decision DKK-32/2012) consent to the takeover of Sygnity by Asseco Poland (decision DKK-62/2012) consent to the takeover of N-Vision BV by Groupe Canal+ (decision DKK-93/2012)
real estate, construction and development services		15	<ul style="list-style-type: none"> consent to the takeover of Aberdeen Marynarska by HEPP IV Management Company in Luxembourg (decision DKK-58/2012) consent to the takeover of EKO-PARK by Sobiesław Zasada (decision DKK-61/2012) consent to the acquisition by Union Investment Real Estate GmbH of the property belonging to Horyzont (decision DKK-92/2012)
financial services and provision of investment counselling		14	<ul style="list-style-type: none"> consent to the takeover of Tebodin BV by Bilfinger Berger (decision DKK-29/2012) consent to the takeover of the Investment Fund by Forum TFI (decision DKK-42/2012)
wholesale and retail trade FMCG		12	<ul style="list-style-type: none"> consent to the takeover of Stokrotka, Maro-Markety and Społem Tychy by Gemma Investments (decision DKK-17/2012) consent to the acquisition by PHU Irex-Pol Ireneusz Ługowski of the property belonging to Eurocash, including 10 wholesale outlets (decision DKK-124/2012) consent to the acquisition by the Marspol Group of the property of PHU Ango Andrzej Goźliński (decision DKK-118/2012) consent to the takeover of EKO Holding by Ecorse Investments (decision DKK-116/2012)

Selected decisions of the President of UOKiK issued in 2012:

■ Consent to concentration in the IT sector (decision DKK-62/2012)

In 2012, the President of UOKiK approved the takeover of Sygnity by Asseco Poland. As part of the proceedings, a survey was carried out among 47 providers of IT services. The analysis covered the largest trading partners of both companies. The collected data enabled to assess the impact of the concentration on the market of IT services.

■ Consent to concentration in the airline industry (decision DKK-131/2012)

The President of UOKiK granted her consent to the takeover of Petrolot by PKN Orlen. The analysis of its impact on the market showed that the concentration would not result in a significant restriction of competition. Moreover, the transaction may positively affect the company's relations with airlines, because PLL LOT will no longer be its sole shareholder. Thus it will eliminate the risk of PLL LOT being favoured to the disadvantage of other carriers.

■ Conditional consent in the pharmaceutical industry (decision DKK-23/2012)

In 2012, the President of UOKiK issued one conditional consent. It related to the intended takeover of Polfa Warszawa by Polpharma. The proceedings carried out by UOKiK revealed that the transaction would restrict competition on

three domestic product launch markets: over-the-counter anticoagulant drugs, fluoroquinolones and sulphonamides available only on prescription. For this reason, the consent could only be given on a conditional basis. As stated in the decision, Polpharma will have to dispose of all its rights to the three drugs¹⁴ within 18 months of the date of issue of this decision, for the benefit of an investor who does not belong to the capital group and is not jointly controlled by any entity from that group. The acquiring party will have to be approved by UOKiK. Furthermore, Polpharma was committed to maintain its 70 % share on the market of the above-mentioned drugs.

Amendment to the Act on competition and consumer protection (PCA)

In 2012, UOKiK prepared amendments to the Act on competition and consumer protection which relate to the antitrust merger control procedure with emphasis on introducing the two-stage proceedings, which will enable the Office to conduct its proceedings more quickly and will enhance the predictability of UOKiK's actions amongst undertakings concerned. Most transactions which do not require an in-depth analysis, or do not raise doubts of the Office as to their impact on competition, will be dealt with during the first stage. The President of UOKiK will have 30 days for completing such cases. However, more complicated cases and cases that give rise to uncertainties of interpretation and thus require an in-depth analysis, will be resolved during the second stage. The Office will inform the parties concerned thereof.

Moreover, the *competition concern* procedure will be incorporated in the Polish provisions of law. It follows a model of proceedings conducted by the European Commission. Under this procedure, undertakings will be informed of objections concerning a given transaction. The procedure will apply to cases in which there are reasonable grounds that a given transaction may lead to a significant restriction of effective competition.

2.5. Court judgements in antitrust cases

Undertakings may appeal against decisions of the President of UOKiK or submit complaints against the President's rulings to the Court of Competition and Consumer Protection¹⁵ at the Regional Court in Warsaw (also referred to as SOKiK). A judgement of the Court of Competition and Consumer Protection may be appealed against to the Court of Appeal in Warsaw. Finally, in certain cases it is possible to file a cassation complaint to the Supreme Court. The practice shows that decisions of the President of UOKiK are upheld by the Court of Competition and Consumer Protection in nearly 80 % of cases.

Statistics of judgements in antitrust cases:

	Court of Competition and Consumer Protection	Court of Appeal	Supreme Court
Total number of judgements issued in antitrust cases in 2012, including:	60	29	2
vertical agreements	29	8	0
horizontal agreements	8	5	0
abuse of a dominant position	19	15	2
merger control	4	1	0

Verdicts reached by the Court of Competition and Consumer Protection in antitrust cases	Number
Overruling the decision of the President of UOKiK	3
Changing the decision of the President of UOKiK	10
Dismissing the appeal of the undertaking	47

¹⁴ Polocard or Acard (anticoagulant drugs), Cipronex or Proxacin (fluoroquinolones) and Sulfacetamidum natrium or Sulfacetamidum WZF 10% HEC.

¹⁵ Decisions on the general product safety may be submitted for re-examination and subsequently appealed against to the Voivodeship Administrative Court in Warsaw.

Selected judgements of the Court of Competition and Consumer Protection and the Court of Appeal issued in 2012:

- Judgement of the Court of Appeal of 20th March 2012 on the appeal of PKP Cargo against the judgement of SOKiK (file no. VIA Ca 1038/11)

The Court of Appeal upheld the decision of the President of UOKiK stating that PKP Cargo had abused its dominant position (decision DOK-3/2009). In the proceedings completed in 2009, the Office decided that the monopolist had abused its market position by depriving selected undertakings of taking part in the economic process under more favourable conditions. PKP Cargo was fined with PLN 60 million. In the grounds of the judgement, the Court of Appeal pointed out that PKP Cargo's activities had distorted competition and hindered the development of the rail market. It also upheld the fine imposed on the undertaking. PKP Cargo submitted a cassation complaint to the Supreme Court.

- Judgement of SOKiK of 14th May 2012 on the appeal of PGE against the decision of the President of UOKiK (file no. XVII AmA 41/11)

The court judgement relates to the decision of the President of UOKiK issued in January, 2011 (decision DKK-1/2011) which prohibited the takeover of Energa by its competitor - the power producing company Polska Grupa Energetyczna (PGE). Justifying its decision, the Office pointed out that the takeover could potentially restrict competition in the domestic electricity generation market and in the electricity retail market. PGE appealed against that decision to SOKiK. The Court upheld the decision of the President of UOKiK in its entirety. The decision is final.

- The judgement of the Court of Appeal of 23rd May 2012 on the appeal of the National Health Fund (pl. Narodowy Fundusz Zdrowia, hereinafter NFZ) against the judgement of SOKiK (file no. VI ACa 1142/11)

The judgement of the court relates to the decision issued in July 2009 (decision RWA-9/2009). As stated by the President of UOKiK in that decision, the criteria used by NFZ in the evaluation of bidders taking part in a contract award procedure for the provision of healthcare services had favoured the previous trading partners of NFZ. In the opinion of the Office, NFZ had abused its dominant position on the market of state-funded healthcare benefits by failing to respect the rules of competition. The Fund was ordered to discontinue the unlawful practice and fined with over one million PLN. NFZ appealed against that decision. Both higher courts - SOKiK (in April 2011) and the Court of Appeal (on 23rd May 2012) confirmed the decision of the President of UOKiK as correct and dismissed the appeal of NFZ in its entirety. In the grounds of the judgement, it was reminded that NFZ, within the meaning of the antitrust law, was treated as an undertaking and as such it had to comply with the rules applicable to all undertakings. NFZ submitted a cassation complaint against the said judgement.

- Judgement of SOKiK of 11th June 2012 on the appeal of Papier Hurt against the President of UOKiK (file no. XVII AmA 197/10)

In 2010, the President of UOKiK discovered that distributors of office supplies had concluded a competition-restricting agreement (decision DOK-3/2010). Office Pulse cooperated with the Office under the *leniency* programme, so no fine was imposed on that company. The other participant to the collusion (Papier Hurt), however, was imposed a fine of PLN 89 thousand and submitted an appeal against it. SOKiK confirmed the decision of the President of UOKiK, and dismissed the appeal. Announcing its judgement, the Court emphasized that the above practice was inconsistent with the antitrust law. The court upheld the financial penalty imposed by the Office and recognized the fine amount as relevant to gravity of the infringement. The company lodged an appeal against that judgement.

2.6. Enforcement of EU competition law by the President of UOKiK

The prohibition of applying competition-restricting practices derives from the provisions set out in the Treaty on the Functioning of the European Union (TFEU). EU regulations require public authorities and courts of the Member States to apply the Treaty directly, in parallel with the national competition law, in cases when specific actions of undertakings affect the trade between EU Member States. In 2012, UOKiK conducted two proceedings, both Polish and EU legislation were applied. One of these cases is still pending¹⁶.

¹⁶ The antimonopoly proceedings concerning the suspicion of entering into a competition-restricting agreement by the following manufacturers of wood-based panels: Kronospan Szczecinek, Kronospan Mielec, Pfleiderer Grajewo, Pfleiderer Prospan and Kronopol.

“As a scientific discipline, economics depicts the functioning of markets and shows changes occurring there. The use of economic tools in antitrust proceedings allows for assessing the market impact of practices under the scrutiny of the Office”.

— Jarosław Król, Vice-President of UOKiK

3. Sector inquiries

Sector inquiries constitute an important component of competition policy, both at national and local level. They are aimed at monitoring the condition of competition and compliance with antitrust law in particular sectors of economy. They are also essential for collecting evidence within proceedings and analyses of consolidation processes carried out by the President of UOKiK to identify the existing or potential non-compliance. The latter provides information on the level of market concentration and the position of particular market participants. Moreover, it allows for identification of powers shaping competition in the given sector and behaviours of the key businesses. Due to its unique structure, the Polish antitrust authority is well positioned to analyse the competitive situation - with its nine branch offices, the Office can exercise its scrutiny over local markets and it can react in advance to irregularities occurring there.

In 2012, UOKiK's Central Office and its Branch Offices were conducting a total of **36** inquiries - **34** concerning the domestic market and **2** relating to local markets.

The results of the most comprehensive and significant for the economy market studies, were presented to the public also during debates with experts organized by the Office. Since 2012, these debates have been transmitted online and video records of these transmissions are available on the website of UOKiK. Their content provides a starting point for the debate on the need for change and on how these changes should evolve on particular markets. More detailed information can be found in the section on the information and educational activities of UOKiK.

Selected sector inquiries conducted by UOKiK in 2012:

Among studies carried out by UOKiK in 2012, it is worth emphasizing those relating to **the waste market, the freight rail market and the gas market.**

UOKiK carried out an in-depth analysis of the **market of municipal waste collection and management services.** It covered all 903 urban and urban-rural municipalities in Poland, 168 rural municipalities and 9 municipalities in which a referendum had been carried out as regards taking over the tasks associated with the collection of municipal waste by the local authorities. 286 undertakings were surveyed in order to assess the effects of the newly-introduced legal provisions on the maintenance of cleanliness and order in municipalities, which have transformed the functioning of this market. The report on survey was presented during a debate held by UOKiK (see Chapter 8).



On the other hand, the analysis of the rail transport of freight was to establish the size of this market, market shares of particular carriers and to verify the definition of that market¹⁷ still used by the President of UOKiK. The analysis was supplemented with information on other means of transport. Following the data collected by the Office, PKP Group, like in previous years, enjoyed a dominant position on the market of freight transportation by rail, followed by the capital groups DB and CTL, but their market share is several times smaller than that of PKP.

For many years, efforts have been made to introduce competition in sectors where the provision of services depends on access to infrastructure the copying of which is not possible or economically viable, e.g. the telecommunications sector, energy sector or postal services. In 2012, the Office looked into the gas sector and presented its findings in the regulatory report *Directions for the development of competition and consumer protection on the gas market in Poland*. The report describes the sector and presents suggestions of UOKiK on how the liberalisation process should be progressing. According to the scenario proposed by the President of UOKiK, the market should be gradually opened up for competition, whereas the liberalisation of prices for household consumers is unlikely to occur until competition has been established in the retail sector after the liberalisation of prices for industrial consumers. A lot of attention is also paid to the situation of consumers and their protection. The results of that report were presented during a debate with representatives of the government, undertakings operating in the gas sector and consumers (see Chapter 8).



“UOKiK acts as an intermediary in the area of state aid monitoring - it gives opinions on aid schemes and individual aid cases before they are referred to Brussels, assessing their compliance with the single market, whilst also proposing possible solutions to adapt programmes to the single market rules”.

— Małgorzata Kozak, Vice-President of UOKiK

4. State aid

To ensure equal competition standards to all undertakings, state aid schemes as well as changes in the conditions applicable to the use of such aid require notification to the European Commission with the exception of aid awarded under the so-called block exemptions. The notification requirement does not cover *de minimis* aid, that is aid which does not exceed EUR 200 thousand gross value (or EUR 100 thousand in the case of road transport) within three subsequent calendar years.

¹⁷ http://uokik.gov.pl/news.php?news_id=10116

The legality of state aid granted to undertakings is assessed only by the European Commission. The main task of UOKiK in this respect is to carry out a preliminary assessment of individual support measures and aid schemes in terms of their conformity with EU law. Therefore the Office works as the advisory authority to institutions granting such aid. Although the opinion of UOKiK is not binding, in practice it is usually taken into account. On the basis of reports of aid-granting institutions, the President of UOKiK develops reports of the aid granted in a given year and its impact on competition.

In 2012, UOKiK received over **509** requests for interpretation and **396** drafts of government documents (legal acts, strategies, programmes, notices and reports) to review whether the specific aid is regarded as state aid.

The European Commission was notified, through the intermediary of the Office, of **41** projects, including **31** cases of individual aid, **2** cases of individual aid for restructuring and **8** aid schemes. The Commission approved **29** projects, **2** projects were withdrawn and **59** were being considered under the so-called preliminary examination procedure.

Formal explanatory proceedings¹⁸ were initiated with respect to **3** projects. The Commission was also notified through the intermediary of UOKiK of block exemptions relating to **21** projects - **7** regarding aid schemes and **14** individual aid.

Selected schemes reviewed and notified by UOKiK in 2012:

- aid to rescue LOT Polish Airlines,
- aid for PGNiG for the construction of gas underground storage facilities in Husów,
- individual aid for Kompania Węglowa (the coal mining company) for the protection of the environment,
- aid for MPR "Sarmatia" for the construction of the Brody-Adamowo oil pipeline (a part of the Odessa-Brody-Plock pipeline),
- aid for the creation of the Gdynia-Kosakowo Airport,
- aid for TVP (Polish Television) in connection with the digitization process,
- changes in the aid schemes: *Aid for modernisation and replacement of electricity distribution networks in Poland* and *Aid for modernisation of heating distribution networks in Poland*,
- extension of the aid scheme *Horizontal aid for investments aiming to reduce emissions from fuel combustion sources*.

Aid for PSE Operator

In 2012, the proceedings before the European Commission relating to the aid for PSE Operator (a transmission system operator) for the construction of a power station in Stanisławów were finally completed. The station is a part of a project involving the construction of a power-link between Poland and Lithuania. The Commission decided that aid exceeding PLN 34 million, which Poland wanted to award to the operator, was compatible with the single market of the EU. The above investment will contribute to the improvement of energy security of Poland, Lithuania and of the whole EU, leading to better integration of the European electricity markets.

¹⁸ The statistics include also applications submitted in previous years, assessed by the European Commission in 2012.



“Confident, well-informed and empowered consumers are the motor of economic change as their choices drive innovation and efficiency. For this reason mechanisms must be developed to enable consumers to fulfil their role in the modern economy and to ensure their effective protection from the risks and threats they cannot tackle as individuals”.

— Jarosław Król, Vice-President of UOKiK

5. Protection of collective consumer interests

Consumers are the weaker participants of the market game and the President of UOKiK is responsible for the elimination of violations of collective consumer interests by economic entities. The priorities of the Office in this respect are determined by *Consumer Policy for 2010-2013*. Its central concern is to:

- create a legal environment which enables consumers to exercise their interests and rights fully and effectively,
- take active action to foster desirable market practices of undertakings and eliminate those which act to the detriment of consumer interests,
- identify issues which are crucial for the protection of weaker market participants.

According to this Policy, interventions of the President of UOKiK should be limited to the most significant violations of the economic interests of consumers.

General information

A practice violating collective interests of consumers is any unlawful activity of an undertaking which harms the interest of a potentially unlimited number of people. In principle this means that any person can be affected by such malpractice¹⁹.

After conducting the relevant proceedings, the President of UOKiK may issue a decision recognizing the practice as violating collective interests of consumers and fine the offending undertaking with up to 10 % of its revenue obtained in the year preceding the decision. The undertaking may also voluntarily take the commitment to change the prohibited practice and to take specific actions to eliminate its effects. If the President of UOKiK decides that these actions are sufficient to remove the infringement, she may accept the above commitments and refrain from imposing a fine.

Branch Offices of UOKiK also play an important role in the elimination of violations of collective consumer interests and in combating anticompetitive behaviour of undertakings.

¹⁹ Article 24 of PCA contains an open list of practices violating collective interests of consumers.

5.1. Practices violating collective consumer interests

Proceedings with respect to practices violating collective consumer interests may only be instituted *ex officio*. However, similarly to cases regarding anticompetitive practices, the Office may also intervene after being notified of the infringement in writing. In 2012, the Office received **599** such notifications. In **228** cases, the notifications provided a basis for instituting explanatory proceedings and in **58** cases - for instituting proceedings concerning the violation of collective consumer interests.

Statistics regarding the proceedings conducted in 2012 are as follows:

	Number
Proceedings concerning practices violating collective consumer interests including:	450
instituted in 2012	376
instituted in previous years, but conducted in 2012	74
completed in 2012	332
Proceedings concerning imposing a fine on the undertaking concerned²⁰ including:	48
instituted in 2012	35
instituted in previous years, but conducted in 2012	13
completed in 2012	28
Explanatory proceedings, including:	923
instituted in 2012	701
instituted in previous years, but conducted in 2012	222
completed in 2012	534

The decisions issued in 2012 included:

	Number
Decisions recognizing a practice as violating collective consumer interests and ordering it to be ceased	85
Decisions recognizing a practice as violating collective consumer interests and confirming that it has been ceased	108
Commitment decisions	131
Total	324
Decisions on the imposition of a fine on the undertaking ²¹	24
Decisions on the discontinuance of proceedings concerning a violation of collective consumer interests, including:	8
finding no practice violating collective consumer interests	3
other reasons	5
Proceedings concluded by a ruling	4

²⁰ The above statistics comprise proceedings on the imposition of a fine on undertakings for failure to execute a decision or its delayed execution, for failure to provide information, or provision of false/misleading information at the request of the President of UOKiK, or for failing to cooperate during the proceedings.

²¹ The above statistics comprise decisions on the imposition of a fine on undertakings for failure to execute a decision or its delayed execution, for failure to provide information, or provision of false/misleading information at the request of the President of UOKiK, or for failing to cooperate during the proceedings.

Selected decisions of the President of UOKiK issued in 2012:

prohibited practices of banks

■ decision RWA-11/2012

Failure to specify the procedure for the change of commissions and fees for administering individual pension accounts - it was one of the practices of Bank Gospodarki Żywnościowej (BGŻ) challenged by the President of UOKiK. BGŻ was fined nearly PLN 1.4 million for violating collective interests of consumers. The decision is not final. The undertaking lodged an appeal against the decision.

■ decision RKR-54/2012

The President of UOKiK was also concerned about the provisions contained in loan agreements secured by mortgages at Raiffeisen Bank Polska. Under some of these provisions, consumers were charged with the costs of appraisal report in the case of failing to pay two or three loan instalments. Other objections of the Office related to clauses in which the bank required the borrower to notify the bank of any circumstances which could affect the customer's financial condition. The fine imposed on Raiffeisen Bank Polska amounted to PLN 1.8 million. The decision is not final.

■ decision RKR-57/2012

Another practice challenged by UOKiK was an unlawful delay in the transfer by Pekao SA of information about the repayment of the loan by the consumer to the Credit Information Bureau (pl. BIK). As a result, a customer who had repaid a loan in that bank could have problems with entering into new commitments, because information about their debts had not been removed from the Credit Information Bureau. The fine imposed on Pekao SA amounted to PLN 1.8 million. The decision is not final.

violations of legal provisions by railway undertakings²²

- The standard forms of agreements used by seven railway undertakings²³ contained provisions which excluded their liability in the case of restrictions on rail traffic or other unspecified circumstances. Consequently, a consumer who suffered harm and did not reach the destination on time due to the undertaking's conduct, could not claim any compensation.
- Przewozy Regionalne and PKP Intercity reserved the right to reply to consumers' complaints within a month or to extend this time limit up to three months. However, under the law, a complaint must be considered within 30 days, failing which the complaint is presumed to be accepted.

misleading advertising

■ decision RPZ-46/2012

PLN 25.40 a month for every PLN 1000 of a loan - this is one of the slogans of an advertising campaign of PKO BP *Maximum loan, minimum instalment (Max pożyczka, mini ratka)* challenged by the President of UOKiK. The proceedings revealed that this promotional loan offer had only been available to customers who had had an account with that bank for at least 6 months. In the opinion of the President of UOKiK, the lending conditions presented in those advertisements were unclear for the average consumer. For misleading advertising PKO BP was imposed a fine amounting to PLN 2.8 million. The decision is not final.

■ decision RPZ-40/2012

Join in for free until the end of August and take advantage of free cash transfers in the branch office (Zapisz się za darmo do końca sierpnia i za darmo przelewaj pieniądze w oddziale) - this is a slogan of an advertising campaign of SKOK im. F. Stefczyka in Gdynia (Cooperative Savings and Credit Union). Consumers might have deduced that they would benefit from free transfers in exchange for opening an account. In fact, however, a new member could only transfer money free of charge until the end of August, i.e. until the end of the promotional campaign. For misleading its consumers the President of UOKiK fined the undertaking with over PLN 1.3 million. The decision is not final.

²² The proceedings on that market were initiated following an inspection which took place in the 1st quarter of 2012, before the Euro 2012.

²³ Koleje Mazowieckie, Koleje Dolnośląskie, Koleje Wielkopolskie, Przewozy Regionalne, PKP Szybka Kolej Miejska, Warszawska Kolej Dojazdowa and PKP Intercity.

■ decision RWA-12/2012

Another example of misleading advertising was the advertisement of Fundusz Hipoteczny Dom which imitated an official notification. In the opinion of UOKiK, the target of this advertisement, i.e. senior citizens, might have expected that reverse mortgage was a benefit guaranteed by a state institution, while in reality it was a commercial offer of a home reversion agreement. The company was imposed a fine amounting to PLN 30 thousand. The decision is final.

5.2. Court judgements in cases concerning the violation of collective consumer interests

In 2012, the Court of Competition and Consumer Protection passed 53 judgements on appeals against decisions of the President of UOKiK in cases concerning violations of collective consumer interests. The Court of Appeal issued 32 such judgements. The Supreme Court did not examine any cases in this respect. In 38 cases, SOKiK dismissed the appeals, in 11 - changed the decisions and in 4 - overruled the decision of the President of UOKiK.

	SOKiK	Court of Appeal	Supreme Court
Judgements passed in 2012 in cases concerning the violation of collective consumer interests	53	32	0

Conclusions of SOKiK's judgements	Number
Overruling the decision of the President of UOKiK	4
Changing the decision of the President of UOKiK	11
Dismissing the appeal	38

Selected judgements of the Court of Competition and Consumer Protection (SOKiK) and of the Court of Appeal in 2012:

- Judgement of SOKiK of 27th February 2012 on the appeal of Eller Service against the President UOKiK (file no. XVII AmA 192/10)

The court judgement relates to the decision issued in March 2010 (decision RWR-6/2010) which stated that the owners of the web portal pobieraczek.pl had violated collective consumer interests by applying a misleading practice. Eller Service was ordered to change the challenged practice concerning the way of informing consumers of its services. Moreover, the company was ordered to display the decision of UOKiK on its web portal for 6 months. Some points of that decision were declared immediately enforceable. The owners of the web portal were fined with PLN 240 thousand. SOKiK confirmed that the owners of the web portal pobieraczek.pl had been misleading the consumers. The Court decided that their actions had been intentional and regarded the amount of fine imposed by the Office as justified. The undertakings lodged an appeal against that judgement.

- Judgement of the Court of Appeal of 12nd July 2012 on the appeal of Vobis against the judgement of SOKiK (file no. VI ACa 288/12)

In this case, the Court of Appeal sustained the decision of the President of UOKiK which stated that Vobis had been misleading consumers in its advertisement of the mobile internet - *Notebook with an iPlus modem for PLN 1* (decision DDK-13/2009). As established by the Office, the target audience of this advertisement may have deduced that they could buy a computer with a modem at a very attractive price. In fact, however, the modem could be purchased for PLN 1 only after the consumer had bought a computer at a market price in a Vobis store. As a consequence, the President of UOKiK punished the company with a fine amounting to PLN 177 thousand. The judgement is final.





■ **Judgement of SOKiK of 1st October 2012 on the appeal of Prominent CF against the President UOKiK (file no. XVII AmA 11/11)**

This court judgement relates to the decision of the President of UOKiK issued in 2010 (decision RPZ-25/2010). The conducted investigation revealed then that the standard loan agreement on the basis of which Prominent had concluded agreements with consumers did not meet the requirements set out in the Act on consumer credit. The Office discovered that the agreements contained false and misleading information on the annual percentage rate of charge (APRC) and the total cost of the loan. In addition, the total amount of all fees, commissions and costs charged by the company in connection with the conclusion of a loan agreement had been too high, exceeding the maximum amount permitted by the then-applicable provisions. For applying practices violating collective consumer interests Prominent was imposed a fine of nearly PLN 40 thousand. The company exercised its right and appealed against that decision. SOKiK dismissed the appeal, confirming the decision of the President of UOKiK in its entirety and stating that the amount of fine was justified. The judgement is final.

5.3. Prohibited contract terms

Prohibited contract terms (abusive clauses) are those provisions which have not been agreed with the consumer individually and which shape the consumer's rights and obligations in a way contradictory to social norms and grossly violating consumer interests. In principle, they are not binding on the consumer, unless they specify the main performances of the parties, including the price, but only when they are formulated in an explicit way²⁴.

It is the Court of Competition and Consumer Protection which decides whether a given contract term is prohibited or not. A court action may be brought by any person to whom a contract containing such a clause has been submitted or by consumer organizations, consumer ombudsmen and the President of UOKiK. Contract terms confirmed as abusive by a final and binding decision of the Court are entered in the register published on the website of UOKiK. Their application is prohibited and may be regarded by the President of UOKiK as a violation of collective consumer interests, punishable with a fine of up to 10 % of the revenue of the undertaking obtained in the year preceding the decision.

Statistics for the enforcement of provisions concerning prohibited contract terms

The Office regularly conducts inspections of standard forms of agreements used by undertakings in transactions with consumers. Thus it identifies clauses that raise doubts as to their compliance with the Civil Code. In such cases, the Office brings actions before the Court of Competition and Consumer Protection. In 2012, the Office referred 47 actions to SOKiK against 46 undertakings, contesting in total 121 different contract terms.

In addition, 91 undertakings were addressed to change the contested clauses. 68 undertakings complied with the request on a voluntary basis.

In recent years, there has been a significant increase in the number of clauses entered in the register. This in turn has a negative effect on its readability and makes it more difficult to use its resources. In the year 2012 alone, as many as 1398 contract terms were considered abusive²⁵ and entered in the register. Having the above in mind, the President of UOKiK called the Minister of Justice to introduce specific legal changes. The register of prohibited clauses and the system of abstract review of contract terms are currently being modernized.

Judgements in cases concerning the abusive clauses:

- **Judgement of SOKiK of 22nd June 2012 concerning the action brought by the President of UOKiK against UEFA to recognize the clause contained in the standard form of agreement as prohibited (file no. XVII AmC 5417/11)**

In August 2011, the President of UOKiK brought the action against the Union of European Football Associations (UEFA) before the Court of Competition and Consumer Protection. The Office expressed its concern about 25 clauses concerning the conditions of sales of tickets for Euro 2012, including those concerning the exclusion of liability for delays in tickets delivery. Other provisions challenged by UOKiK related to unforeseen circumstances which could

²⁴ Article 385³ of the Civil Code contains a list of 23 examples of prohibited clauses.

²⁵ This number relates to actions brought by different entities, including the President of UOKiK. The clauses entered in the register in 2012 resulted from judgements passed also in previous years.

change the essential terms of the agreement, such as the date, hour and location of matches. SOKiK decided that 19 out of 25 of these clauses violated the interests of consumers. Justifying its decision, the Court stated that the clauses were inconsistent with social norms and seriously affected the interests of consumers. The UEFA lodged an appeal against that judgement.

■ **Judgement of the Court of Appeal of 19th October 2012 on the appeal of Sygma Banque against SOKiK (file no. VI ACa 544/12)**

In December 2011, SOKiK recognized as prohibited four clauses applied by Sygma Banque in its regulations and loan agreements. Consequently, the President of UOKiK brought an action to the court. The undertaking exercised its right and lodged an appeal to the Court of Appeal, which dismissed the appeal, upholding the decision of SOKiK. The court of second instance confirmed that four clauses used by Sygma Banque should be entered in the register of prohibited clauses. They related, *inter alia*, to claim enforcement rules, payment card cancellation and determination of the date of delivery of the loan agreement. The time-limit for lodging a cassation complaint by the undertaking did not expire before the end of 2012.

Inspections of standard contracts

In 2012, UOKiK compiled six reports on inspections of standard forms of agreements and presented them to the public.

The report on the inspection of individual retirement accounts (IKE)²⁶

Between July 2011 and January 2012, UOKiK carried out an inspection of 25 undertakings offering agreements to customers interested in opening an individual retirement account. After analysing 115 standard agreements, the President of UOKiK contested practices of 16 financial institutions. The objections of UOKiK concerned, *inter alia*, applying the provisions violating the economic interests of consumers. The analysis of agreements on establishing individual retirement accounts provided a basis for instituting 13 proceedings in cases concerning the violation of collective interests of consumers. They were concluded with administrative decisions. 8 actions were brought before SOKiK demanding recognition of 17 clauses as prohibited.

Three transport-related reports - transport by rail, transport by air and car rental companies²⁷

Prior to the Euro 2012 Football Championship, UOKiK carried out an inspection of standard forms of agreements and regulations applied by air carriers²⁸, railway undertakings²⁹ and car rental companies in Poland³⁰. In total, UOKiK analysed 69 different standard forms of agreements, regulations, tariffs and price lists used by 32 undertakings. Furthermore, the President of UOKiK reviewed the information posted on their websites and contained in advertising materials and special offers prepared in connection with the Championship.

The report on direct selling

Data of the direct selling market indicate that it is expanding rapidly, despite having to compete with online sales. Bearing in mind that the offer of undertakings operating in this segment is targeted at elderly consumers, UOKiK carried out the market inquiry in the first half of 2012. Different irregularities were identified in 33 out of 34 analysed standard forms of agreements, e.g. the undertakings concerned failed to provide consumers with a statement that would enable them to withdraw from agreements concluded outside the business premises of those undertakings. Some of these standard forms of agreements were found to contain onerous and not homogenous terms. Following the above analysis, UOKiK instituted 24 proceedings in cases concerning the violation of collective consumer interests³¹ and brought 10 actions for recognition of relevant contract clauses as prohibited. None of these proceedings were completed before the end of 2012.

²⁶ http://uokik.gov.pl/news.php?news_id=3232

²⁷ The results of these activities were presented in the following reports: *The position of the consumer on the market of passenger rail transport*; *The report from the study of the domestic air transport market evaluating its compliance with consumers' rights on that market*; *The report from an inspection of activities of undertakings providing car rental services*.

²⁸ As a result of this inspection, 4 proceedings were instituted in cases concerning the violation of collective consumer interests. In 2012, three of them ended with an administrative decision.

²⁹ As a result of this inspection, 8 proceedings were instituted in cases concerning the violation of collective consumer interests. All of them were conclusively resolved in 2012.

³⁰ As a result of this inspection, 7 proceedings were instituted in cases concerning the violation of collective consumer interests. All of them were conclusively resolved in 2012.

³¹ Two of these proceedings were instituted in January 2013.

The report from an inspection of consumer loans³²

Between March and November 2012, UOKiK took under scrutiny the activities of undertakings granting consumer loans to check the degree of implementation of the newly amended Act on consumer credit. The inspection covered 31 randomly selected undertakings, including 15 banks, 5 Cooperative Savings and Credit Unions (pl. SKOK, Spółdzielcza Kasa Oszczędnościowo-Kredytowa) and 11 shadow banking companies. The President of UOKiK inspected 147 standard forms of agreements and 16 advertisements, identifying 88 infringements of different type. As a consequence, 26 proceedings were instituted in cases concerning the violation of collective consumer interests and 17 actions were brought before the court, demanding recognition of the relevant clauses as prohibited.

5.4. Cooperation with consumer organizations

The President of UOKiK cooperates with non-governmental organizations. Funds for implementation of particular projects are granted in tender procedures³³. In 2012, the following organizations were provided with grants (totalling PLN 1.67 million) by the President of UOKiK:

- Polish Consumer Federation for the provision of free advice and legal aid in the area of consumer redress, “Consumer Helpline”, trainings for poviats/municipal consumer ombudsmen and representatives of consumer organizations;
- Associations of Consumer Ombudsmen for developing, editing and electronic distribution of a newsletter for consumer ombudsmen;
- Association of Polish Consumers for a consumer e-mail centre “E-Advice”, education of senior consumers within the framework of campaign *Be a well-informed consumer*;
- Association for Promotion of Financial Education (pl. Stowarzyszenie Krzewienia Edukacji Finansowej) for the project entitled *Prevention of over-indebtedness*.

³² http://uokik.gov.pl/news.php?news_id=10137&news_page=1

³³ The rules for the assignment of consumer protection tasks and the procedures for the transfer of funds are laid down in the Act on operations of public benefit organisations and volunteerism. The amount which can be allocated for the completion of these activities is specified annually in the budget act. The information on tenders is published in the press and in the *Public Information Bulletin*. It is also available at the premises of the Office.



“Products available on the market must guarantee safety to their users. A complex system of control is to ensure that these rules are complied with”.

— Małgorzata Kozak, Vice-President of UOKiK

6. Market surveillance and product safety

6.1. General product safety

The President of UOKiK exercises the surveillance over the safety of non-food consumer products. Direct inspections at the premises of undertakings are conducted by the Trade Inspection on its own initiative or at the request of the President of UOKiK³⁴.

The President of UOKiK institutes administrative proceedings after receiving inspection files from the Trade Inspection or information from other sources, e.g. from consumers or authorities of other EU Member States. Where a product is found to pose a threat to the life and health of users, the President of UOKiK may impose certain obligations on its manufacturer or distributor, e.g. prohibit launching the product into the market, request warning consumers (e.g. by publishing press announcements), eliminate the danger, withdraw the product from the market or from consumers³⁵. In addition, the President may impose on the entity responsible for placing the product on the market a fine of up to PLN 100 thousand.

In 2012, the Office handled 350 cases concerning the general product safety³⁶. 289 of them were conclusively resolved that year. A large number of inspections related to textile products for children (81), adulterated food products (76) and bicycles (21). The President of the Office issued 136 decisions, including 19 decisions imposing specific obligations on undertakings and 26 decisions imposing fines.

Register of dangerous products

Products considered by the President of UOKiK to be non-compliant with safety requirements are entered in the Register of Dangerous Products. 36 products were entered in the Register in 2012.

Voluntary notifications from undertakings

The positive tendency is that undertakings more and more frequently voluntarily notify UOKiK of identified irregularities and corrective actions taken. The information provided by entrepreneurs is then published on the website of UOKiK. Moreover, the Office monitors the course of corrective actions. In 2012, undertakings submitted 93 voluntary notifications. The statistics of the Office indicate that the largest number of notifications (68) concerned the automotive industry. The remaining notifications regarded, *inter alia*, electric equipment and engines for leisure boats.

³⁴ The President of UOKiK approves inspection plans conducted by the Trade Inspection, both scheduled inspections and inspections carried out as part of the tasks of the Voivodeship Inspectorates.

³⁵ The withdrawal of a product from consumers means the undertaking concerned must rebuy it from users at the price of purchase, regardless of wear and tear. A consumer who has a proof of purchase may seek such a refund directly from the distributor who sold the product or, in the absence of such a proof of purchase, directly from the manufacturer.

³⁶ The Act of 12 December 2003 on general product safety (Journal of Laws of 2003 No. 229, item 2275, as amended).

The Rapex System

The Rapex System (*Rapid Alert System for Non-Food Consumer Products*) was established by the European Commission to ensure a high level of consumers' health and safety protection within the EU Single Market. It is a system for rapid exchange of information between the Member States and the European Commission concerning products posing risks to consumers. UOKiK acts as a contact point for this system in Poland.

In 2012, UOKiK submitted **38** notifications to the system, most of which concerned toys and child use and care articles (13). In **59** cases, the Office took action in response to information received from another EU Member State. In addition, the Office carried out investigations and communicated its position on notifications submitted by the authorities of other Member States.

6.2. The conformity assessment system

The President of UOKiK monitors the system of control of non-food products in terms of their conformity with the essential requirements set out in the so-called New Approach Directives³⁷. Within her remit, the President of UOKiK conducts administrative proceedings pursuant to the Act on the conformity assessment system³⁸ and when it occurs that a product is not compliant with the essential requirements, the President issues a decision ordering its withdrawal from the market and enters the product in a special register. In 2012, UOKiK examined **426** cases, **309** of which were conclusively resolved before the end of that year. The largest group of inspected products were toys (192), followed by electric equipment (90). In total, the Office issued **312** decisions, including **39** decisions imposing specific obligations on undertakings.

The register of products non-compliant with essential, detailed or other requirements

Activities of the Office include, *inter alia*, maintaining of a special register of products non-compliant with essential, detailed or other requirements, which is available on the website of UOKiK. In 2012, **151** products were entered in the register.

³⁷ They relate to over 20 groups of products, e.g. electric equipment (including electronic equipment and household appliances), toys, personal protection equipment, construction materials, machines and elevators. Only articles which must conform to the essential requirements set out in the relevant legal provisions should bear the CE mark.

³⁸ Act of 30 August 2002 on the conformity assessment system (Journal of Laws of 2010 No.138, item 935, as amended).



Cooperation with specialized bodies

Upon receipt of information about products not satisfying the essential requirements, the President of the Office may instruct a competent specialized body to carry out an inspection or inform it about potential non-conformity of specific products placed on the market. In 2012, UOKiK had **34** inspections carried out by the Trade Inspection and in **22** cases it informed other specialized bodies of a number of irregularities.

6.3. The surveillance over the Trade Inspection

The President of UOKiK plans, coordinates and monitors the inspections of food and non-food products and services carried out by voivodeship inspectorates of the Trade Inspection and examines their results. Furthermore, the President also performs the tasks associated with monitoring of the fuel quality and coordinates the work of nine accredited laboratories (control and analytical, fuel and household chemical products, toys, textile products as well as laboratory of instrumental analysis), which are tasked with testing products to be examined by the Trade Inspection. In 2012, the laboratories controlled **5852** samples, out of which **1253** were found to be non-compliant with the legal requirements or standards declared by the undertaking.

The statistics of inspections carried out by the voivodeship inspectorates of the Trade Inspection at the request of the President of UOKiK:

Object of inspection	Number of inspections
Agri-food products	2360
Non-food products and services	1372
General product safety	1162
Compliance with New Approach Directives	1827

In 2012, 22 nationwide inspections of agri-food products were conducted with the emphasis on the labelling and display of food products in points-of-sale to consumers, as well as the labelling of pre-packaged foodstuffs. Furthermore, UOKiK published the results of the first ever nationwide inspection of the 'high-end' products, which are at least twice as expensive as products offered for sale on a massive scale, organic products and products with protected names.

Moreover, 14 nationwide inspections of non-food products and services were carried out. In connection with the ongoing digitization process which began in 2011, inspections were conducted among undertakings to check their progress in implementing legal provisions relating to digital terrestrial television.

6.4. Liquid fuel quality scrutinizing system

The list of petrol stations and wholesalers, along with the results of conducted inspections, is published by UOKiK on its website and updated every two weeks. The website contains an on-line form for submitting complaints on petrol stations offering improper quality of fuel. The complaints are taken into account in the course of scheduled activities.

The results of the inspections carried out in 2012 suggest that the quality of liquid fuel in Poland has deteriorated as compared to the previous year. **483** samples of fuel (petrol and heating oil) were tested, revealing that **4.14 %** of these samples did not meet the quality requirements. The quality of liquified petroleum gas (LPG), on the other hand, improved in comparison with 2011 - **1.11 %** out of samples tested were regarded as non-compliant with quality standards (out of the total of **450** collected samples).

The President of UOKiK issued **86** decisions ordering undertakings to incur the costs of performing tests whenever fuel samples failed to meet the quality requirements.

“Due to globalization and the development of the digital economy, competition and consumer risks are crossing national borders and the fight against these risks requires close collaboration between governments of particular countries. Taking part in the exchange of information and know-how, Poland visibly shapes the design of the European competition and consumer policy”.

— Małgorzata Krasnodębska-Tomkiel, President of UOKiK

7. International cooperation and contacts with EU institutions

7.1. Multilateral cooperation

Protection of competition

The European Competition Network (ECN) is a platform for cooperation and exchange of information between the European Commission and national competition authorities of the EU. In 2012, representatives of UOKiK actively participated in the work of working groups and subgroups of the Network. Last year, there was a meeting of the Chief Economists of the ECN in Warsaw. The President of the Office takes part in annual meetings of heads of European antitrust authorities. Another tool for the exchange of knowledge and experiences within the ECN are informal enquiries addressed to other authorities. This allows for sharing experiences gained and obtain information from counterparts in other EU Member States. UOKiK found it particularly useful when working on the assumptions for the Competition Act which is currently being amended. In 2012, UOKiK also responded to 69 such enquiries. In addition, its representatives were involved in editorial activities of the Network, publishing articles in the periodical “ECN Brief” and presiding over the work of the editorial team on the December edition of the internal bulletin “ECN Newsletter”.

The European Competition Authorities (ECA) constitutes the informal discussion forum for the heads of the European Competition Authorities. A standing agenda point of annual meetings of ECA are presentations of changes in national provisions and the recent case law. In July 2012, the annual meeting was hosted by Estonia. UOKiK presented the results of its current activities and its experiences regarding the synergy effects of the competition and consumer policy.

Poland is also a member of the International Competition Network (ICN), which provides a platform for cooperation and exchange of experience for 127 competition protection authorities representing 111 antitrust jurisdictions from all over the world. In 2012, representatives of UOKiK took part in the work of five working groups of the Network on: cartels, merger control, unilateral conduct, effectiveness of antitrust authorities and competition advocacy. The experts of UOKiK were involved in the 11th ICN Annual Conference and in the workshops organized by the French Competition Authority.

In 2012, the Office began intensive preparations for the 12th ICN Annual Conference, which will be hosted by UOKiK in April this year. The conference will provide an occasion to present the achievements of UOKiK in over 20 years of its existence and to outline plans for the future.

The Organisation for Economic Co-operation and Development (OECD) is one of the most important international forums for discussing issues connected with competition law and policy. In 2012, representatives of the Office took part in three meetings of the Competition Committee and its working groups, during which they provided information on the experience of Poland in the area of e.g. digital economy, defining the relevant market, international cooperation, payment systems, the *leniency* programme.

United Nations Conference on Trade and Development (UNCTAD) is a subsidiary body of the United Nations Organization, which was established in Geneva in 1964. UNCTAD is primarily tasked with promoting economic development, international trade and global investments. Poland is an active member of this institution. In 2012, a meeting of competition experts was held in Geneva, which provided representatives of UOKiK with an opportunity to share their experience in the application of antitrust law in public procurement.

Protection of consumers

UOKiK participates in meetings of working groups and committees of the Council of the European Union, including the Working Party on Consumer Protection and Information and the European Commission, in particular the Directorate General for Health and Consumer Protection (DG SANCO).

UOKiK also belongs to the Consumer Policy Network (CPN) and its representatives take part in regular meetings of the Directors General of the authorities responsible for consumer protection in the European Union.

Furthermore, the Office is involved in the work of the Consumer Protection Cooperation Committee (CPC Committee). One of the joint initiatives is the annual review of websites, the so-called *Internet Sweep*. The 2012 review covered websites offering downloadable files and streaming media (including online games). UOKiK reviewed 10 websites offering downloadable games to consumers, detecting 6 infringements of a cross-border nature.

Representatives of the Office participated in three workshops organized within the framework of the FUABA initiative (*Follow-up action to the Building a European Internet Enforcement Capability Activity*)³⁹. In addition to providing practical trainings on detecting and combating violations in the sector of e-commerce, the project is expected to lead to the development of formal, but at the same time flexible solutions for the cooperation of authorities in cases of cross-border violations of consumer rights. A *know-how* web platform is also to be set up, containing translations of court judgements from the EU area concerning e-commerce and other contents. The Office became involved in the work of the communications cell of the CPC, taking part in developing two editions of its newsletter.

UOKiK takes an active part in the work of the Product Safety Enforcement Forum of Europe (PROSAFE). Its objective is to facilitate the exchange of opinions and information as well as provide a forum for sharing experience and best practices as regards the market surveillance and the safety of products and services. Since 2010, a representative of UOKiK has been a member of the PROSAFE Board. The participation in the work of this organization allows for following the latest trends regarding the reform of the market surveillance system in Europe and the legislative act on product safety, which is currently being amended.

In addition, Poland belongs to the International Consumer Protection and Enforcement Network (ICPEN), the aim of which is the exchange of information on practices violating consumer interests at a transnational level and to promote cooperation between the authorities responsible for implementing consumer laws. In 2012, representatives of UOKiK took part in meetings of the ICPEN organized by authorities from Costa Rica and Belgium. During the second of these meetings, organized under a motto *Taking enforcement to the next level*, efforts were initiated to intensify cooperation in the Network to make its activities more effective and to boost its international visibility. In addition, UOKiK took part in the annual *Internet Sweep* under the motto *I bought what?*. It reviewed 37 websites (mainly websites of online stores and websites offering games) and detected irregularities in 23 cases.

Employees of UOKiK were also involved in the work of the OECD Committee on Consumer Policy, which brings together representatives of consumer protection authorities of the Member States, experts from civil society organizations and businesses. At present, the Committee is focusing its work on issues associated with the

³⁹ FUABA is the continuation of the BEIEC project, completed by the CPC in 2011 (*Building a European Internet Enforcement Capability*).

development of online services, e.g. the fight against spam, protection of consumers buying digital content, mobile payments, telecommunications services, resolution of disputes, consumer redress as well as accession of new members, including the Russian Federation. Poland took an active part in the workshops on *Consumer Protection and Empowerment in the Purchase of Digital Content* organized by the Committee.

7.2. Bilateral cooperation

An important area of international cooperation is the development of direct contacts between the Polish competition authority and its counterparts in partner countries, both in the EU and beyond. Under the bilateral cooperation, the employees of UOKiK had an opportunity to exchange experiences during a number of bilateral meetings.

In 2012, a meeting was held with a delegation from the Department of Justice of the United States of America to discuss the most important aspects of the reform of the competition law in Poland, in particular the changes which are to be introduced in the *leniency* programme.

In addition, the heads of UOKiK met with the Director General for the Market Affairs, the British counterpart of the ministry of economy (*Department for Business, Innovation and Skills, BIS*). Moreover, the Office hosted study visits of delegations of the China Consumers' Association (CCA) and the Serbian institutions responsible for consumer protection: the Ministry of Domestic and Foreign Trade and Telecommunications and Advisory Consumer Centres run by consumer organizations from Belgrade, Novi Sad and Jagodina. During these meetings, UOKiK presented the system of protection of the weaker market participants and market surveillance in Poland. Moreover, representatives of the Office took part in the meeting of the Polish-Lithuanian Intergovernmental Economic Cooperation Commission. The priority theme of the event was the protection of consumers and market surveillance. The Office also initiated negotiations on bilateral cooperation agreements in this area with the Hungarian Consumer Protection Authority and the Ukrainian State Inspectorate for Protection of Consumer Rights.



“Educational activities constitute an important part of the work of UOKiK. Every year, we draw the attention of market participants to what is forbidden and what is permitted and we convey this message in a manner tailored to specific target groups”.

— Małgorzata Krasnodębska-Tomkiel, President of UOKiK

8. Information and educational activities

Information and educational projects constitute an integral part of the activities of UOKiK. Their aim is to enhance the awareness and knowledge of legal and economic matters among all market participants. In the undertaken initiatives, the President of UOKiK highlights the significance of the antitrust law for the Polish economy and informs about the rights and obligations of undertakings and consumers. The effectiveness of these activities is confirmed by the results of social surveys conducted by the Office in order to assess the level of awareness of legal and economic issues among all market participants.

8.1. Social campaigns and conferences

Initiatives promoting the market competition

- A campaign against competition-restricting agreements *Entrepreneur - don't collude! (Przedsiębiorco, nie zmawiaj się!)*

In 2012, UOKiK launched a nationwide educational campaign to raise the awareness of the effects of anti-competitive agreements. The campaign was addressed to professional market participants. The project began with a conference entitled, *More effective ways of market protection - time for changes in law?* hosted in cooperation with the Faculty of Law, Administration and Economics of the University of Wrocław (28th March 2012). The conference agenda was devoted also to the presentation of the most important assumptions for the amended Act on competition and consumer protection. The conference was attended by experts on competition law and representatives of the business circles. Their presence initiated a discussion on the development of the best solutions to protect competition, whilst taking into account the needs of undertakings.

Within this campaign, a series of web videos, radio broadcasts and newspaper articles was also prepared. A special page with a compendium of knowledge on illegal collusions was created on the website of UOKiK.

The campaign was also addressed to future executives - students of management and economics. As part of pilot projects, in November/December 2012 experts from the Office gave lectures on prohibited agreements to students of five institutions of higher education in Warsaw.

- State Aid Days (29-30 May 2012)

The two-day conference was a continuation of annual meetings organized by the Member States holding the Presidency of the Council of the European Union. The conference was accompanied by a seminar - *Reforms of state aid law with particular*



emphasis on regional aid. The invited guests included a representative of the Cabinet of the Commissioner for Competition, European Commission, an expert from the Office for the Monitoring of State Aid from Hungary and representatives of institutions responsible for the provision of regional aid in Poland.

■ **The conditions of the liberalisation of the gas sector in Poland (11th September 2012)**

During the debate, UOKiK presented the results of its market research - *Competition and consumer protection developments in the gas market in Poland*. The meeting provided an opportunity to discuss the obstacles and limitations involved in the development of competition in this sector and to present views on how the existing trends would evolve.

■ **2nd International Competition Law Forum (27th September 2012)⁴⁰**

Encouraged by considerable interest following the First International Competition Law Forum in 2009, UOKiK organized the second edition of this event. The guests included Joaquín Almunia - Vice-President of the European Commission, Commissioner for Competition, heads of competition authorities from all over the world, representatives of international consumer protection organizations, lawyers and entrepreneurs. The event provided an opportunity to exchange experiences within procedural fairness and its significance for the effective enforcement of competition law. Moreover, trends in the fining policy were presented as well as selected aspects of judicial review of antitrust decisions.

■ **Protection of competition in public procurement (Toruń, 12nd October 2012)**

In cooperation with the Faculty of Law and Administration of the Nicolaus Copernicus, the University of Toruń, UOKiK organized a conference on effective ways of identifying and eliminating bid-rigging. The invited guests included a representative of the OECD, representatives of competition authorities from Germany, Sweden, Spain and Hungary, as well as experts from the National Chamber of Appeal, legal firms and scholars.

■ **Meeting of the Chief Economist Working Group, DG Competition, EC (November 2012)**



These annual meetings enable the members of the ECN to exchange information. The event was accompanied by a seminar, *Effective use of economics in competition enforcement*, which was attended, among others, by Kai-Uwe Kühn - the Chief Economist of the Directorate General for Competition, European Commission, economists from international organizations and European competition authorities, as well as representatives of law firms and academia. The participants discussed, *inter alia*, the effective ways of using economic tools in detecting bid-rigging.

Initiatives promoting consumer rights

■ **The debate organized to mark the World Consumer Rights Day - Consumers on the local market of waste management (15th March 2012)**

During the debate, the organizers presented a report entitled, *Competition in the Polish market of reception and management of communal waste*, providing a starting point for a discussion on the expected impact of changes in legislation. The most noteworthy examples of activities targeted at the weaker market participants in 2012 include a series of training sessions for senior consumers - *Be a well-informed consumer*, with nearly 2 thousand participants. In addition, during the *Intergenerational Days for Promoting Activity* and the accompanying *Active 50+ Fair* in Warsaw on 24-26 September 2012, the experts of UOKiK warned senior citizens of traps which they can encounter when dealing with unfair traders.

In addition, the President of UOKiK became the honorary patron of the 3rd edition of the consumer fair organized by the Association of Polish Consumers.

⁴⁰ A video recording of the conference is available in "Media" on the website: <http://www.uokik.gov.pl/home.php>

8.2. Internet projects

Since 26 January 2012, the users of the UOKiK's website have been able to use a specially developed system for checking the availability of publications of UOKiK and ordering their free copies. Nearly 500 orders for different publications were placed last year. All publications can be downloaded online as well.

8.3. Other projects

UOKiK presented awards in the seventh edition of the *Libertas et Auxilium Competition for journalists* (25th June 2012). The aim of this competition is to reward the best newspaper articles, radio broadcasts and television programmes in respect of competition and consumer protection issues. The gala award ceremony was followed by a debate entitled *Effective ways of fighting with cartels*. It was attended by entrepreneurs, lawyers and journalists.

UOKiK presented awards in the **competition for the best Master's theses** on the protection of competition (for the fourth time) and on consumer-related issues (for the second time). The winning theses were chosen by a jury chaired by the President of UOKiK.

In 2012, the **8th Consumer Knowledge Competition** was organized in Wielkopolska under the patronage of the President of UOKiK. The competition was addressed to students of upper secondary schools. The event was co-organized by the Branch Office of UOKiK in Poznań.

The **16th "Energy" Science Picnic** (12th May 2012) provided young consumers and their parents with an opportunity to learn and test research methods which are used every day by employees of the Laboratory of Textile Products and Instrumental Analysis of UOKiK in Łódź. The children had a chance to check stretchability of different materials and their resistance to rubbing, and take part in other activities.



Additionally, UOKiK became involved in a social campaign under a slogan *Don't be cheated. Check before you sign!*, launched in November 2012. The campaign was organized jointly by the Bank Guarantee Fund, Polish Financial Supervision Authority, Ministry of Finance, Ministry of Justice, the National Bank of Poland, the Police and UOKiK. Its aim was to highlight the risk associated with taking out loans at high interest margins on a short term basis (the so-called "payday loans") and risky investments offered by financial institutions not subject to the state supervision. As a result of the information activities of UOKiK, nearly 150 press releases as well as radio and television materials were produced and published in the national media.

Cooperation with the mass media

The primary objective of the cooperation of UOKiK with the mass media is to convey its messages to the general public, thus raising the awareness of all market participants. In 2012, the Office was actively involved in cooperation with national, regional and local media. It published 227 press releases, including 31 on the protection of competition, 52 on the protection of consumers and 94 on the merger control. 28 announcements on local issues were made in regional media. A large number of comments authored by the President of UOKiK were published in national daily newspapers, including “Puls Biznesu” and “Dziennik Gazeta Prawna”.

UOKiK published 18 798 press articles and online communication materials (9 227 in the press, 9 571 on the Internet) and 221 radio and television materials concerning decisions issued by the President of UOKiK and other initiatives taken by the Office. The knowledge of antitrust law and the rights and obligations of market participants was also disseminated through comments and interviews with the managing staff and employees of the Office and within the framework of long-term cooperation with a number of editorial teams.

In 2012, UOKiK organized 7 press conferences.

In addition, UOKiK continued its cooperation with the All-Ukrainian Consumers' Federation “PULSE”. Prior to the European Football Championship, both the Polish and the Ukrainian institutions repeatedly reminded Polish and foreign consumers of their rights. In 2012, the Office produced and printed a guide in Polish, Ukrainian and English language versions for football supporters planning to travel to Poland or Ukraine for the EURO match. It provided football fans with information on their rights. The brochure was distributed in both countries.

At the initiative of UOKiK, 31 institutions took part in a joint campaign entitled *What should you know before holidays?*, which took place on 29th June 2012. Its aim was to make the public aware of a number of safety measures, the rights of the youngest consumers or protection of personal data.

8.4. Publishing activities

An important component of the information and educational policy of the Office are its extensive publishing activities. As part of its series “The Library of UOKiK”, which is a collection of reports and papers written by employees of the Office, UOKiK published the following items: *The system of antitrust proceedings in cases concerning the control of concentration between undertakings* (Mateusz Błachucki), *State aid for undertakings* (Karolina Gałązka), *Why be afraid of bank loans? The Act on consumer credit - questions and answers* (Maciej Czapliński).

In addition, the Office published a number of guides: *Finding your way in the real estate market* (Anna Jackowska), *Financial services guide*, *A guide for football fans*.

Moreover, the Office published two theses of the winners of the competition for the best Master's degree thesis on the protection of competition, organized by the President of UOKiK.

All publications were distributed among the stakeholders free of charge. They were also available in an electronic format on the website of the Office: www.uokik.gov.pl.



The organisation chart of UOKiK





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