



Office of Competition and Consumer Protection

REPORT ON ACTIVITIES 2014

Warsaw 2015

General information about the Authority

The President of the Office of Competition and Consumer Protection (UOKiK) is a central governmental authority. The powers of UOKiK are laid down in the Act of February 2007 on Competition and Consumer Protection (Journal of Laws No. 50, item 331 as amended). The Authority's activities are financed from the state budget.

Management

President of UOKiK: Adam Jasser (appointed by the Prime Minister on 20 March 2014)
Vice-President of UOKiK (Antitrust Division): Bernadeta Kasztelan-Świetlik (appointed 11 June 2014)
Vice-President of UOKiK (Consumer Protection Division): Dorota Karczevska appointed 11 June 2014)
Director General: Monika Bronkau-Lugowska (appointed by the Prime Minister on 21 August 2008)
Chief Economist: Wojciech Szymczak, Director of the Market Analyses Department

Advisory Board

The President of UOKiK is advised by the **Advisory Board**. The principal task of the Advisory Board is to issue opinions on core legislation and government proposals for strategic papers on protection of competition and consumers, make recommendations with regard to amendments to legislation and papers of that kind, and initiate cooperation with external experts, including the academic community. The Board was created on 9 May 2014.

Members of the Board:

Professor Tadeusz Skoczny (Chairman of the Board), Mark Allen, Professor at the Wrocław University of Economics
Bożena Borkowska Ph.D., Jakub Borowski Ph.D., Professor Sławomir Dudzik, Krzysztof Jaroszyński Ph.D.,
Monika Namysłowska Ph.D., Anna Piszcz Ph.D., Konrad Kohutek Ph.D.

What UOKiK does:

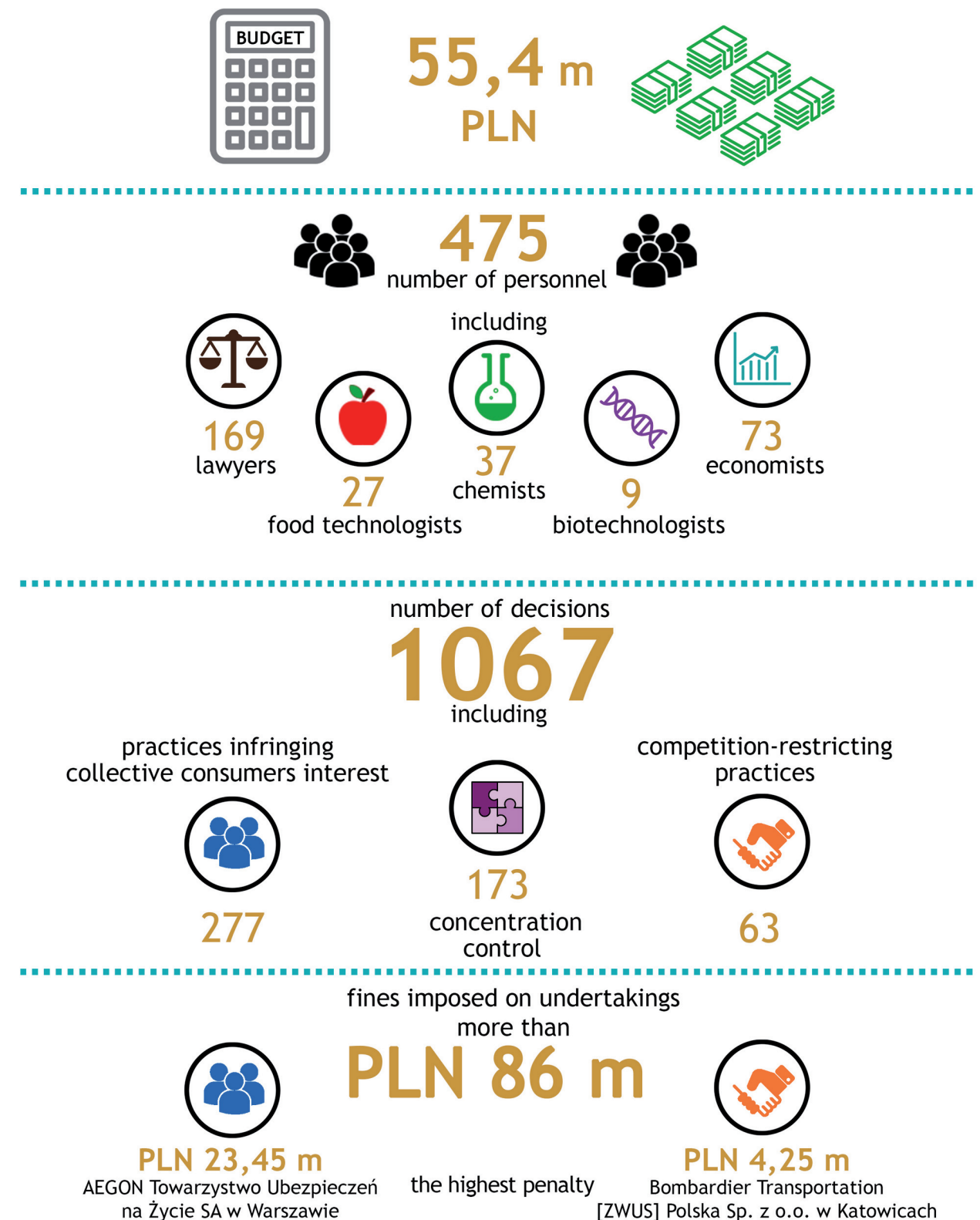
- acts to prevent disruption in the functioning and development of competition and eliminate disruption when it occurs;
- performs concentration control;
- protects collective consumer interests;
- ensures product safety and oversees the quality of non-food products and foodstuffs on sale;
- monitors state aid;
- takes part in the legislative process to create a legal framework that supports development of competition and ensures effective protection of consumer interests.

UOKiK in international rankings

UOKiK's ranking in the Global Competition Review: (★★★, consistent).

This report contains data valid as at 1 July 2015.

Facts concerning UOKiK's activities in 2014



Contents

| | |
|--|----|
| General information about the Authority | 2 |
| Facts concerning UOKiK's activities in 2014 | 3 |
| Foreword | 6 |
| Calendar of events..... | 7 |
| 1. The mission and priorities of the Office of Competition and Consumer Protection..... | 12 |
| 2. Consumer as the main focus | 15 |
| 2.1. Selected decisions concerning consumer protection and cooperation with other entities | 15 |
| Financial services sector | 15 |
| Off-premises sales | 18 |
| Activities of property developers | 19 |
| The telecommunications sector - examples of uokik decisions and court proceedings..... | 19 |
| 2.2. Court judgements in cases concerning infringement of collective interests of consumers | 22 |
| 2.3. Other examples of court rulings concerning consumer issues..... | 23 |
| 2.4. Working with consumer organisations..... | 24 |
| 3. Competition protection..... | 25 |
| 3.1. Examples of decisions in selected areas of the economy and intervention and cooperation within the competition and consumer protection network | 25 |
| Telecommunications | 25 |
| Education..... | 26 |
| The energy sector | 27 |
| Transportation | 28 |
| Protection of local communities | 28 |
| Prohibited agreements | 29 |
| Counteracting bid rigging | 29 |
| 3.2. Leniency programme | 32 |
| 3.3. Control of concentrations of undertakings | 32 |
| 3.4. Competition protection case law | 36 |
| 3.5. Application of EU competition law | 38 |

| | |
|---|----|
| 4. Market surveillance and product safety | 39 |
| 4.1. Product safety | 39 |
| 4.2. Compliance assessment programme | 40 |
| 4.3. Supervision of the Trade Inspection Authority (IH)..... | 41 |
| 4.4. UOKiK's laboratories | 41 |
| 4.5. Fuel quality inspection system..... | 42 |
| 5. State aid | 43 |
| 6. Legislative works | 45 |
| 7. Social research and market analysis..... | 50 |
| 8. Competition and consumer protection awareness campaigns..... | 52 |
| 8.1. Public appearances made by the management of UOKiK | 52 |
| 8.2. Social campaigns and conferences | 53 |
| 8.3. Promotional competitions and campaigns..... | 55 |
| 8.4. What the media say about us | 55 |
| 8.5. Publications | 56 |
| 9. International cooperation and contact with EU institutions | 57 |
| 9.1. Multilateral cooperation | 57 |
| 9.2. Bilateral cooperation | 59 |
| 9.3. International meetings and conferences | 59 |
| <i>Postscript</i> | 60 |
| Organisational chart..... | 61 |
| Appendix - List of abbreviations..... | 62 |

Foreword

Enactment of legislation that is of major importance for consumers and undertakings - the Act on Consumer Rights - building market participants' confidence, and fruitful relationships forged with other regulators are just some of the achievements on which UOKiK was able to pride itself at the end of 2014.

UOKiK focused primarily on eliminating market practices that cause severe dysfunction, among other things looking at products offered by undertakings in the financial sector: the wording of advertising of selected financial products, the terms on which shadow banks lend, and the structure of unit-linked life insurance policies. Following inspections, four decisions were issued finding large financial institutions operating in Poland to have infringed collective consumer interests.

A lot of attention was also paid to analysis of clauses in contracts used by property developers, travel agents, and telecommunications operators, as well as undertakings selling goods online or off the premises. UOKiK's decisions which deserve a mention in particular concern sales of cooking appliances and life support equipment at so-called "product demonstrations", aimed primarily at the elderly. UOKiK's consumer protection division played a special role in operations of this kind, supported by experienced specialists and a cell set up to take on responsibility for market surveillance and analysing complaints.

UOKiK reacted equally efficiently to detected infringement of competition and consumer rights, by investing above all in an open approach and dialogue with business undertakings, but also applying measured responses.

Many decisions were backed up by economic analysis, which meant that breaches could be dealt with in a manner adequate for the specific nature of a particular market. Under the supervision of the UOKiK's Chief Economist, analyses were carried out for the purposes of competition protection cases (the telecommunications services market, coal market, and elementary school textbook market), concentration control, and calculating the extent of potential consumer threats (such as analysis of costs and benefits to be gained from proposed amendments to the Property Development Act, examining the effects of products of financial firms on consumers and the market, and checking whether those institutions calculate the annual percentage rate).

In 2014 the "competition and consumer protection network" was expanded to include other interested parties, through currently existing relationships. The enforcers that UOKiK has been working with within this network include sector regulatory bodies such as the Office of Electronic Communications (UKE),

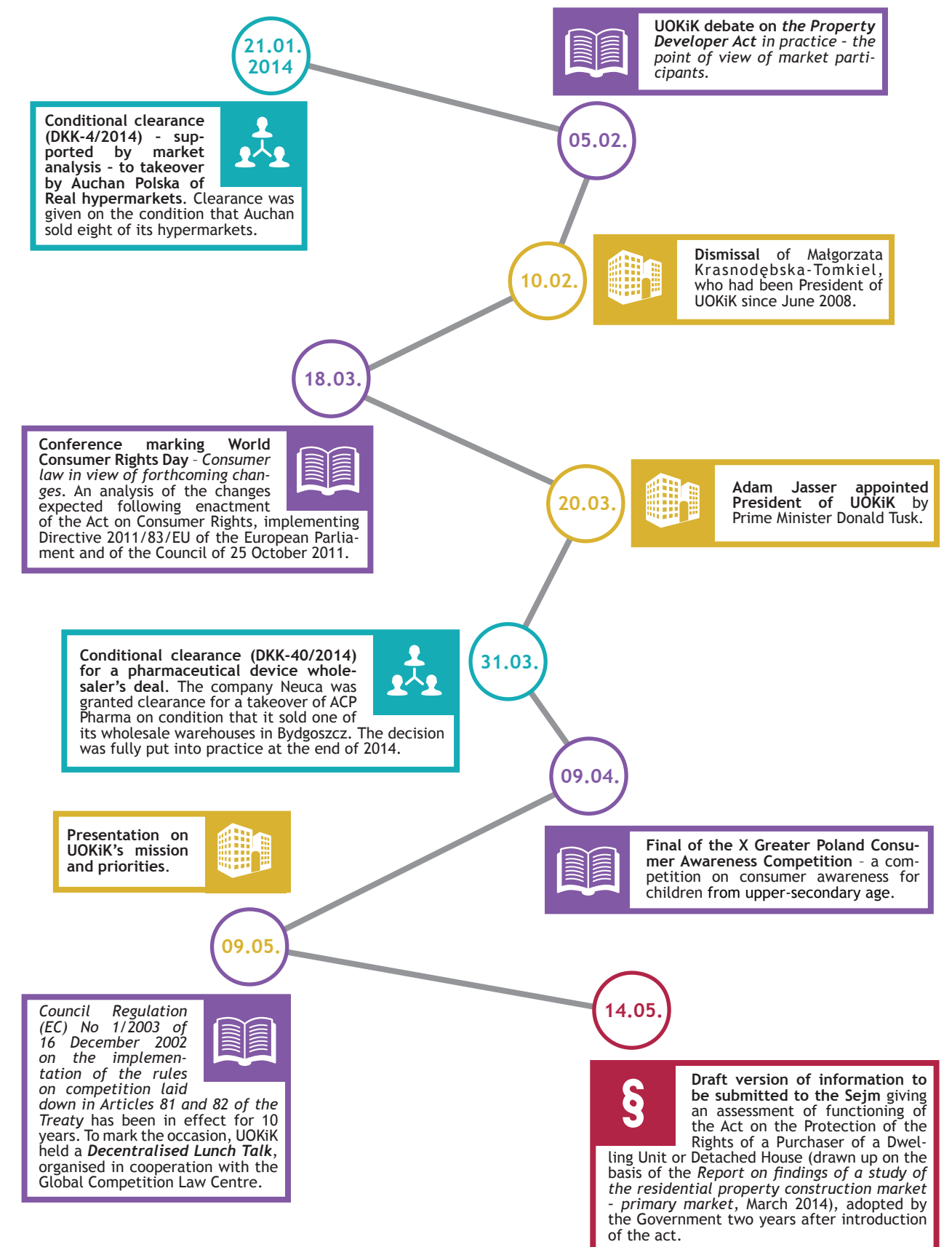
Financial Supervision Authority (KNF) and the Energy Regulatory Office (URE), law enforcement agencies, and non-government organisations. The effects of these measures can be seen for example in cooperation initiated with the Prosecutor's Office, Police, and Central Anti-Corruption Bureau (CBA) to detect bid-rigging.

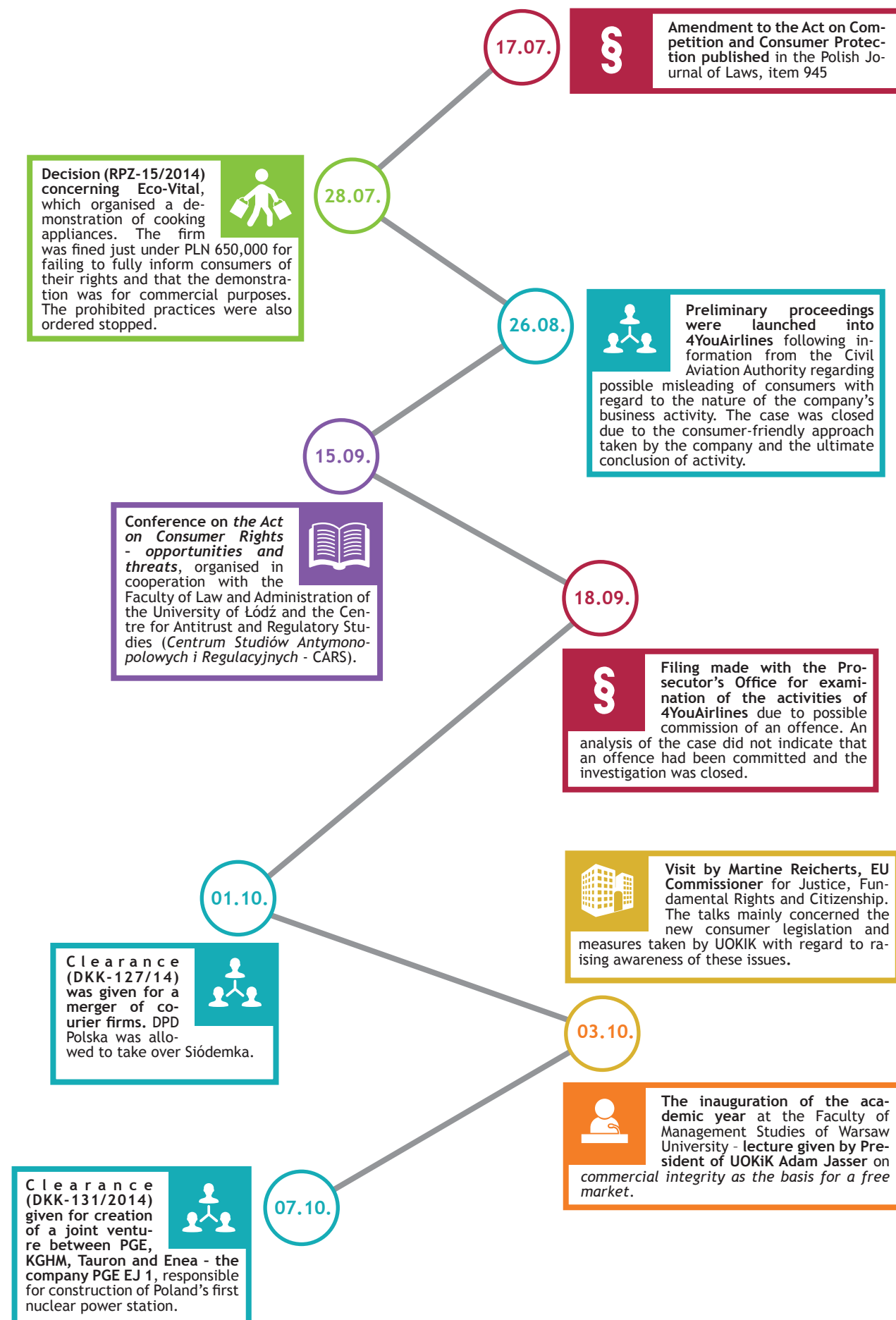
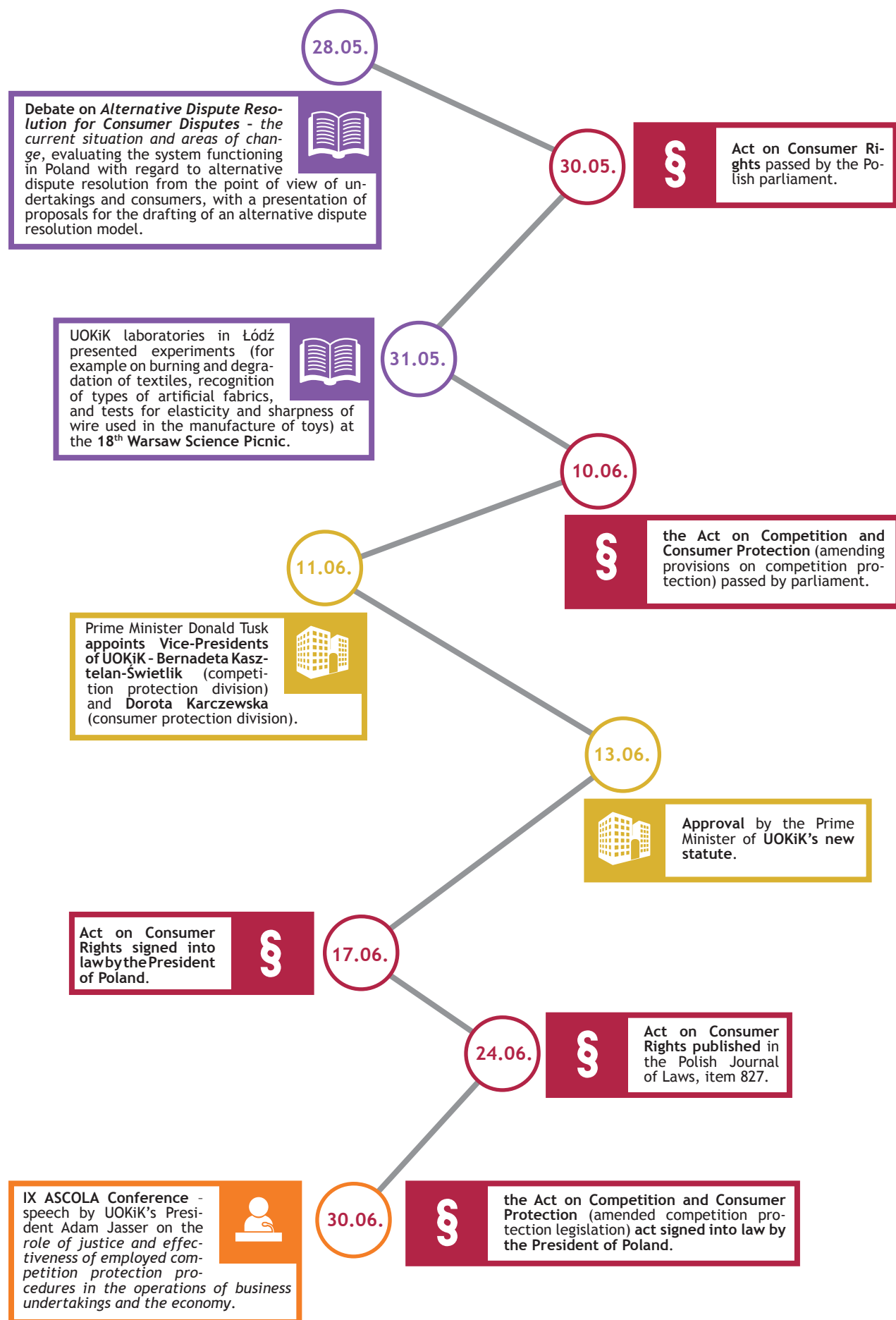
In 2014 UOKiK also undertook legislative activities. The joining of forces with other state authorities is having an ever greater effect, which can be seen for example in the efficient introduction into the Polish legal system of the Act on Consumer Rights (this systemically reinforces consumer protection) and the Act on Competition and Consumer Protection and work to amend it. Last year UOKiK also continued its work to implement the core aims of the Act on Alternative Dispute Resolution (ADR) and took part in consultations concerning legal solutions put forward among others by the Ministry of Health (MZ), Energy Regulatory Office (URE), and the Ministry of Finance (MF). Work also continued on a proposal for the *Competition and Consumer Protection Policy*, which identifies the major issues that determine how these two areas function within the Polish economy.

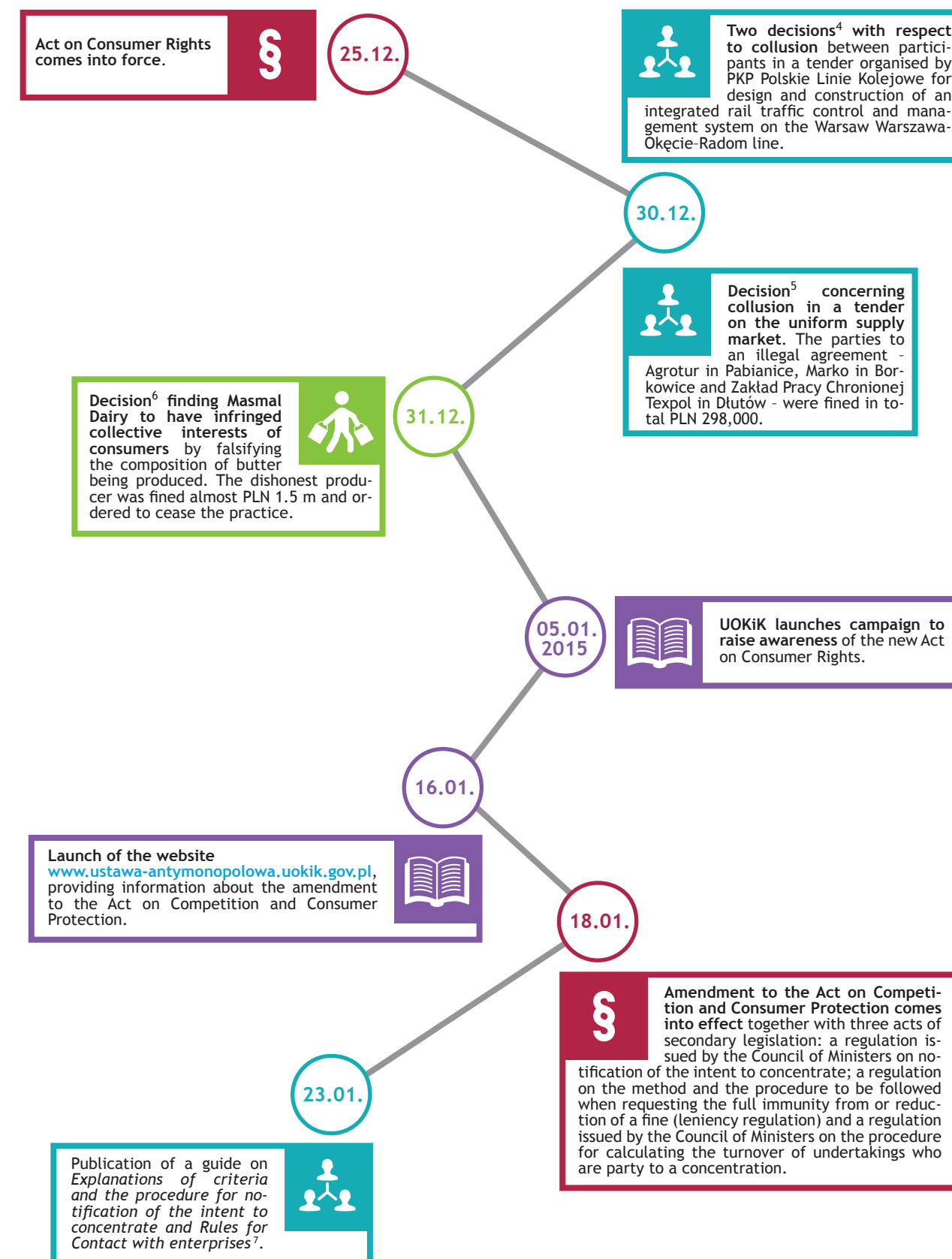
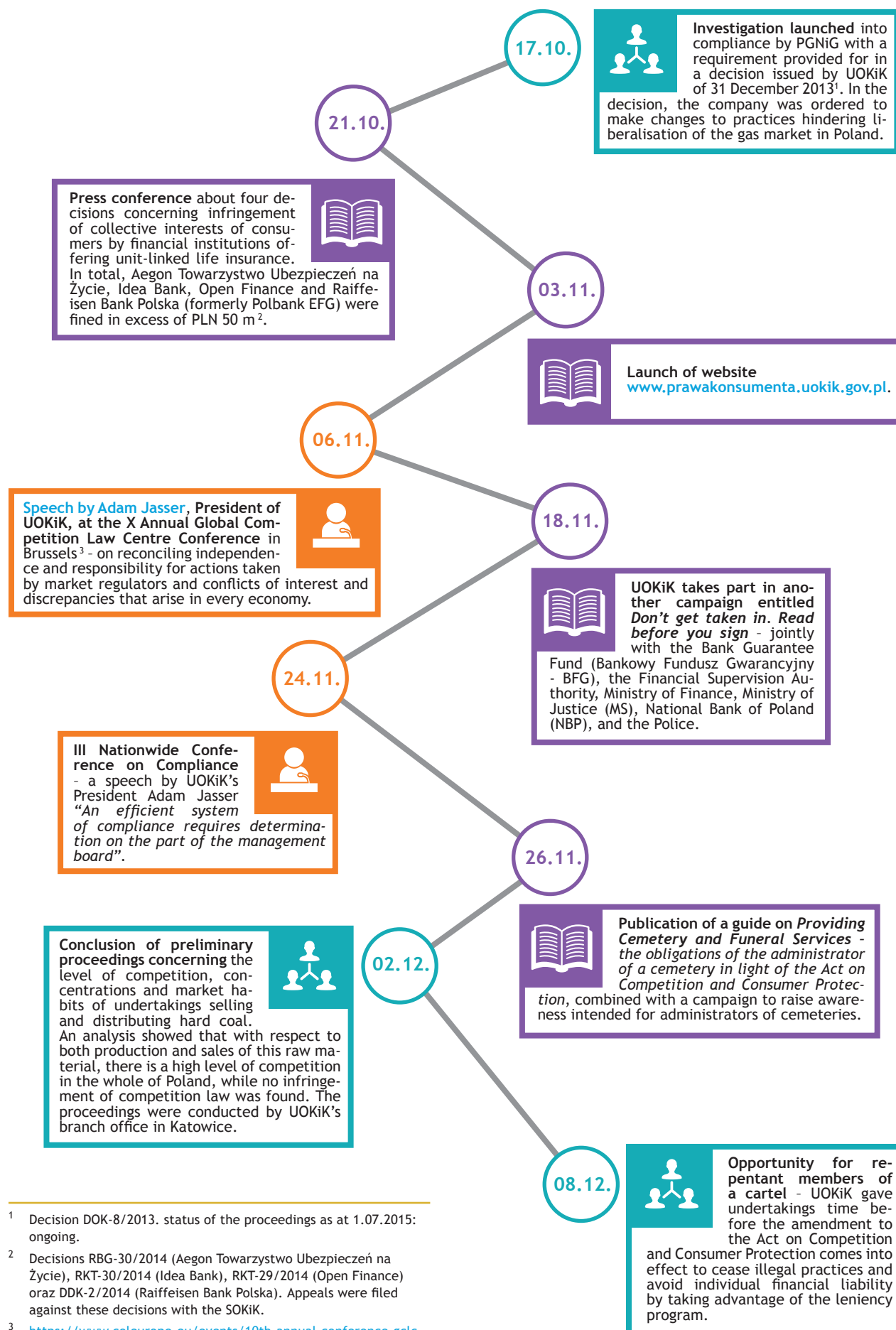
In addition to that, UOKiK also made its mark in the international arena, when representatives took part for instance in plenary sessions of the European Competition Network (ECN) working groups for particular subject areas, and annual meetings of the heads of European antitrust authorities. UOKiK experts were also involved in a project to enhance knowledge and exchange experiences with employees of the newly created Georgian antitrust authority.

As was the case last year, the ranking awarded UOKiK in the prestigious antitrust publication *Global Competition Review* was consistent.

Calendar of events







¹ Decision DOK-8/2013. status of the proceedings as at 1.07.2015: ongoing.

² Decisions RBG-30/2014 (Aegon Towarzystwo Ubezpieczeń na Życie), RKT-30/2014 (Idea Bank), RKT-29/2014 (Open Finance) oraz DDK-2/2014 (Raiffeisen Bank Polska). Appeals were filed against these decisions with the SOKiK.

³ <https://www.coleurope.eu/events/10th-annual-conference-gclc>.

⁴ Decisions DOK-10/2014 and DOK-11/2014. Appeals were filed against both decisions.

⁵ Decisions DOK-9/2014. The company filed an appeal

⁶ Decisions RBG-46/2014. The company filed an appeal.

⁷ <https://uokik.gov.pl/download.php?plik=16154>.

The mission and priorities of the Office of Competition and Consumer Protection

The mission of UOKiK is to raise the level of welfare of consumers by providing effective protection of consumer interests and rights, and providing support for competition which helps to optimise economic growth and innovation.

This mission will be pursued while respecting the principles of procedural fairness in proceedings and by working with institutions within the competition and consumer protection network which is now being formed.

UOKiK's PRIORITIES: effectiveness, efficiency and an openness of administrative activities

I. Effectiveness of activities

- **effectiveness of protection of competition and consumers**, resulting in higher quality of competition, increased safety of consumers, and consumers having freedom of choice, which is the foundation for a social market economy.
- **tough but reasonable reaction to infringement of competition rules and consumer interests.**
- **maintaining a balance between commercial freedom and regulatory intervention**, and, consequently - increased efficiency of management and greater innovation, i.e. the key factors that bring about material comfort of consumers.
- **ensuring compliance with the three principles of corporate governance** which are the basis of a market economy, and which are:
 - » freedom to compete, meaning firms being free of anti-competitive behaviour of other undertakings, for example collusion or abuse of a dominant position on the market;
 - » a level playing field for firms competing on markets, meaning freedom from disruption of competition by the state using administrative barriers, subsidies or preferential treatment of

some entities at the expense of others, which cannot be justified by the public interest;

- » fair play in competition, meaning using only fair methods which are legally compliant and in line with good and moral practice towards other market participants (competitors, customers, consumers).

- **use of economic analysis** as the basis for making administrative decisions, having regard for their implications for the material comfort of consumers and functioning of the entire Polish economy. Use of economic tools means that changes emerging on markets can be diagnosed on an ongoing basis, irregularities can be dealt with quickly, and it can be determined to what extent entities operating in a particular sector affect each other. The importance of use of economic analysis was stressed by the inclusion of the Chief Economist in the management personnel of UOKiK in June 2014.

- **measures to expand the institutional competition and consumer protection network**, the operations of which in turn bring about stable, competitive markets, with consumers at the centre. The network comprises government authorities, private-public entities, and non-government organisations.

II. Efficiency

- More effective protection of consumers is to be achieved through **the efficient elimination of severe dysfunction and by educational and awareness campaigns**. To this end, towards the end of 2014, broader powers were given to the Department of Consumer Protection, which is mainly responsible for monitoring the market, and this includes new products, services and advertising, and quick reaction to consumers' problems.
- UOKiK is working on **formulating standards in relationships with market participants**. In order to be in a position to take more

predictable and comprehensible action, UOKiK is open to dialogue with undertakings and to obtaining from them information about how a particular sector functions. **Explanations and guidelines** which simplify procedures connected with ongoing proceedings and make an undertaking's contacts with officials at UOKiK easier, and specify best practices which safeguard consumer rights, play a vital role in mutual relations. This is because these practices should be introduced by undertakings before they learn of the final decision in their case.

III. Openness

- In its activities, UOKiK aims to **detect dangers as quickly as possible**, which can be achieved due to **exchange of information within the competition and consumer protection network**. The Advisory Board to the President of UOKiK and external experts (for example members of the Polish Competition Law Association (Stowarzyszenie Prawa Konkurencji), the International Chamber of Commerce (Międzynarodowa Izba Handlu), the Polish Association of Company Lawyers (Polskie Stowarzyszenie Prawników Przedsiębiorstw) as well as other consumer organisations and associations, undertakings and experts on competition law) which act in a consultancy capacity, are a vital link in the network.
- UOKiK is open to information from undertakings which have the most extensive knowledge of the markets on which they are active. In light of this, in 2014 a series of preliminary consultations were held with undertakings and other interested parties on proposals for regulations for the Act on Competition and Consumer Protection (the leniency programme, concentrations, calculating an undertaking's turnover). To give an example, during one meeting new regulations were discussed which provide for fines for managers, and a discussion was held on whether there are legitimate grounds for businesses to adopt compliance programmes.
- In addition to consultations held due to requirements under generally applicable law⁸, UOKiK also sought the opinions of market participants regarding guidelines for the Act on

Competition and Consumer Protection (issues relating to the leniency programme, notification of the intent to concentrate, and the procedure for calculating turnover of undertakings).

IV. Creating the competition and consumer protection network

- One example of building relationships with law enforcement authorities was a meeting⁹ between the Management of UOKiK and the **Prosecutor General** Andrzej Seremet. At that meeting, the options for closer cooperation and exchange of information about offences harmful to consumers and competition were discussed.

In turn, by working together with the **Warsaw Appellate Public Prosecutor's Office**, UOKiK was able to obtain information about preliminary proceedings concerning a tender organised by the Polish National Police Headquarters for fingerprint readers. On the basis of the information received and details as to the events that occurred in the course of the tender, and notes made on information provided by suspects, UOKiK instituted antitrust proceedings in which it proved that an illegal competition-restricting agreement had been entered into¹⁰.

- Another example of activity within that network was **work with the Regional Prosecutor's Office in Warsaw**, which was conducting preliminary proceedings concerning a tender for supply of an automatic train control system. The files provided were used in competition protection proceedings resulting in issuance of a decision¹¹ finding bid-rigging to have taken place in a tender between Zakłady Automatyki "Kombud" S.A. and KZA Przedsiębiorstwo Automatyki and Telekomunikacji S.A. with Bombardier Transportation (ZWUS) Polska sp. z o.o.
- As a result of an operation carried out jointly with the **Insurance Ombudsman**, UOKiK obtained a range of opinions from consumers about lack of clarity of activities of insurance companies. Checks were carried out on the basis of this information, and as a result, four financial institutions were fined for infringing collective interests of consumers. The irregularities detected led UOKiK to propose modifications to the government's works on the Act on Insurance and Reinsurance.

⁸ The requirement for public consultation in cases of major importance to local and regional communities is not provided for directly in the Polish Constitution of 2 April 1997, but does follow from constitutional principles, in particular the principle of the nation's sovereignty (art. 4), the principle of a democratic state governed by the rule of law (art. 2), the principle of civil society (art. 11, 12, 14, 16 section 2, 17, art. 25 section 2) and the principle of a social market economy (art. 20).

⁹ Meeting held 13 August 2014 at the Prosecution General.

¹⁰ Decision DOK-8/2014 has not yet become legally binding. An appeal was filed with the SOKiK.

¹¹ Decision DOK-10/2014 has not yet become legally binding. An appeal was filed with the SOKiK.

- In 2014 UOKiK began to work more closely with sector regulators such as the **Financial Supervision Authority (KNF)**, the **Energy Regulatory Office (URE)** and the **Office of Electronic Communications (UKE)**. It also worked together with the **Internal Security Agency (ABW)**, the **Central Anticorruption Bureau**, and **Supreme Audit Office (NIK)** in the detection of bid-rigging. In addition, UOKiK received reports of possible infringement of competition law and consumer rights. The largest number of reports came from the KNF, CBA, NIK, General Directorate for National Roads and Motorways (GDDKiA), the Social Insurance Institution (ZUS) and also voivode inspectors of the Trade Inspection Authority (WIIH). Meanwhile, UOKiK submitted reports to institutions such as the CBA, the Inspector General for Personal Data Protection (GIODO), the Prosecution General, the Police, and the WIIH. An example of cooperation commenced in this way was collusion on the market for supply of military uniforms. The procedure, which lasted two years, involved three companies which were using a system of cover bidding to manipulate tenders. **In addition to instituting proceedings which confirmed that bid-rigging had taken place¹², UOKiK made two filings relating to the case with the Prosecutor's Office. As a result of the two filings, officials at both of the institutions exchanged information.**

Enhancement of the role of economic analysis

The system of state intervention in the economy for the purpose for protection of competition, i.e. ensuring that market mechanisms operate properly, is based on economic grounds. Economic regulation in the form of laws protecting competition on one hand ensures that the competition mechanism is protected, while on the other it ensures the appropriate level of legal certainty for undertakings.

Application of the law falls within the domain of legal practitioners, however, and thus it is specialists in this field who for many years dominated protection of competition. In recent decades it has been noted however that many cases prove elusive when it comes to a simple manner of appraisal, and in-depth economic analysis is required. The idea emerged of taking a more economics-based approach to competition law, which gave rise among other things to the separate formation of specialist economic units within antitrust authorities.

Here the role of economists is above all to evaluate the foreseeable effect the issues examined by antitrust

authorities will have on the economy, and consequently on consumers. Among other things, economists analyse the effects practices of undertakings had or could have had (in particular those who have a dominant position on the market), how harmful agreements reached with a view to restricting competition have been nor could have been, and how mergers and acquisitions notified to UOKiK might change the market.

Since mid-2002 there has been a specialist unit in UOKiK which is responsible for economics and market studies, and the field in which it operates is steadily widening. Economists are involved in work on antitrust cases and also provide opinions on all decisions made in this area. Due to the fact that UOKiK is an authority that safeguards not only competition but also consumer interests, in this regard as well the role of economists turns out to be substantial, especially as far as determining the harm suffered by consumers and assessing the functioning of the consumer on the financial services market is concerned.

Economic analysis is a crucial element of the preparation and assessment of the effects of regulation, and also of the formulation of legislative provisions having regard for the economic consequences of these provisions. In 2014 a team of economists at UOKiK took part among other things in work on new regulations for the Act on Competition and Consumer Protection, *Regulation issued by the Council of Ministers of 23 December 2014 on Notification of the Intent to Concentrate and the Regulation issued by the Council of Ministers of 23 December 2014 on the Procedure for Calculating Turnover of Undertakings which are Party to a Concentration*.

¹² Decision DOK-9/2014.

2. Consumer as the main focus

PRACTICES WHICH ARE AN INFRINGEMENT OF COLLECTIVE INTERESTS OF CONSUMERS

Infringement of collective interests of consumers occurs where the unlawful practice of an undertaking affects an unlimited number of people, and therefore, potentially, anyone could suffer harm due to that practice. Inquiries into practices which are an infringement of collective interests of consumers are only instituted ex officio, i.e. where the subject matter of the proceedings is the imposition of an obligation on a party or restriction or revocation of a party's rights. It is possible however to submit a report to UOKiK in writing, which becomes grounds for intervention. In 2014 the Authority received **908** filings of this kind.

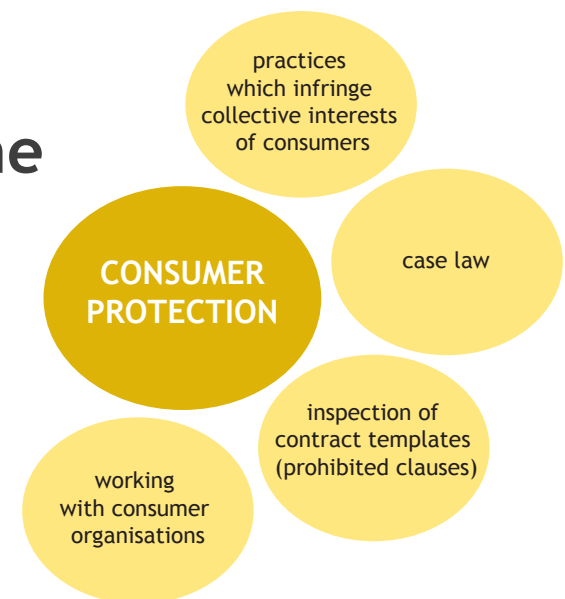
In **205** cases the information received was a factor in instituting preliminary proceedings, and in **68** - in instituting preliminary proceedings concerning infringement of collective interests of consumers. UOKiK's aim is to enforce the rules of fair play on the market, not only by issuing decisions penalising undertakings, but also through **soft measures** - suggesting best practices and commitments to making changes. Last year **118** cases were resolved in this way.

2.1. Selected decisions concerning consumer protection and cooperation with other entities

FINANCIAL SERVICES SECTOR

In 2014 UOKiK analysed products on offer in the financial sector which are adverse for consumers. This is because there are cases in which consumers are misled: they purchase a product which is offered as certain and safe, while in fact it often involves a high level of risk. Offers made by undertakings that provide credit facilities and loans are analysed by the UOKiK team of economists, who focus in particular on checking whether the APR is calculated correctly. This is a ratio that is required by law and which enables financial products offered on various terms to be compared.

UOKiK also points out to undertakings that they have an obligation to inform customers in a clear and unambiguous way about the investments made, the potential risk, the purpose for which the entrusted funds are used, and the manner in which the funds will be secured. Despite warnings, many financial institutions do not operate in compliance with the



law, which is demonstrated by the fact that since 2012 illegal practices of undertakings in the financial sector have been questioned by UOKiK in more than 170 decisions.

UNIT-LINKED INSURANCE POLICIES

There is no doubt that the sale of policies with unit-linked insurance (UFK) to consumers was a dishonest form of sale. They have frequently been sold as a safe and attractive investment product to persons who intended to open an ordinary deposit account and were not aware that they might lose a substantial portion of their funds if they wanted to withdraw. This is an example of the problem of *misselling* in the financial sector, which has triggered a wave of complaints made by consumers and has become an object of surveillance for financial regulators and consumer protection agencies in many countries.

In October 2014 UOKiK issued four decisions concerning unit-linked insurance policies, finding illegal methods to be used by insurance companies and banks offering those products: **Aegon Towarzystwo Ubezpieczeń na Życie¹³**, **Idea Bank¹⁴**, **Open Finance¹⁵** and **Raiffeisen Bank Polska (formerly Polbank EFG)¹⁶**.

These decisions may be helpful for consumers who wish to pursue claims using civil law remedies¹⁷.

¹³ Decision RBG-30/2014, fine of PLN 23 446 206. The practice was ordered stopped.

¹⁴ Decision RKT-30/2014, fine of PLN 4 172 571. The practice was ordered stopped.

¹⁵ Decision RKT-29/2014, fine of PLN 1 673 546. The practice was stopped.

¹⁶ Decision DDK-2/2014, fine of PLN 21 122 088. The practice conducted by Polbank EFG, taken over by Raiffeisen, was stopped.

¹⁷ "Final decision made by a consumer protection Authority confirming a breach of the Act on Competition and Consumer Protection is binding for a common court" - a quote from a Supreme Court judgement, case file III SK 61/14 of 23 April 2015 (see also the judgement issued by a panel of 7 Supreme Court judges of 23 July 2008, III CZP 52/08).

REPORT ON ACTIVITIES 2014

Consumer as the main focus

In decisions concerning Open Finance and Idea Bank, UOKiK's objections concerned the failure to provide consumers with essential information at the moment an agreement was being concluded and misleading them with respect to risk. In the case of Aegon Towarzystwo Ubezpieczeń na Życie, UOKiK found the actions of the insurance company at the performance phase of the agreement to be illegal, and in the case of Raiffeisen Bank Polska (formerly Polbank EFG) prohibited practices were found during the pre-contractual, agreement conclusion, and agreement performance stages.

When concluding agreements, Idea Bank and Open Finance did not provide information about the risk related to the product, or of the high costs of withdrawing from an agreement before the period for which it was concluded was due to expire. When presenting the products on offer, employees presented the benefits at the expense of information about the potential losses. They presented unit-linked insurance policies as standard deposit accounts or a saving product. This was confirmed in complaints from customers which UOKiK has received in large numbers.

While the inquiry was in progress Open Finance ceased a practice that had been employed for six years. In the case of Idea Bank, UOKiK ordered the rules for selling unit-linked insurance policies, which had been in place since 2011, to be changed.

In turn, Raiffeisen Bank Polska (formerly Polbank EFG) was concluding agreements over the telephone but did not provide the legally required information beforehand. The bank refused to accept withdrawals by consumers within the 30-day time limit provided for by law. The bank also failed to state that the *Savings Multiplication Program "Kumulatus"*, which was on offer, was in fact a unit-linked insurance policy. Consultants presented the offer as a "scheme", and form of "saving". Moreover, when proposing the offer, the bank concealed from customers the fact that the value of buying back the invested funds within the first few years of the agreement was considerably higher than the premiums paid. As a result, many consumers were not aware which product had been chosen.

The last of the institutions penalised - Aegon Towarzystwo Ubezpieczeń na Życie - misled customers as to the effectiveness of an amendment to a life insurance agreement while it was in force and the possibility of an undertaking charging a liquidation fee on unilateral terms. In 2012 the Court of Competition and Consumer Protection (SOKiK) found a clause used by the company, which said that the customer would lose the entire savings in the event of termination of the agreement within the first or second year, to be a prohibited clause. As a result of a legally binding judgement issued by the SOKiK, the company was ordered to stop using the prohibited clause when trading. In practice this means that a liquidation

fee cannot be charged when a consumer withdraws from an agreement while the agreement is in force. UOKiK found that instead of ceasing to charge fees which had been prohibited by the SOKiK, Aegon Towarzystwo Ubezpieczeń na Życie unilaterally changed the method in which they were calculated. In cases in which customers served notice of termination of agreements, the insurance company stated that a liquidation fee would be charged which was determined according to new rules. Meanwhile, by law, a life insurance agreement cannot be unilaterally amended while it is in force. UOKiK found that informing consumers that new rules had supposedly been established in currently binding agreements for calculating the liquidation fee might be misleading. This is because as a result of that information, consumers might opt to continue with the agreement due to fear of being charged a higher fee, and agree to cover that cost.

The total fines on the undertakings mentioned came to PLN 50 414 411¹⁸.

Banks and other financial institutions should be a model of commercial integrity, providing, at every stage, clear, reliable and objective information about the conditions, costs, and risks and helping to select a product suited to a customer's true needs and capabilities.

Adam Jasser, President of UOKiK

Working with the Insurance Ombudsman is an important element of UOKiK's activities with respect to insurance. Both institutions monitor the activities of businesses in terms of prohibited practices which harm the collective interests of consumers and use of prohibited contractual clauses.

Based on analyses performed to date on unit-linked insurance policies, UOKiK, together with the Insurance Ombudsman, has proposed legislative changes aimed at "civilising" products of this kind and requiring institutions that sell them to redress the adverse effects for customers who are misled. UOKiK put forward proposals during government work on the Act on Insurance and Reinsurance, suggesting among other things that the new legislation should require parties offering investment-based insurance policies to perform an analysis of a customer's needs and financial standing. Consumers also need to be given the right to withdraw among other things from a unit-linked life insurance agreement or to have the option of withdrawing from an agreement of that kind for 60 days from the moment they receive information for the first time about the amount of the payments which are due under the concluded

¹⁸ The decisions are not final. The companies filed appeals with the court.

insurance agreement. This includes the buy-back value if the amount of the payments changes while the insurance agreement is in force (the consumer should receive that information from the insurance company at least once a year). UOKiK also considers it vital to limit liquidation fees for withdrawal from a unit-linked life insurance agreement. Under the legislative proposal now being worked on, in such a case the insurance company pays the value of the capital fund insurance units as at the day notice is received of withdrawal from the agreement, less no more than 4 percent. The insurance company may deduct the cost of the insurance coverage provided from the amounts being paid unless those costs have already been settled.

If the insured financed the cost of the insurance premium the policy holder promptly reimburses the insured for the amounts paid by the insurance company. It was also stated that it is important for the position of the Insurance Ombudsman to be strengthened during alternative dispute resolution between consumers and insurance companies in the cases of investmentbased agreements. These proposals are reflected in the legislative proposal¹⁹.

ADVERTISING IN THE FINANCIAL SECTOR (practices which infringe collective interests of consumers)

In 2014 in response to suggestions made by consumers who felt that their lack of specialist knowledge of financial products was being used against them, UOKiK monitored the financial market and found that on this market there was a particular kind of asymmetry of information - consumers are provided with imprecise and incomplete information by institutions which offer complex credit, insurance, or investment products. For this reason, on 17 September, administrative proceedings were instituted with respect to four financial institutions to determine whether or not a consumer watching an advertisement promoting their products was misled and had an opportunity to familiarise him/herself with the message.

Inspections were carried out with respect to the following: Alior Bank ("Lowest Rate of Instalments Guaranteed" campaign) Bank Gospodarki Żywnościowej ("Interest Nut" campaign), Euro Bank ("Worth Checking Quality and Price. Cash Loan at Attractive Rate of Interest from as little as 5.7 percent") and Provident Polska ("Try it Out and Stay" campaign). In December 2014 further inquiries were instituted with regard to Credit Agricole ("Loan Calculated Simply for PLN 10" campaign)

UOKiK was concerned at the manner in which information was provided about the cost of a credit facility in advertisements shown on television: the length of time for which information important for a consumer was

given, about the rate of interest, the entire amount to be paid, and the APR, was disproportionately short in relation to the entire message. Also, the information given was written in small print. UOKiK's reservations concerned therefore whether the consumer was able to read the contents of the advertisement and whether a consumer knew, having watched the advertisement, what kind of costs the consumer would have to bear. The case is pending.

Every consumer has a right to reliable, complete and clear information about a product or financial service in order to be able to compare products on offer on the market and make the decision that is best for him/her.

Adam Jasser, President of UOKiK

UOKiK continues to see a need for an all-embracing approach to protection of consumers on the financial product market. The following are essential: enforcing the rules of commercial integrity, a consistent approach to prosecution for infringement of consumer rights, and soft measures in the form of persuasion, informing undertakings of best practices, and working with other institutions to devise standardised regulations for specific industry sectors. This is also why, in December 2014, UOKiK monitored advertising of financial products. An analysis of advertisements made by 28 financial institutions - banks, lending companies, credit unions, and intermediaries - showed that messages were not always clear and reliable as to the information given to consumers about the conditions of the product on offer. Breaches occurred mainly with regard to provisions in the Act on Consumer Credit²⁰ and the Act on Combating Unfair Commercial Practices²¹.

At the same time, talks were entered into with the Polish Bank Association (ZBP) concerning the drawing up of standards for advertising consumer credit. UOKiK submitted a proposal to the government containing amendments to provisions specifying the minimum standards for advertising or offers of financial services, in such a way that a customer receives, from the outset, reliable, comparable information about a particular product and any costs connected with it.

THE SHADOW BANKING MARKET

UOKiK regularly monitors the shadow banking market. Among the illegal practices employed by undertakings active in this sector are misleading advertising, hindering withdrawal from an agreement, failure to comply fully with disclosure obligations, and charging exorbitant fees.

²⁰ Act of 12 May 2011 on Consumer Credit and the Act of 14 September 2012 amending the Act on Consumer Credit and the Act on Corporate Liability for Offences Subject to a Fine (Journal of Laws of 2012 No. 0, item 1193).

²¹ Act of 23 August 2007 on Counteracting Unfair Commercial Practices (Journal of Laws of 2007 No. 171, item 1206).

REPORT ON ACTIVITIES 2014

Consumer as the main focus

During proceedings concerning the Provident case, UOKiK performed an analysis of the templates and the information forms for granted loans. A review was also carried out of the wording of agreements concluded with consumers. In addition, UOKiK team of economists carried out an evaluation of the company's product range in terms of the benefits for consumers. The following irregularities were revealed in the analyses:

- » the method that Provident applied to calculate the amounts payable due to granting and repayment of loans might be an infringement of consumer interests;
- » fees for providing lending-related services at a consumer's home (collecting money at the home of the consumer) varied despite being set for the same number of instalments. In reality the level of the fees for services provided at someone's home was linked to the amount of the loan, and not the value of the service.

The company applied a similar criterion when charging preparatory fees. According to UOKiK, this practice is illegal due to the fact that a fee for a service should be linked to the costs incurred by the undertaking.

Provident undertook to change the practices that were questioned by introducing fixed rates for fees, which were linked to the services being provided. The changes are due to come into effect as of 1 August 2015 at the latest.²²

OFF-PREMISES SALES

UOKiK has been receiving complaints from people purchasing goods in off-premises sales. In many cases these complaints are grounds for taking measures and eliminating irregularities. One of the effects of measures taken in this regard was issuance of decisions in 2014 concerning among others the Poznań company Nuovo²³ (rehabilitation and healthcare products), Zakład Usługowo-Handlowy Gazpron²⁴ in Konin (sale and assembly of gas cookers and gas sensors) and Sobex Gaz²⁵ (sale and assembly of gas sensors).

In the case of Nuovo, UOKiK's objections related to the fact that there were no established procedures for charging debt recovery fees. In addition, the company reserved the right to charge customers for costs of up to PLN 300 for each domestic visit of persons reminding customers that they were behind with payments (it was not stated how frequently these visits might occur), and to charge PLN 400 for withdrawal from an off-premises contract. UOKiK ordered Nuovo to cease the practices infringing collective rights of consumers and fined the

company PLN 21 536. The decision is legally binding, and the undertaking did not exercise the right of appeal to the Court of Competition and Consumer Protection (SOKiK).

Similar practices were employed by Sobex Gaz, which was charging customers who withdrew from an agreement (despite the fact that by law they were entitled to serve notice of cancellation within a specified time limit at no further cost) a fee for the service and use of the item of PLN 100. In addition, the undertaking reserved the right in the agreement template among other things to perform a service at a time later than that established, by as much as 21 days. This is a prohibited clause due to the fact that it provides for the option of unilateral change of the time limit for performance of an agreement by an undertaking without legitimate reason. If a consumer incurs losses due to improper performance of an agreement for reasons for which the undertaking is responsible, then, by law, the consumer is entitled to compensation. UOKiK fined Sobex Gaz a total of PLN 4440 for practices infringing collective interests of consumers. During the proceedings, the undertaking ceased some of the contested practices. The decision is legally binding²⁶, and Sobex Gaz did not exercise the right of appeal to a court.

In turn, among other things, Zakład Usługowo-Handlowy Gazpron stipulated in an agreement that *where the maintenance service is called out without legitimate reason the customer is required to cover the costs of travel and a man-hour of the maintenance service, of PLN 90*. This clause might discourage the company's customers from submitting complaints for fear of incurring additional costs, while, under the law, costs related to complaints submitted by consumers (for example travel by maintenance service personnel) are borne by the undertaking. UOKiK fined Gazpron PLN 1011 for practices infringing collective interests of consumers. Even before the proceedings came to an end, the firm ceased the prohibited practices, leading to the fine being reduced. The decision is legally binding²⁷.

Prohibited practices are also employed by undertakings conducting **sales during product demonstrations**. An example of this is Eco-Vital, which offers cooking appliances. The firm invited people *for snacks, meetings, cooking workshops, and performances by celebrities* without stating that the idea was to conduct sales. Employees were trained to focus on the non-commercial aspects of a meeting (for example artistic performances or lectures on healthy eating). There was also no information on the tickets given out that the *cooking workshops* were organised for commercial purposes. UOKiK found that Eco-Vital infringed collective interests of consumers by not disclosing that the presentation was for commercial purposes and not informing consumers adequately of their rights. UOKiK ordered the prohibited practices to be stopped and fined the undertaking almost PLN 650,000²⁸.

In 2014 UOKiK conducted similar cases concerning sales of paramedical equipment (decisions in the Mat-Medic²⁹ and Vigget³⁰ cases).

UOKiK was assisted in the area described by other departments. In June 2014, in cooperation with 22 state institutions, UOKiK informed consumers of rights and obligations of consumers making off-premises purchases.

In the campaign, UOKiK was joined by the Prosecution General, the Office of Electronic Communications, the Energy Regulatory Office, the Consumer Federation, the Association of Polish Consumers, the Commissioner for Human Rights, and voivodship inspectorates of the Trade Inspection Authority (IH) (Białystok, Bydgoszcz, Gdańsk, Gorzów Wielkopolski, Katowice, Kielce, Kraków, Lublin, Łódź, Olsztyn, Opole, Poznań, Rzeszów, Warsaw, and Wrocław).

ACTIVITIES OF PROPERTY DEVELOPERS

On 29 April 2012 the Act on the Protection of the Rights of a Purchaser of a Dwelling Unit or Detached House came into force. The main aim of this act was to reduce the risk borne by a consumer when buying an apartment or house on the primary market. Once the act had been in force for almost two years, UOKiK presented its findings on the functioning of the new legislation. UOKiK's observations, and the information collected from undertakings, reveal that the primary goal of the new legislation was achieved - there was an increase in the level of protection of buyers. This is also confirmed by a fall in the number of complaints against property developers received by UOKiK, and proceedings conducted in cases concerning infringement of collective interests of consumers. Another positive change is an increase in the number of investments that are not financed in their entirety by buyers' funds.

Based on analysis of collected data, UOKiK drew up a list of proposals for amendments to the act, in order to make provisions which are interpreted in a number of different ways (for example concerning the property purchase reservation contract) more precise and to afford consumers more rights. The most important proposals in the draft of the *Core Aims of the Bill Amending the Act on Protection of the Rights of a Purchaser of a Dwelling Unit or Detached House*³¹ include:

- » **the issue of the property purchase reservation contract** - this agreement is concluded between the property developer and the buyer, and concerns exclusion of the premises from sale for a specified period of time. Both undertakings and UOKiK take the view that a definition of agreements of this kind needs to be included in the act;

- » **pre-contractual obligations** - the need to make more precise the list of documents that constitute a source of information that the property developer is required to use when drawing up the information prospectus (this applies among other things to the obligation to provide information about planned investments within a circumference of one kilometre from the real property);

- » **handover of residential premises** - if there are serious defects in the unit the consumer should have the right to refuse to accept the premises.

It has also been proposed that the consequences of the property developer not remedying a defect within the prescribed time limit be defined by affording the buyer the right to withdraw from the property development agreement. In UOKiK's view, legislation of this kind would provide even greater protection for people purchasing apartments or houses on the primary market.

Economic analysis

UOKiK conducted an analysis of the balance of costs and benefits of the legislative amendments to the so-called "property development act". The analysis separated the pecuniary and non-pecuniary effects of the amendment to the act, divided into categories according to individual groups of interested parties. It was revealed that the proposed amendments would mean that undertakings would have to bear certain costs, however this is a result of the need to increase the level of legal and economic safety of buyers in relations with property developers.

THE TELECOMMUNICATIONS SECTOR - examples of UOKiK decisions and court proceedings

For many years UOKiK has been looking closely at the activities of telecommunications operators and the new practices they employ. In 2014 UOKiK's decisions concerned local markets and prohibited contractual clauses. The cases that were most important for consumers were conducted mainly in the courts. This was a time of a boom in judgements confirming previous UOKiK decisions.

A judgement issued by the Court of Competition and Consumer Protection (SOKiK) of 31 January 2014 concerning the appeal filed by Telecom Media S.A. against a UOKiK decision³²

The SOKiK judgement concerned a decision of December 2011³³, finding that Telecom Media - organiser of the text message lottery "IX Grand Prize Quiz"- misled consumers. The practice that was prohibited was the sending by the undertaking

²² On the basis of decision RWA-2/2015 of 20 April 2015.

²³ Decision RPZ 21/2014.

²⁴ Decision RPZ 24/2014.

²⁵ Decision RPZ-23/2014.

²⁶ Decision RPZ 23/2014.

²⁷ Case file XVII AmA 152/14.

²⁸ Decision RPZ 15/2014.

²⁹ Decision RPZ 17/2014.

³⁰ Decision RPZ 19/2014.

³¹ The core aims, which also provide for changes in the form of security of funds of buyers of real estate, are at the public consultation and interdepartmental consultation stage.

³² Case file XVII AmA 47/12.

³³ Decision DDK-11/2011.

of text messages giving the impression that upon sending a text message containing a response the subscriber had already or would then receive a prize, while sending a message only guaranteed inclusion in the lottery. Actions of this kind are considered to be unfair aggressive market practice, which is illegal. The court upheld the fine of more than PLN 113,000 imposed on the undertaking. On 22 April 2014 the undertaking filed an appeal, which was dismissed in a judgement issued by the Appeal Court of 17 March 2015.³⁴

A judgement issued by the Appeal Court of 25 February 2014 concerning the appeal filed by MobileFormats S.A. against a SOKiK judgement³⁵

A similar case was conducted against MobileFormats, which was mentioned in the *UOKiK Report on Activities for 2013*. A television text message lottery organised by the firm, “Exchange Serial Codes for Prizes”, was misleading for consumers due to the fact that it was suggested that it was under the special control of the Ministry of Finance, making it safer and fairer than others. In the decision issued³⁶, UOKiK concluded that the organiser of the lottery had misled consumers, and fined it PLN 85,000. The appeal filed by the undertaking was dismissed in a SOKiK judgement³⁷. Upon reviewing the appeal against the SOKiK ruling, the Appeal Court (SA) concurred with UOKiK and upheld the fine imposed on the undertaking. The SA’s judgement is legally binding.

Two SOKiK judgements (of May³⁸ and October³⁹ 2014) on the appeal of CT Creative Team against two UOKiK decisions

In 2014 for the third time, UOKiK paid close attention to CT Creative Team. The first decision⁴⁰ issued in the case of this undertaking concerned the content of an advertisement for an interactive game on mobile telephones, which was misleading for consumers because, according to the advertisement, ordering the game and making use of it was free of charge, while during use of the application it transpired that it was not possible to continue playing the game without paying to send text messages. The company’s appeal to the SOKiK was dismissed in a judgement⁴¹ of 30 May 2014. The company then appealed against the SOKiK judgement, and this appeal was also dismissed, in a judgement of 18 June 2015⁴².

In a further judgement⁴³, on 23 October 2014, the Court upheld the second decision⁴⁴ and upheld the fine imposed on the company - of more than PLN 140,000. In this case, UOKiK questioned the advertising content sent to consumers in connection with the “Quiz” competition. The messages sent did not contain information that sending a text message meant joining a competition consisting in consumers paying to send text messages. The advertisement also did not contain any information about the price of text messages or the organiser of the competition. These practices were deemed by UOKiK, and subsequently by the SOKiK, as infringement of collective interests of consumers.

Another unfair act on the part of the company was discovered due to complaints submitted by consumers who were surprised by the high charges for text messages sent when making use of games on mobile telephones. In most cases, the users of the application were children - who were unwittingly making use of the paid versions in which it was easier to play the game, for which a text message had to be sent, at a higher price, to order them. In UOKiK’s view, CT Creative Team infringed collective interests of consumers by not informing them of the true costs arising due to sending text messages while playing and following each activity for which an additional fee was charged. In the issued decision⁴⁵ UOKiK ordered the illegal practice stopped and fined CT Creative Team more than PLN 30,000. The decision is legally binding and the company did not appeal to a court.

Appeal Court Judgement of 16 April 2014 concerning the appeal by Orange Polska S.A. against a SOKiK judgement⁴⁶

The SOKiK judgement concerned a UOKiK decision of 28 December 2010⁴⁷, finding an advertisement by the operator of the Orange network - Polska Telefonia Komórkowa Centertel - to be misleading for consumers. The company stated that the price of a telephone call to anybody as part of the special offer *Only SIM* was from 25 groszy per minute, while the price for a call to P4 - the operator of the Play network - was from 37 groszy per minute. The information about the “to anybody” special offer was disseminated in television advertising, in advertising in the press, outside advertising, and poster advertising. It was not stated clearly that there were exceptions to the special offer. This practice was deemed to be an infringement of collective interests of consumers, and the company was fined more than PLN 4.8 m. Orange’s appeal to the SOKiK was dismissed in a judgement⁴⁸ of 21 January 2013, and an appeal was filed. The Appeal Court concurred with the view that collective interests of consumers

had been infringed, while also acknowledging that the company had done this unintentionally, and that this was grounds for lowering the fine to PLN 2.4 m. The judgement is legally binding.

Appeal Court judgement of 7 November 2014 concerning UOKiK’s appeal against the SOKiK judgement concerning Canal+ Cyfrowy⁴⁹

Proceedings in the case Canal+ Cyfrowy were instituted following complaints from consumers in November 2009. It was ascertained that the company had informed a large number of customers of changes among other things in the subscription contract and conditions of use only by placing the information in the distributed newsletter for subscribers *PLUS+* (issue 27, May-June 2009). In UOKiK’s view, providing information about new conditions of an agreement on the last two pages of the company newsletter was not a form that guaranteed that a subscriber would review it. In addition, a change to a condition of an agreement as important as the price gives a consumer the option of withdrawing from the contract. In order for a consumer to be able to exercise that right, the consumer has to know about the planned changes, however, in such cases the proper form of notification is a separate letter or covering letter attached to the newsletter.

UOKiK therefore deemed the company’s practice to be unfair and fined it more than PLN 3.5 m⁵⁰. In addition, the undertaking was required to publish UOKiK’s decision on its websites, and place an announcement stating the ruling delivered in a national daily newspaper, for a period of six months. The company filed an appeal with the SOKiK, which, in a judgement of 19 September 2013, overturned UOKiK’s decision⁵¹. UOKiK then appealed against the SOKiK’s judgement. The Appeal Court amended some elements of the contested judgement. It found that the undertaking had committed the practices questioned by UOKiK, but lowered the fine and set aside the obligation to publish the ruling delivered in the decision in question.

Proceedings in the case concerning the mobile telephone operator T-Mobile - practice infringing collective interests of consumers

In connection with complaints from customers of T-MobilePolska concerning an amendment to agreements concluded with customers for telecommunications services, UOKiK decided to check whether the actions taken by the company were legally complaint. In letters sent to some customers in July 2014, the operator stated that if they did not consent to the change in the price tariff, the price for the telephone subscription would go up by PLN 5 as of 1 September 2014.

UOKiK launched preliminary proceedings⁵² on 8 August 2014 to determine whether T-Mobile was in breach of the conditions of an agreement with consumers, whether it had informed consumers properly of the change in the price, and whether it had specified an appropriate length of time to make a decision. It was also examined whether the correspondence sent to consumers stated whether consumers could serve notice of termination of the agreement if they did not agree to the changes, and that the operator was not entitled to a refund of the discount granted due to conclusion of the agreement.

On the basis of the findings of the preliminary proceedings, in November 2014 UOKiK instituted the relevant proceedings. In UOKiK’s view the company’s actions could constitute unfair commercial practice⁵³. Consumers could have been misled upon receiving information about the unilateral change of the conditions of the agreement - in particular with respect to such an important element of the agreement as the price of the service. Although the agreement template used by T-Mobile did specify the procedure for and the conditions for changes to provision of services, nevertheless there was no detailed reference to the criteria and the situations in which the company would perform those changes on a unilateral basis. The consumer was therefore deprived of the opportunity to assert the right of a consumer to fulfilment of the conditions accepted by both parties to the agreement, and was also unable to determine whether the increase proposed by the company was legitimate. The case is pending.

UOKiK’s actions in the telecommunications sector were reinforced by working with the Office of Electronic Communications. As early as 2011, both institutions jointly intervened with regard to the issue of unfair prices of text messages, while towards the end of 2014 they drew up a document on the relationship between the Telecommunications Act and the Act on Consumer Rights, which was coming into effect at that time. Telecommunications undertakings who were required to adjust their activities to the requirements of the new legislation requested guidelines in this matter. The Standpoint on the Relationship between the Telecommunications Act and the Act on Consumer Rights⁵⁴ gives legal explanations of 61 detailed issues raised by undertakings with respect to interpretation of the new legislation. Among the issues discussed were the operator’s disclosure obligations and the principles for concluding distance and off-premises contracts.

³⁴ Case file VI ACa 764/14.

³⁵ Case file VI ACa 913/13.

³⁶ Decision RPZ-5/2011.

³⁷ Case file XVII AmA 121/11.

³⁸ Case file XVII AmA 95/12.

³⁹ Case file XVII AmA 105/13.

⁴⁰ Decision RPZ-11/2012.

⁴¹ Case file XVII AmA 95/12.

⁴² Case file VI ACa 1126/14.

⁴³ Case file XVII AmA 105/13.

⁴⁴ Decision RWA-10/2013.

⁴⁵ Decision RŁO-37/2014.

⁴⁶ Case file VI ACa 1262/13.

⁴⁷ Decision DDK-20/2010.

⁴⁸ Case file XVII AmA 79/11.

⁴⁹ Case file VI ACa 161/14.

⁵⁰ Decision DDK-7/2010.

⁵¹ Case file XVII AmA 203/10.

⁵² UOKiK can start preliminary proceedings, which are always conducted in relation to a case and not against a particular undertaking. The aim of preliminary proceedings is to carry out a preliminary study of the situation on the market. If during the inquiry UOKiK finds irregularities it can begin proceedings concerning practices infringing collective interests of consumers.

⁵³ Within the meaning of the *Act of 23 August 2007 on Combating Unfair Commercial Practices*.

⁵⁴ This document is not legally binding. It is only a guideline.

TABLES GIVING THE ESSENTIAL STATISTICS

Table 1. Number of cases handled in 2012, 2013 and 2014 concerning practices infringing collective rights of consumers

| | 2012 | 2013 | 2014 |
|---|------------|-------------|------------|
| Proceedings in cases concerning practices infringing collective interests of consumers, including: | 450 | 523 | 401 |
| year in which instituted: | 376 | 389 | 209 |
| instituted in previous years but conducted in the year: | 74 | 134 | 192 |
| year in which concluded: | 332 | 333 | 281 |
| Proceedings to fine an undertaking⁵⁵, including: | 48 | 40 | 26 |
| year in which instituted: | 35 | 21 | 22 |
| instituted in previous years but conducted in the year: | 13 | 19 | 4 |
| year in which concluded: | 28 | 35 | 19 |
| preliminary proceedings, including: | 923 | 1103 | 872 |
| year in which instituted: | 701 | 746 | 543 |
| instituted in previous years but conducted in the year: | 222 | 357 | 329 |
| year in which concluded: | 534 | 715 | 481 |

Table 2. Decisions issued in 2012, 2013 and 2014

| | amount | | |
|--|------------|------------|------------|
| | 2012 | 2013 | 2014 |
| Decisions in which a practice was deemed an infringement of collective interests of consumers and the practice was ordered stopped | 85 | 98 | 53 |
| Decisions in which a practice was deemed infringement of collective interests of consumers and in which the practice was found to have stopped | 108 | 112 | 82 |
| Commitment decisions | 131 | 116 | 142 |
| Total | 324 | 326 | 277 |
| Decisions imposing fines on undertakings ⁵⁶ | 24 | 26 | 17 |
| Decisions discontinuing proceedings regarding infringement of collective interests of consumers, including: | 8 | 14 | 8 |
| due to no practice infringing collective interests of consumers being found to have taken place | 3 | 0 | 1 |
| for other reasons | 5 | 14 | 7 |
| Proceedings which were concluded by way of a resolution | 4 | 1 | 2 |

2.2. Court judgements in cases concerning infringement of collective interests of consumers

In 2014 the SOKiK issued 113 judgements concerning appeals against UOKiK decisions concerning infringement of collective interests of consumers.

The Appeal Court issued 34 judgements of this kind, while the Supreme Court reviewed 1 case relating to this matter. In 74 instances, the SOKiK dismissed the appeal, in 26 it amended the decision, and in 13 it overturned UOKiK's decision.

⁵⁵ The statistics cover cases concerning fines imposed on undertakings for failure to comply with or not complying within the requisite time period with decisions, for failure to provide or providing untrue or misleading information when requested by UOKiK, and for failing to cooperate during an inspection.

⁵⁶ The statistics cover decisions imposing fines imposed on undertakings for failure to comply with or not complying within the requisite time period with decisions, for failure to provide or providing untrue or misleading information when requested by UOKiK, and for failing to cooperate during an inspection.

Table 3. Statistics with regard to judgements in cases concerning infringement of collective interests of consumers for the years 2012-2014

| Judgements issued in cases relating to infringement of collective interests of consumers, including: | 2012 | 2013 | 2014 |
|--|------|------|------|
| Court of Competition and Consumer Protection | 53 | 77 | 113 |
| The Appeal Court in Warsaw | 32 | 30 | 34 |
| The Supreme Court | 0 | 1 | 1 |

Table 4. Judgements issued by the Court of Competition and Consumer Protection (SOKiK) in cases concerning infringement of collective interests of consumers in the years 2012-2014

| Year | 2012 | | 2013 | | 2014 | |
|--------------------------------|--------|--|--------|--|--------|--|
| SOKiK judgements | amount | Percentage of the total number of judgements | amount | Percentage of the total number of judgements | amount | Percentage of the total number of judgements |
| UOKiK decisions overturned | 4 | 7 | 6 | 8 | 13 | 11,5 |
| UOKiK decision amended | 11 | 21 | 12 | 15 | 26 | 23 |
| Undertaking's appeal dismissed | 38 | 72 | 59 | 77 | 74 | 65,5 |

2.3. Other examples of court rulings concerning consumer issues

SOKiK judgement of 29 September 2014 concerning an appeal against a UOKiK decision by Samsung Electronics Polska⁵⁷

In September 2009 UOKiK found that Samsung Electronics Polska had employed practices infringing collective interests of consumers⁵⁸ and fined the undertaking more than PLN 2 m. Internet and television advertising of Samsung were questioned due to UOKiK considering the advertising to imitate public information films produced by the Ministry of Administration and Digitisation (Ministerstwo Administracji i Cyfryzacji - MAiC) during a campaign to provide information about digitisation of terrestrial television.

The practice consisted in advertising aimed at consumers (for instance video clips). In its advertisements, the firm used elements that were characteristic for the MAiC's campaign (the character featured similar dialogue and slogans), thus giving the impression that the advertisement for Samsung televisions was an element of a government information campaign, which could be misleading for consumers. The undertaking appealed to the SOKiK, which concurred with UOKiK, and dismissed the appeal. Samsung Electronics Polska exercised the right to appeal, and therefore the judgement is not legally binding.

Appeal Court judgement of 16 September 2014 concerning an appeal filed by Aflofarm Farmacja Polska against an SOKiK judgement⁵⁹

In the judgement of the court of first instance (the SOKiK)⁶⁰ the appeal against the UOKiK decision of July 2011⁶¹, finding that the undertaking had misled consumers, was dismissed. In this case UOKiK questioned an advertisement for the dietary supplement NeoMag Cardio. The advertisement suggested that the person recommending the product was a professor and an expert on heart conditions.

A similar situation arose in the case of a radio advertisement - the person recommending the dietary supplement NeoMag Forte was supposedly a professor and a dietician. In reality the advertisement featured actors who did not hold academic titles or the specified qualifications.

The Appeal Court did not entirely concur with UOKiK's standpoint, and found that while the television advertisement was indeed misleading (due to the broad range and having the greatest potential with regard to attracting and maintaining the attention of viewers due to elements such as the picture, text and sounds), the radio advertisement was not. The Appeal Court took the view that despite broad catchment, the radio advertisement was broadcast for a short time and was received in a superficial way. For this reason, taking into account the nature of the average consumer, the SA did not find the questioned radio advertisement for the supplement to be misleading for the audience. The judgement is legally binding.

⁵⁷ Case file XVII AmA 103/13.

⁵⁸ Decision DDK-2/2013.

⁵⁹ Case file VI ACa 1858/13.

⁶⁰ Case file XVII AmA 124/11.

⁶¹ Decision RPZ-12/2011.

Appeal Court judgement of 18 June 2015 concerning UOKiK's appeal against a SOKiK judgement concerning PKP Intercity⁶²

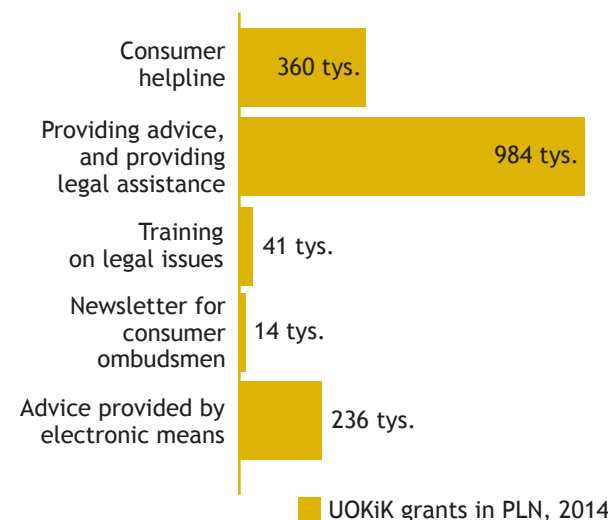
A decision⁶³ of 27 September 2012 found that in its conditions of service the carrier used a clause according to which the time limit for review of complaints could be extended. In this clause, PKP Intercity reserved the right to provide responses to objections raised by a consumer within a time limit of one month or to extend that time limit to three months, while under the law this period is 30 days, and failure on the part of the carrier to provide a response within the requisite time limit means that the complaint is acknowledged. UOKiK therefore found collective interests of consumers to have been infringed and ordered the carrier to stop practices restricting its liability towards consumers. In addition, as the company had made an undertaking to pay compensation to consumers who, during the period between 1 January 2011 and 31 May 2012, submitted complaints relating to cancellation of a train scheduled to run regularly - UOKiK ordered PKP to provide information as to the extent that this undertaking was being honoured. The company stopped using the contested clauses, but appealed to the SOKiK in an attempt to prove that its extension of the time limit for review of a complaint was not illegal; it cited EU law and the fact that EU law takes precedence over Polish law. Under an EU regulation⁶⁴, the addressee of the complaint shall either give a reasoned reply or, in justified cases, inform the passenger by what date within a period of less than three months from the date of the complaint a reply can be expected. The court concurred with the company, finding no infringement of collective interests of consumers to have taken place, and amended UOKiK's decision. UOKiK appealed⁶⁵ against the SOKiK judgment⁶⁶, and the appeal was dismissed. The SA judgment is legally binding.

2.4. Working with consumer organisations

UOKiK works with non-government organisations. Funds for carrying out projects are provided by way of a competition⁶⁷. In 2014 UOKiK provided subsidies of PLN 1 635 000 for the following:

- the Polish Consumer Federation - for a consumer helpline (PLN 360,000), advice and legal aid free of charge with regard to claims pursued by consumers⁶⁸ (PLN 984,000) and training on the law for municipal/poviat consumer rights ombudsmen and employees in their offices, representatives of voivodship trade inspection authorities and employees of consumer organisations (PLN 41,000);
- the Association of Consumer Ombudsmen - for creating, editing and electronic distribution of an e-newsletter for consumer ombudsmen (PLN 14,000). The quarterly gives up-to-date information on consumer matters, including discussion of the most recent Polish and international rulings;
- the Association of Polish Consumers - for the consumer e-mail centre *E-Poradnictwo*⁶⁹ (PLN 236,000), in which advice was given by e-mail 25 565 times.

UOKiK grants



3

Competition protection

Competition-restricting practices - anti-competitive agreements and abuse of a dominant position - this can disrupt market mechanisms.

Competition protection legislation prohibits **agreements** aimed at or resulting in elimination, restriction, or breach in some other way of competition on the market. Price-fixing, bid-rigging, and market sharing agreements are deemed to be practices of this kind⁷⁰. The law does provide however for a small number of exceptions to this general ban - so-called "agreements of minor importance" and block exemptions⁷¹.

Abuse of a dominant position is also prohibited. This is the use of market strength of an entity or entities to restrict the freedom of activity of business counterparties and competitors by imposing less favourable rules of cooperation than would apply in conditions of effective competition⁷². Under the Act on Competition and Consumer Protection, an undertaking is presumed to hold a dominant position if its market share is more than 40 percent. This should be assessed on a case-by-case basis, while the basic criterion according to which it is determined that an undertaking has a dominant position is its true market strength, not solely its percentage share of a particular market.

Antitrust proceedings concerning competition-restricting practices are instituted only ex officio. This does not however rule out the option of informing UOKiK in writing of suspected prohibited practices. Last year UOKiK received 469 reports of this kind, as a result of which it launched preliminary proceedings in 177 cases, and proceedings in 35 competition protection cases. UOKiK aims to eliminate violations that occur on the market not only by fining undertakings, but also using **soft measures** - such as specifying best practices and issuing commitment decisions. Last year 11 cases were resolved in this way.

In many cases concerning combating competition-restricting practices, an economic analysis was used. It



is worth mentioning above all two cases in which a study was carried out of the situation on markets of special importance for society: on the telecommunications services market⁷³ and on the market for elementary school textbooks⁷⁴.

3.1. Examples of decisions in selected areas of the economy and intervention and cooperation within the competition and consumer protection network

TELECOMMUNICATIONS

The telecommunications sector is one of the areas of the economy in which there is steady technological progress and rapid change. For this reason, the UOKiK monitors this sector on an ongoing basis and observes the activities of the main regulator of this sector - the Office of Electronic Communications (UKE).

Examination of activities of telecommunications operators

In April 2014 UOKiK started preliminary proceedings concerning whether network sharing or sharing of infrastructure or frequencies led to restriction of competition.

⁷⁰ A list of examples of competition-restricting practices can be found in art. 6 section 1 of the Act on Competition and Consumer Protection.

⁷¹ See art. 7 and 8 of the Act on Competition and Consumer Protection.

⁷² A list of examples of practices which constitute abuse of a dominant position can be found in art. 9 section 2 of the Act on Competition and Consumer Protection.

⁷³ More information on this case is given in chapter 3.1. The case was pending at the time this *UOKiK report on activities for 2014* was published.

⁷⁴ More information on this case is given in chapter 3.1. The preliminary proceedings were completed on the basis of a resolution of 6 May 2015.

⁶² Case file VI ACa 1116/14.

⁶³ Decision RPZ-22/2012.

⁶⁴ *Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations.*

⁶⁵ Case file VI ACa 1116/14.

⁶⁶ Case file XVII AmA 4/13.

⁶⁷ The rules for recommending consumer protection tasks and the procedure for providing funds for organisations are laid down in the Act on Public Benefit and Volunteer Work. The amount that can be granted for their activities is specified on an annual basis in the budget. Information about competitions is placed in the media and UOKiK's Public Information Bulletin, and is also available at UOKiK's offices.

⁶⁸ Advice is given in five regions in Poland: the south-west (advice given 14 484 times in 2014), north-west (advice given 16 435 times), north-east (advice given 8187 times), south-east (advice given 9864 times) and Mazowieckie region (advice given 7675 times).

⁶⁹ Consumers can make use of a free of charge legal advice service provided by experienced lawyers by e-mail.

The collected information enabled a closer look to be taken at the sector, and this included verifying information that came from undertakings and experts directly to UOKiK or through public discussion. The collected data is currently being analysed and proceedings are continuing.

Frequency auctions held by the Office of Electronic Communications

In order to allocate frequencies, the UKE holds, as part of its responsibilities, competitions, tenders, or auctions. Towards the end of 2013 it was proposed that undertakings applying for frequencies be selected by way of a new auction formula that had never been tried before. On 4 April 2014 the UKE commenced consultations concerning auctions for reservation of frequencies⁷⁵.

In May 2014 UOKiK stated its position⁷⁶ on the matter, saying that it was concerned about the rules according to which the UKE intended to dispose of frequencies designated for mobile internet LTE (800/2600 MHz). A comparison of the two versions of the auction documentation (from the years 2013 and 2014) indicated that the rules had been simplified with respect to the issue of the spectrum cap⁷⁷. UOKiK found that this modification gave the impression that the new documentation had been drawn up without analysing the structure of the market from the point of view of competition and consumers. UOKiK also suggested a change of the definition of the term “capital group”, which could give rise to doubt on the part of entities wishing to take part in the auction. This is because correct assessment with regard to the entities in the capital group was to be the factor determining correct submission of bids by all of the entities in the group, and if the limits with respect to bids submitted within a single group were exceeded, this would result in disqualification from the auction. UOKiK put forward its doubts as to sale of a band by way of an auction, and suggested using the formula of a tender as a solution that was tried and tested.

On 10 October 2014 the UKE announced an auction for frequencies. Under the proposed procedure, it was possible for any entities to take part in the auction, including those who did not have any market experience or even the status of a business undertaking. In response to the actions of the UKE, UOKiK presented its view⁷⁸, emphasising that the means of preserving the level of competition and protecting the interests

of consumers was inadequate. The lack of provisions requiring operators to ensure the quality and diversity of the provided services was particularly worrying. UOKiK was also concerned about the fact that the UKE auction did not guarantee that the objectives of the Digital Agenda for Europe - according to which all EU citizens should be able to use a connection of at least 30 Mb/s by 2020, would be achieved. The standpoint of UOKiK did not affect the scope and the rules of the announced auction, which entered the bidding phase⁷⁹ on 10 February 2015.

EDUCATION

Elementary school textbooks - market analysis from the point of view of competition-restricting practices

In proceedings⁸⁰ concerning situations arising on the elementary school textbook market (in light of a reform of this market and gradual introduction of free textbooks) UOKiK made use of an economic analysis. In this sector, a rise in the price of textbooks, exercise books, and other elementary school materials sold by the publishers WSiP, Nowa Era and Grupa Edukacyjna (including the publishing house Juka 91), was noted. This caused UOKiK to launch preliminary proceedings in August 2014, aimed at determining whether the sudden rise in prices might be a result of use of competition-restricting practices, in particular leading to exploitation of consumers.

A study was therefore carried out as to trends in changes in prices of textbooks on offer and the profit margins of the major publishers. The analysis did not reveal that the prices might indicate competition-restricting practices, as the publishing houses had adopted various strategies with regard to management of pricing and the costs of textbook packages, which is certainly a typical feature of a competitive market.

The study confirmed a high level of dysfunction of the textbook market, due to the price not being an essential factor in the choice of the product. Due to the universal obligation to attend school, parents of pupils and teaching staff working with pupils have to buy textbooks, while they have a minimal say in the purchase of particular publications. This is because the choice is made by teachers and schools, for whom the price is not a particularly important factor. This creates an incentive for publishers to compete above all with regard to quality, but at the same time it gives them room to considerably raise the price. In UOKiK's view measures need to be taken to rationalise the choices made by teachers. School management and school councils, through which parents also have a say, could play a key role in this.



THE ENERGY SECTOR

The quality of coal in Poland - market analysis in terms of competition-restricting practices

In May 2014 UOKiK instituted proceedings to determine the situation on the hard coal market⁸¹. This task was given to UOKiK's branch office in Katowice, which carried out an analysis of distribution of hard coal all over Poland, the distribution channels, and the methods of sale. It was also examined whether the policy for setting prices might give rise to concerns with regard to protection of competition, and a review was performed of prices used by entities being the individual links in the hard coal supply chain, from producers to users and entities reselling it.

The analysis showed that with respect both to production and to sale of coal in the energy sector, there was a high level of competition. The study did not reveal any violation of antitrust laws. The largest national producer of coal is Kompania Węglowa, whose market share has been falling steadily for a number of years, like the shares of other competitors. It was also revealed that sale prices of coal used by national producers and distributors cannot be considered exorbitant. The main factors that determine prices are the cost of extraction and transport, and the envisaged profit. Coal is sold first and foremost via distributors, which means that mines can lower the costs of selling

coal. These get their supply mainly from domestic producers, but some of them sell imported coal, causing sales of imported coal in Poland to rise.

Institution of proceedings concerning failure to comply with a UOKiK decision on the part of PGNiG⁸²

In December 2013 UOKiK issued a decision⁸³, in which it provided credible evidence that PGNiG was taking advantage of a dominant position, revealing that the company was using contractual clauses which were harmful to undertakings purchasing gas from PGNiG on a wholesale or retail basis. During the proceedings, PGNiG undertook to change the questioned practices. The decision issued required PGNiG to offer users an annex to the existing contracts. This was to afford PGNiG's users greater freedom to lower the amount of fuel ordered and the level of the contractually agreed capacity for the following gas year.

On 17 October 2014 UOKiK instituted proceedings to determine whether the company had complied with the requirement and had amended the agreements as stated in the decision (the proceedings also concern PGNiG Obrót Detaliczny - this company was created following issuance of the decision and became a party to the questioned agreements).

⁷⁵ 5 reservations in the 791-816 MHz and 832-857 MHz ranges and 14 in the 2500-2570 MHz and 2620-2690 MHz ranges.

⁷⁶ UOKiK's standpoint of 5 May 2014, case file DOK2-0799-8/14/KD.

⁷⁷ According to the auction algorithm the sole restriction for each of the participants in the auction (regardless of the spectrum resources in their possession in the 900 MHz band) was obtaining two reservations in the 800 MHz band. Formerly there was an additional restriction, which was that the number of the band held within the digital dividend and 900 MHz band cannot exceed 40 MHz.

⁷⁸ The position of UOKiK of 28 October 2014, case file DOK2-0799-8/14/KD.

⁷⁹ At the moment UOKiK report on activity for 2014 was being published an auction was in progress for 19 reservations of frequencies of 800 MHz and 2600 MHz.

⁸⁰ https://uokik.gov.pl/news.php?news_id=11629.

⁸¹ The proceedings were concluded on 2 December 2014.

⁸² As at 1 July 2015 the case was pending.

⁸³ Decision DOK-8/2013.

TRANSPORTATION

Production and distribution of spare parts for Mi-2 helicopters (abuse of a dominant position)

Wytwórnia Sprzętu Komunikacyjnego WSK „PZL Świdnik” was the only undertaking producing Mi-2 helicopters. In 2008 Mi-2 helicopters were no longer being put on sale, but PZL undertook to ensure that spare parts would be available at least until 2020, and maintained its position as the only manufacturer and distributor. In 2012 the company took part in a tender for maintenance services for Mi-2 helicopters organised by Military Unit 4228 Kraków. However, the contract was awarded to PPHU Navcom Systems.

UOKiK took action following an analysis of a complaint submitted by Navcom Systems, as WSK „PZL Świdnik” refused to sell Navcom Systems spare parts for the helicopters. Meanwhile, according to the law, a monopolist may not deny other undertakings access to products necessary for them to provide services. UOKiK’s investigation revealed that by refusing to sell spare parts to a competitor, WSK “PZL Świdnik” acted in a manner that was counterproductive to development of competition on the national Mi-2 helicopter maintenance service market.

In a decision⁸⁴ issued in December 2014, UOKiK ordered the competition-restricting practices stopped and fined the company almost PLN 322,000. The decision is not legally binding. The undertaking appealed to the SOKiK.

PROTECTION OF LOCAL COMMUNITIES

Water supply and sewage discharge services provided by the municipal authorities (abuse of a dominant position)

Due to having nine branch offices, UOKiK is able to react to practices that are onerous for local communities and successfully eliminate such practices. One of the sectors that are observed on an ongoing basis is that of water supply and sewage discharge services, which are provided mainly by municipal companies and municipal authorities (within the meaning of competition protection law these are undertakings). Permanent monitoring of the activities of these entities has led to UOKiK decisions - in 2014 35 decisions were issued concerning abuse of a dominant position in the public utility services sector.

Among the practices most commonly questioned is the setting of the amount due for consumption of water at the highest possible level in cases of loss or damage to a water meter for which the user is responsible. This practice was employed for example by the Krzanowice municipal authorities, while in such a case, under the law, the undertaking should demand that

payment be made for the amount of water actually consumed.

Another violation is unlawful charging of partial fees. The same municipal authority charged users for operation and maintenance of the sewage system who are not connected to the sewage system but have their own means of discharge of waste. As a result, they were paying the same fee for discharge of waste as entities connected to the sewage system. In UOKiK’s view they should be charged lower amounts. In the issued decision⁸⁵ the Krzanowice municipal authorities were ordered to stop the unfair charging of fees, settle payments with water users properly, and submit a report on the extent to which that obligation was complied with. The municipal authorities declared voluntarily that they would modify the questioned activities, and thus UOKiK refrained from imposing any further financial sanctions.

The Czernica⁸⁶ municipal authorities also employed prohibited practices by imposing onerous contractual conditions on persons applying to connect to the water supply and sewage discharge network. In one contractual provision, it required each of the service users to cover the costs of construction of water supply and sewage discharge installations and to transfer to the municipal authorities, free of charge, ownership title to them and to waive any claims in this regard. The law⁸⁷ says that construction of water supply and sewage discharge network installations (of which water supply networks and sewage networks are part) is the obligation of the undertaking, and a person wishing to make use of the network is only required to cover by themselves the cost of construction of the connection. The practice employed by the municipal authorities provided it with unjustified gains, but as a result of the proceedings the practice was stopped. UOKiK fined the municipal authorities more than PLN 3,500.

Cemetery services (abuse of a dominant position)⁸⁸

One area that has been the object of UOKiK control in recent years in terms of the functioning of competition is the cemetery services market, which includes services relating to maintenance of and management of a cemetery. This market should be open to entities that wish to operate on it, while often administrators of cemeteries break the law by taking advantage of their dominant position and preventing other entities from conducting funeral activities or imposing unfair prices for selected services such as use of a burial spot or digging a grave.

Practices of this kind were employed by the municipal authority of Piława Górna (which manages a municipal cemetery), which charged an additional fee for permission to build a headstone, despite the fact that it had already charged a fixed one-off fee for using the burial plot. UOKiK found the municipal authorities’ actions to be manifest of abuse of a dominant position and ordered it to abolish the additional fee and submit a report on the extent to which that obligation was complied with. In the statement of reasons for the decision⁸⁹, UOKiK cited Supreme Court judgments and administrative court judgements, which state that *as a consequence of an agreement on the basis of which an entity managing a cemetery gives an interested party a plot for a grave, a particular kind of civil law relationship is created. In this relationship, that person acquires not only the right to bury the deceased, but also - according to universal custom - a range of rights of a permanent nature, such as the right to erect and modify a headstone, the right to regularly visit the grave, the right to permanently keep it in proper condition, the right to make decorative changes, etc.*

PROHIBITED AGREEMENTS

Under antitrust law, agreements which have as their object or effect elimination or restriction of competition are prohibited. In particular, price fixing and bid rigging, and market sharing agreements, are considered to be practices of this kind.

COLLUSION BETWEEN MANUFACTURERS OF PRAMS (price fixing)

The companies Coneco and Tutek (manufacturers of children’s prams) did not allow retail distributors to sell their products at prices below the prices specified by the manufacturers. Business counterparties of Coneco faced the possibility of penalties, for example the “cutting” of discounts, for not complying with these guidelines. Tutek operated in a similar way - even involving in the monitoring of prices the distributors themselves, who identified derogations. An employee of the manufacturer of prams reacted to each instance reported by reminding a particular business counterparty to comply with the price list. If it did not do so it faced a penalty - which meant being denied a discount and sometimes even a refusal to sell the products.

The consequences of activities of this kind could have been felt by consumers, who had restricted access to the products of those manufacturers at prices below the specified prices. This practice was burdensome for distributors as well - as they were not able to compete against each other using prices. UOKiK fined Tutek almost PLN 16,000 for taking part in an illegal price-fixing arrangement (the undertaking ceased the practice immediately following institution of the

proceedings). In the case of the other manufacturers - Coneco - UOKiK ordered the employed practice to be changed and imposed a fine of more than PLN 7,000. The decisions⁹⁰ are final, and none of the undertakings appealed to the SOKiK.

COUNTERACTING BID RIGGING

According to the law, the agreeing by parties to a tender among themselves of the conditions specified in submitted bids is prohibited and is subject to a fine. Undertakings are required to act independently and are not allowed to agree their actions among themselves. However, UOKiK has encountered many cases of this happening, and the most common form of bid rigging is submission of a so-called “security bid”. Undertakings enter into an arrangement under which, if their bids are the two most favourable, the winner will not sign the agreement so that the second in line - which is more expensive, is chosen. This constitutes an unfair means of ensuring greater profit at the expense of the organiser of the tender and competitors. According to the law, an undertaking is entitled to decide not to provide services, but this may not be a result of an understanding with another party in the tender.

One of the priorities with regard to combating bid rigging is more effective detection, which is done by working more closely with other institutions responsible for ensuring that the public procurement system functions properly: the Public Procurement Office (UZP), National Chamber of Appeal (KIO), Ministry of Infrastructure and Development (MIR), Supreme Audit Office (NIK), Central Anti-Corruption Bureau (CBA), Internal Security Agency (ABW), the Prosecutor’s Office, and the Police. The cooperation consists in information exchange, and UOKiK officials conduct training for representatives of other authorities. In this training they draw attention to behaviour that might be an indication that prohibited practices are taking place. Information received from consumer ombudsmen, private individuals, and undertakings are also valuable.

In 2014 UOKiK received in total 443 reports of suspected bid rigging. The majority were provided by private individuals, consumer ombudsmen, and undertakings. The notification system is not a one-way street. UOKiK operates on a reciprocal basis by sending reports to other institutions cooperating within the competition and consumer protection network (CBA, NIK, the Police, the Prosecutor General, Financial Supervision Authority (KNF) and Ministry of Administration and Digitisation (Ministerstwo Administracji i Cyfryzacji - MAiC).

TENDER FOR SUPPLY OF ITEMS OF UNIFORMS⁹¹

One example of bid rigging, based on a special kind of mechanism, was a case of undertakings participating in tenders for supply of items of uniforms organised by

⁸⁴ Decision RLU-27/2014.

⁸⁵ Decision RKT-5/2014 is legally binding. No appeal was filed.

⁸⁶ Decision RWR-21/2014 is legally binding. No appeal was filed.

⁸⁷ *Act of 7 June 2001 on the Collective Supply of Water and the Collective Discharge of Sewage* (consolidated text, Journal of Laws of 2006 No. 123, item 858 as amended).

⁸⁸ Following inspections on the cemetery services market UOKiK produced a special handbook for entities managing cemeteries. More information is given in chapter 8.2.

⁸⁹ Decision RWR-23/2014 is legally binding. The municipal authority did not file an appeal with the SOKiK.

⁹⁰ Decisions RKT-42/2014 and RLU-25/2014.

⁹¹ Decision DOK-9/2014.

REPORT ON ACTIVITIES 2014

Competition protection

the Military Property Agency and Military Unit 4226 in Warsaw in the years 2011-2012. In the inquiry, UOKiK found three companies, Agrotur in Pabianice, Marko in Borkowice, and Zakład Pracy Chronionej Texpol in Dłutów, to have colluded. These companies used a **system of cover bidding** (in which the undertakings agree to submit two different bids, and if one is found to be the most favourable - the winner of the tender does not sign the contract or deliberately fails to file the required documentation, so that the more expensive bid is chosen). In this case of collusion, the winner did not provide explanations when requested by the contracting party and did not provide the required Social Insurance Institution (ZUS)/Agricultural Social Insurance Fund (KRUS), the National Court Register (KRS) and tax office documentation. In addition, the bids of all of the undertakings bore similar handwriting, and in one case were filed by the same person. The fact that there were family links between the entities could also have contributed to the making of mutual arrangements. The undertakings were fined in total PLN 289,000 for activities violating the law. The undertakings appealed to the SOKiK, and the appeal was dismissed⁹² (this ruling is not yet legally binding). In addition to the conducted inquiry, which confirmed that collusion had taken place, cooperation with law enforcement authorities also led UOKiK to file two reports with the Prosecutor's Office.

RAILWAY TENDER - TWO INSTANCES OF COLLUSION

In December 2014 UOKiK issued two decisions finding irregularities during a tender organised in 2011 by PKP Polskie Linie Kolejowe. The tender was for design and construction of an integrated rail traffic control and management system on the Warsaw Warszawa-Okęcie-Radom line. The contracting party intended to designate more than half a billion zlotys for performance of the contract. Four contractors entered the tender, and the only criterion for selection of a bidder was the price.

As a result of its own analyses and information provided by the Prosecutor's Office, UOKiK found the parties to the tender to have entered into two separate prohibited agreements.

The parties to **one case of collusion** were Bombardier Transportation, Zakład Automatyki Kombud and KZA Przedsiębiorstwo Automatyki i Telekomunikacji. The undertakings agreed between themselves that Bombardier Transportation would submit a so-called "token" bid. The price proposed was higher than that proposed by the Kombud and KZA consortium, and was thus intended to make the tender appear competitive and give the impression that the price set by the other party to the bid-rigging arrangement was relatively low. The bid also contained accounting errors intended to bring about its disqualification - similarly to incorrect extension of the period for which the bid was binding and the validity of the down payment.

The undertakings were collectively fined almost PLN 7 m⁹³ for participation in a competition-restricting agreement. UOKiK's decision⁹⁴ is not legally binding. An appeal has been filed with the SOKiK.

Actions of the Prosecutor's Office and court

The prosecutor's office and court also dealt with the tender as part of a criminal case. The undertakings were found to have agreed among themselves the conditions for participation in the tender and entered into an agreement, and were not competitors towards each other. Despite this, the criminal case concerning the agreement was closed because the institution that organised the tender did not suffer harm. This did not exclude however intervention on the part of UOKiK⁹⁵.

The other case of collusion in a tender occurred between Thales Polska and Qumak. The former submitted a bid as a party to the tender, and at the same time was to be the comprehensive subcontractor for a competitor to it, Qumak.

UOKiK does not question whether subcontractor contracts can be concluded between parties to a tender, but in this case the two companies collaborated to a substantial degree, and the result could have been deemed to be tantamount to Thales submitting a bid twice in the tender (once as a member of a consortium, and the second time as the comprehensive subcontractor to Qumak). If Qumak had won the tender, almost the entire tender contract would in reality have been performed by Thales Polska, and the role of the former would have been limited to organisational activities. In UOKiK's view the undertakings colluded in order to double the likelihood of Thales Polska winning the tender. Thales Polska was fined more than PLN 750,000 for breach of competition, while Qumak was fined almost PLN 900,000. The decision⁹⁶ is not legally binding. An appeal has been filed with the SOKiK.

Table 5. The number of cases in which proceedings were conducted concerning competition-restricting practices - a comparison of 2014 with the years 2012 and 2013

| | 2012 | | | 2013 | | | 2014 | | |
|---|------------|---|-----------|------------|--|-----------|------------|---|-----------|
| | instituted | Conducted in 2012, but instituted in previous years | concluded | instituted | Conducted in 2013 but instituted in previous years | concluded | instituted | Conducted in 2014, but instituted in previous years | concluded |
| Antitrust proceedings (total) | 112 | 35 | 93 | 87 | 54 | 92 | 64 | 34 | 68 |
| Antitrust proceedings concerning horizontal agreements, including: | 13 | 5 | 9 | 20 | 8 | 15 | 15 | 5 | 14 |
| conducted on the basis of art. 101 of the TFEU | 1 | 0 | 0 | 1 | 1 | 0 | 0 | 2 | 0 |
| Antitrust proceedings concerning vertical agreements, including: | 18 | 5 | 11 | 19 | 13 | 13 | 3 | 8 | 6 |
| conducted on the basis of art. 101 of the TFEU | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Antitrust proceedings concerning abuse of a dominant position , including: | 81 | 25 | 73 | 48 | 33 | 64 | 46 | 19 | 48 |
| conducted on the basis of art. 102 of the TFEU | 0 | 1 | 1 | 2 | 0 | 1 | 0 | 1 | 0 |
| Proceedings to fine an undertaking | 6 | 1 | 4 | 8 | 3 | 6 | 4 | 6 | 4 |
| preliminary proceedings | 290 | 179 | 303 | 354 | 153 | 267 | 324 | 227 | 341 |

Table 6. Decisions issued in 2014 - comparison with the years 2012 and 2013

| Type of agreement | 2012 | | | 2013 | | | 2014 | | |
|--|------------|-----------|------------------------------|------------|-----------|------------------------------|------------|----------|------------------------------|
| | Horizontal | Vertical | Abuse of a dominant position | Horizontal | Vertical | Abuse of a dominant position | Horizontal | Vertical | Abuse of a dominant position |
| Decisions finding practices to be competition-restricting practices and ordering them to be stopped | 3 | 4 | 19 | 2 | 4 | 24 | 1 | 2 | 9 |
| Decisions finding practices to be competition-restricting practices and confirming that they have been stopped | 5 | 6 | 11 | 13 | 9 | 17 | 12 | 3 | 11 |
| Commitment decisions | 0 | 1 | 37 | 0 | 0 | 23 | 0 | 0 | 25 |
| Total | 8 | 11 | 67 | 15 | 13 | 64 | 13 | 5 | 45 |
| Decisions imposing a fine | 0 | 3 | 1 | 0 | 0 | 6 | 0 | 4 | 0 |
| Proceedings discontinued by way of a decision: | 1 | 0 | 6 | 0 | 0 | 3 | 1 | 1 | 4 |
| due to no practice being determined | 1 | 0 | 3 | 0 | 0 | 2 | 1 | 1 | 3 |
| for other reasons | 0 | 0 | 3 | 0 | 0 | 1 | 0 | 0 | 1 |
| Proceedings discontinued by way of a resolution | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

⁹⁷ The parties to the horizontal agreements are competing undertakings, which means that they operate on the same level of the supply chain. The main aim of the agreements is to restrict mutual competition, for example through price fixing.

⁹⁸ If a practice which is being examined might affect trade between EU Member States, antitrust proceedings are also conducted on the basis of EU law, i.e. art. 101 and 102 of the TFEU.

⁹⁹ Vertical agreements are made between undertakings that operate at different levels of the supply chain, i.e. they do not compete with each other. The parties might be a manufacturer and distributor, or a wholesaler and retailer.

¹⁰⁰ The statistics cover proceedings to impose a fine for failure to comply or failure to properly comply with UOKiK's decisions (including with respect to inspection related to those decisions), failure to provide or providing untrue or misleading information, and failure to cooperate during an inspection or search.

¹⁰¹ The statistics cover proceedings to impose a fine for failure to comply or failure to properly comply with UOKiK's decisions (including with respect to inspections related to those decisions), failure to provide or providing untrue or misleading information, and failure to cooperate during an inspection or search.

⁹² Case file XVII AmA 32/15.

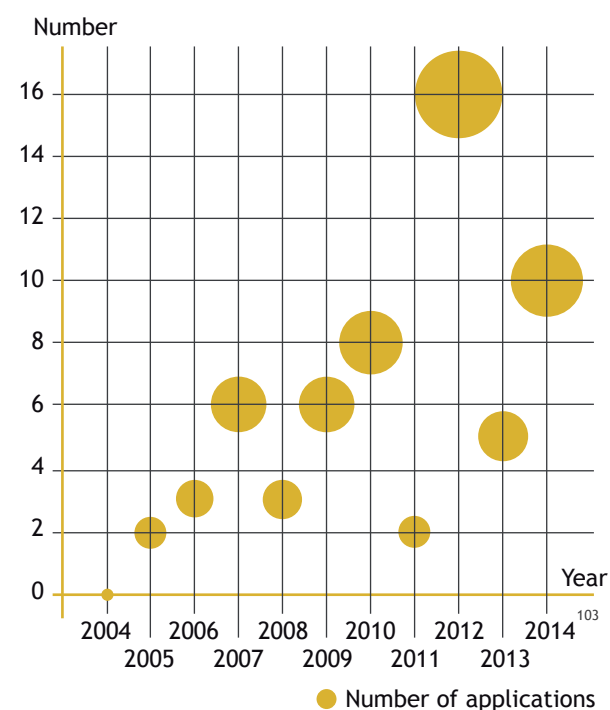
3.2. Leniency programme

The leniency programme is intended for parties to anti-competitive agreements who decide to cease an unlawful practice voluntarily and begin to cooperate with UOKiK, by providing information and evidence indicating that collusion has taken place. Information obtained in this way is a valuable source of evidence for UOKiK of existence of unlawful competition-restricting agreements¹⁰².

In 2014 work was being finalised on an amendment to the Act on Competition and Consumer Protection, introducing changes to the leniency programme.

Up to now, only the entity that was the first to notify UOKiK of prohibited practices could expect complete exemption from a penalty, while the others could expect a reduced penalty. The introduction of the leniency plus solution means that an undertaking that is the second or the next to submit an application will be given an additional decrease in the penalty of 30 percent, if it notifies UOKiK of another instance of collusion to which it has also been party. In the latter case it will have the status of the first applicant and will avoid a fine. Extension of the programme means that price-fixing resulting in higher costs for consumers can be detected and eliminated.

Table 7. Number of applications submitted to UOKiK under the leniency programme



¹⁰² Details can be found on the UOKiK's website: https://uokik.gov.pl/leniency_programme.php.

¹⁰³ Two of these applications filed under the leniency programme were factors in the institution of antitrust proceedings in Wrocław (service quality certificates market, for example for hospitals), and three - for UOKiK's Kraków branch office to conduct antitrust proceedings.

3.3. Control of concentrations of undertakings

The development of potential of a business enterprise often requires that its position on the market be reinforced. For this reason mergers and acquisitions are the standard for a modern economy. Competition and consumer protection authorities assess the impact of those actions on the level of competition and in cases which are legally justifiable they can prohibit a concentration. This is because they have an obligation to counteract consolidation where this might restrict competition and might lead to permanent changes in the structure of the market.

Only the largest transactions which affect or might affect competition on the Polish market are subject to UOKiK control. The obligation to give notification of a concentration applies to undertakings of which the combined turnover in the year preceding the year of the notification exceeded the equivalent of EUR 1 bn globally or EUR 50 m in Poland.

After conducting the proceedings UOKiK can:

- issue clearance for the concentration - if due to the concentration competition on the market will not be significantly restricted, which occurs in particular by way of creation of or strengthening of a dominant market position;
- give conditional clearance - if the above prerequisite will apply once the stipulated conditions are fulfilled;
- issue so-called "special" clearance - in cases where despite the anti-competitive effect the transaction will contribute to economic development or technical progress, or will be beneficial to the national economy;
- prohibit the transaction - if competition on the market will be severely restricted as a result of the transaction, in particular by way of creation of or strengthening of a dominant market position.

Failure to provide UOKiK with information during concentration proceedings or conducting a concentration without obtaining clearance from the Authority can lead to a fine of up to 10 percent of the revenue¹⁰⁴ from the preceding year. This occurs very rarely however - in 2014 there was only one case of this kind.

¹⁰⁴ As of 18.01.2015 a fine can be up to 10 percent of the turnover achieved in the year preceding the year in which the decision is issued

THE ROLE OF ECONOMIC ANALYSIS IN CONCENTRATION CONTROL

Issuance of clearance or the prohibiting of a concentration is based upon economic premises. In particular, resolving problematic cases, i.e. those in which there is a significant increase in concentration on the market, requires detailed economic analysis - ascertaining in a precise way the scope of markets examined and assessing the effects of the transaction on the market.

In 2014 the team of economists played a significant part in resolving two cases: takeover by the Auchan chain of 57 hypermarkets from the Real chain, and takeover by Henkel of a portion of the assets of PZ Cussons. These were two out of four cases recorded in 2014 in which effecting transactions was conditional upon the undertakings taking the measures specified in the decision.

Takeover of 57 hypermarkets in the Real chain by the Auchan chain - conditional clearance¹⁰⁵

The basis for notifying a concentration was an agreement between Groupe Auchan and Metro for sale of shares and contributions to Real companies in Poland, Romania, Russia, and Ukraine. The authority responsible for examining the agreement was the European Commission, but at the request of the undertakings the elements of the case concerning the Polish market were referred to UOKiK in March 2013. The competition analysis carried out amounted to determining the level of rivalry between individual retail formats (hypermarkets, supermarkets, and discount stores) and the scale of impact in terms of competition of the hypermarkets on local markets to which the concentration related. UOKiK found that

while hypermarkets exert competitive pressure on supermarkets and discount stores, pressure in the opposite direction is limited, and therefore for the purpose of analysis of the effects of the concentration it was assumed that the relevant market only included hypermarkets. The geographical market applied was an area of up to 20 or 25 minutes' drive in a car - this was the catchment area indicated by data concerning places of residence of customers.

When analysing the market situation on the basis of the principles described above, UOKiK concluded that for competition of a range of local markets to be maintained, Auchan would have to sell eight Real hypermarkets¹⁰⁶. Auchan agreed to this condition. Due to this decision competition was maintained on the local retail markets.

Takeover by Henkel of a portion of the assets of PZ Cussons - conditional clearance¹⁰⁷

In this case, a study of the market and analysis of prices of individual washing agents (selected brands of washing powder and washing-up liquids, including brand "E") revealed that the concentration would lead to restriction of competition. The level of concentration on this market is currently substantial, and the gathering of the most popular brands in the middle price segment in one set of hands could have an adverse effect on functioning of the market. UOKiK found that the negative effects of the concentration could be averted by Henkel disposing of the brand Rex to an independent entity that guaranteed that the brand would be maintained on the market, and gave clearance for the transaction subject to that condition. Due to this decision, competition and a broad selection on the washing agents market was maintained. The company was required to present to



¹⁰⁵ Decision DKK-4/2014.

¹⁰⁶ On 3 March 2015 UOKiK issued clearance for two transactions (decisions DKK-36/2015 and DKK-37/2015), which enabled Auchan Polska to fulfil the conditions for takeover of the Real chain.

¹⁰⁷ Decision DKK-11/2014.

UOKiK a list of potential buyers of the brand in order for clearance to be obtained. The entities proposed did not however fulfil the conditions stipulated by UOKiK. The rejection was issued in writing, and Henkel (treating this as being equal to a decision) appealed to the SOKiK. Courts do not however treat correspondence from UOKiK relating to fulfilment of imposed conditions as decisions, and therefore the company withdrew the appeal, and the SOKiK discontinued proceedings in the case¹⁰⁸. Once Henkel had proposed a buyer that fulfilled all of the conditions stipulated by UOKiK, the Rex brand was sold.

Takeover by KDWT, owned by Eurocash, of 11 Kolporter tobacco wholesale warehouses - conditional clearance¹⁰⁹

The parties to the concentration were undertakings active on the tobacco and impulse items (for example products located next to the checkout) wholesale market. KDWT owns 163 wholesale warehouses and is part of the Eurocash capital group. The company filed notification of the intent to take over wholesale warehouses belonging to the Kolporter business enterprise. During the proceedings UOKiK indicated that the concentration might not be effected, as the UOKiK proceedings revealed that the transaction would lead to restriction of competition on the local market, including the Kolporter wholesale warehouse in Sosnowiec. The strongest position there is held by

KDWT, and the sole competitor of similar potential is Kolporter. Following the transaction, the shares of the surviving entity would be so big that the other undertakings would not be able to compete with them effectively. For this reason UOKiK gave clearance for the transaction on condition that it would not include the Kolporter wholesale warehouse in Sosnowiec.

In decisions issued to date, imposing a structure-related condition, UOKiK gave clearance for the transaction conditional upon sale of individual assets of the parties within a specified time limit following performance of the transaction. However UOKiK's experience shows that imposing a condition of that kind does not necessarily restore balance in competition on a particular market. For this reason, UOKiK decided that the wholesale warehouse in Sosnowiec owned by Kolporter should be excluded from the transaction.

For the purpose of the concentration, the company Service FMCG was set up, and part of the business enterprise of Kolporter - 11 wholesale warehouses (in Gdańsk, Kielce, Niepołomice, Lublin, Poznań, Szczecin, Warsaw, Nowa Wieś Wrocławska, Kraków and two in Toruń) was contributed to this company.

Table 8. Concentration control proceedings and types of rulings - a comparison of the years 2012, 2013 i 2014

| Cases concerning concentration control conducted in the year: | Number of cases | | |
|---|-----------------|------|------|
| | 2012 | 2013 | 2014 |
| | 194 | 206 | 224 |
| including concluded in the year: | 2012 | 2013 | 2014 |
| | 155 | 177 | 190 |

| Types of decisions: | 2012 | 2013 | 2014 |
|---|------|------|------|
| clearance for the concentration | 136 | 156 | 169 |
| clearance for the concentration as a result of which competition would be severely restricted on the market - non-enforcement of the ban on concentration (art. 20 section 2 of the Act on Competition and Consumer Protection) | 0 | 0 | 0 |
| conditional clearance | 1 | 2 | 4 |
| prohibition | 0 | 0 | 0 |
| decision discontinuing the concentration control proceedings | 0 | 0 | 0 |
| resolution discontinuing the concentration control proceedings | 0 | 3 | 4 |
| return of notification of the intent to concentrate | 16 | 16 | 12 |
| decision imposing a fine for not filing notification of the intent to concentrate | 2 | 2 | 1 |
| decision imposing a fine due to undertaking not providing information in the course of concentration proceedings | 1 | 3 | 0 |
| withdrawal of notification | 2 | 3 | 4 |

¹⁰⁸ Case file XVII AmA 120/14.

¹⁰⁹ Decision DKK-121/2014.

Table 9. Examples of UOKiK's decisions concerning concentration control in selected industry sectors

| sector | number of cases | examples of decisions |
|---|-----------------|--|
| Retail and wholesale of consumer goods | 17 | <ul style="list-style-type: none"> clearance for acquisition by 3W Dystrybucja Budowlana S.A. with its seat in Ruda Śląska of a portion of the assets of Saint-Gobain Polska Sp. z o.o. with its seat in Wrocław (decision DKK-158/2013) conditional clearance for takeover by Auchan Polska Sp. z o.o. with its seat in Piaseczno of control of "Real Sp. z o.o. i Spółka" Sp.k. with its seat in Warsaw and Real Sp. z o.o. with its seat in Warsaw (decision DKK-4/2014) clearance for acquisition przez Jeronimo Martins Polska S.A. with its seat in Kostrzyn of a portion of the assets of Marcpol S.A. with its seat in Łomianki (decision DKK-71/2014) |
| Foodstuff industry | 16 | <ul style="list-style-type: none"> clearance for a merger between SM Mlekovita in Wysokie Mazowieckie and Okręgowa Spółdzielnia Mleczarska in Sanok (decision DKK-22/2014) clearance for takeover by Innova Phoenix S.a.r.l. in Luxembourg of control of Bakalland S.A. in Warsaw (decision DKK-93/2014) clearance for a merger between SM Mlekovita in Wysokie Mazowieckie and Tomaszowska Spółdzielnia Mleczarska in Tomaszów Lubelski (decision DKK-164/2014) |
| Chemical industry | 14 | <ul style="list-style-type: none"> clearance for takeover by Zakłady Lentex S.A. with its seat in Lubliniec of control of Novita S.A. with its seat in Zielona Góra (decision DKK-66/2014) clearance for takeover by Boryszew S.A. in Warsaw of control of Tensho Poland Corporation Sp. z o.o. in Ostaszew (decision DKK-73/2014) clearance for creation by Albemarle Corporation with its seat in Baton Rouge (USA) and Israel Chemicals Limited with its seat in Tel Aviv (Israel) of a joint venture (decision DKK-174/2014) |
| Real estate and property development services | 13 | <ul style="list-style-type: none"> clearance for takeover by AXA Real Estate Investment Managers France with its seat in Courbevoie (France) of control of ZT General Partner S.à.r.l. with its seat in the Grand Duchy of Luxembourg (decision DKK-33/2014) clearance for takeover by SELP Administration S.a.r.l. with its seat in Luxembourg of control of EPISO Cake S.a.r.l. with its seat in Luxembourg (decision DKK-72/2014) clearance for acquisition by P3 HoldCo II, s.r.o. with its seat in Prague, Czech Republic, of a portion of the assets of Poland Central Unit 1 sp. z o.o. with its seat in Warsaw, Europolis Park Błonie sp. z o.o. with its seat in Warsaw, Center Park sp. z o.o. with its seat in Warsaw and Alliance Management Company sp. z o.o. with its seat in Warsaw (decision DKK-153/2014) |

Duration of concentration proceedings

In 2014 the average duration of control proceedings was **57 days**. This time period is to be shortened under the amendment in effect as of 18 January 2015 to the Act on Competition and Consumer Protection. The new legislation introduces a **two-stage procedure for analysis of merger and acquisition applications**: simple concentrations will be reviewed within one month, while more complex applications will be reviewed for a further four months. Under the previous legislation, UOKiK had two months to conduct proceedings. To date the period of waiting for responses from undertakings has not been included in this time period, which meant that the more complex issues were reviewed for a longer time. Another change is the fact that an undertaking can learn the envisaged direction of decision, including UOKiK's objections, even during the proceedings. This means that the undertaking can comment on the objections, and even modify the scope of the merger or acquisition, and in this way can avoid the transaction being prohibited.

UOKiK commenced preparations for introduction of the new concentration control system even before the amendment came into force, and this is confirmed in the statistics.

The average duration of concentration control proceedings in 2014

| | |
|-------|---------|
| Q I | 78 days |
| Q II | 59 days |
| Q III | 50 days |
| Q IV | 42 days |

The average duration of concentration control proceedings in 2015

| | |
|------|---------|
| Q I | 28 days |
| Q II | 34 days |

Table 10. Statistics for judgements in competition protection cases

| | SOKiK | | | Appeal Court in Warsaw | | | Supreme Court | | |
|---|-------|------|------|------------------------|------|------|---------------|------|------|
| | 2012 | 2013 | 2014 | 2012 | 2013 | 2014 | 2012 | 2013 | 2014 |
| Judgements issued in competition protection cases in the years 2012-2014 in total, including relating to: | 60 | 71 | 64 | 29 | 22 | 26 | 2 | 3 | 3 |
| vertical agreements | 29 | 44 | 16 | 8 | 9 | 14 | 0 | 0 | 0 |
| horizontal agreements | 8 | 8 | 10 | 5 | 1 | 2 | 0 | 0 | 0 |
| abuse of a dominant position | 19 | 19 | 35 | 15 | 10 | 10 | 2 | 2 | 2 |
| control of concentrations of undertakings | 4 | 0 | 3 | 1 | 2 | 0 | 0 | 1 | 1 |

Table 11. SOKiK judgements in competition protection cases

| SOKiK judgements in competition protection cases | 2012 | | 2013 | | 2014 | |
|--|--------|------------|--------|------------|--------|------------|
| | number | percentage | number | percentage | number | percentage |
| Overturning of a UOKiK decision | 3 | 5 | 3 | 4 | 6 | 9 |
| Amendment of a UOKiK decision | 10 | 17 | 7 | 10 | 17 | 27 |
| Dismissal of an appeal filed by an undertaking | 47 | 78 | 61 | 86 | 41 | 64 |

3.4. Competition protection case law

Undertakings can file appeals against UOKiK decisions and complaints concerning UOKiK resolutions with the Court of Competition and Consumer Protection (SOKiK)¹¹⁰ in Warsaw. A SOKiK judgement can be appealed against to the Appeal Court in Warsaw. A cassation appeal can also subsequently be filed with the Supreme Court. Practice shows that in just under 64 percent of cases UOKiK decisions concerning competition protection are upheld by the SOKiK.

Selected judgements by the SOKiK and the Appeal Court in Warsaw issued in 2014.

SOKiK judgement of 12 May 2014 relating to appeal against UOKiK's decision by Polskie Górnictwo Naftowe i Gazownictwo (PGNiG)¹¹¹

In July 2012 UOKiK issued a decision¹¹² finding that PGNiG had abused a dominant position on the national natural gas wholesale market. The prohibited practice was refusal by PGNiG to sell natural gas to Nowy Gaz according to the rules applicable to a comprehensive agreement. This was because Nowy Gaz intended to resell the gas. UOKiK found that PGNiG thereby restricted sales - to the detriment of business counterparties and consumers. This conduct was also deemed to be counteracting the formation of conditions necessary for competition to be created or to develop on the national natural gas retail market. PGNiG appealed against the decision issued by the SOKiK, which found that UOKiK had correctly classified the conduct of the undertaking as a competition-restricting practice. At the same time, the fine of PLN 60 m was upheld. The judgement is not legally binding, and the undertaking exercised the right to file an appeal.

SOKiK judgement of 28 November 2014 concerning an appeal against UOKiK's decision by Tikkurila Polska S.A. and Praktiker Polska Sp. z o.o.¹¹³

In the decision¹¹⁴ to which this judgement relates UOKiK found that a competition-restricting agreement had been concluded on the national wholesale paint and lacquer market, in the form of fixing retail prices for reselling of paints and varnish by the manufacturer, Tikkurila Polska S.A. with the entities selling them, Castorama Polska Sp. z o.o. and Praktiker Polska Sp. z o.o. Due to cooperating with UOKiK under the leniency programme, Castorama avoided a penalty. The remaining undertakings appealed to the SOKiK, which concurred with UOKiK. The court thus confirmed that a prohibited agreement had been entered into, but lowered the fines imposed on the undertakings to PLN 2.5 m. The judgement is not legally binding, and the undertakings exercised their right to file an appeal. UOKiK also appealed.

Judgement issued by the Appeal Court of 15 May 2014 concerning an appeal against a SOKiK judgement by TP EmiTel Sp. z o.o. with its seat in Kraków and UOKiK¹¹⁵

Towards the end of 2005, at the request of the Union of Public Media Employers (Związek Pracodawców Mediów Publicznych - ZPMP), UOKiK instituted proceedings against TP EmiTel, the owner of stations broadcasting a radio and television signal. Members of the Union – Polish Radio, regional public radio stations, and Polish Television – alleged that the company was charging various fees for provided services.

Broadcasters who wish the programmes they have on offer to reach users can disseminate their programmes through broadcasting networks. In 2005 the most effective method of reaching subscribers was use of the terrestrial network. At that time the monopolist and main supplier of services of that kind was TP EmiTel. In the course of the proceedings UOKiK reviewed agreements that the company had concluded with business counterparties. The analysis revealed that the company applied varying rates of fees for individual users, discriminating against public broadcasters and favouring commercial broadcasters – the differences were as much as 35 percent.

TP EmiTel's conduct was evidently anti-competitive in nature in view of the fact that public broadcasters had been the main users of the company's services for many years. In the UOKiK's view this practice was an activity which was aimed at potential new operators who could offer broadcasters competitive rates and give them conditions that were binding in the long term. In addition, the company broadened its base of service users,

thereby lowering the long-term costs of providing them. It was the only party to benefit, because the rate of fees that public broadcasters were charged for the broadcasting service rose systematically.

In a decision¹¹⁶ of 25 October 2007 UOKiK found that for many years TP EmiTel had been discriminating against public broadcasters, and ordered that the prohibited practices be stopped. The company was fined more than PLN 19 m for abuse of a dominant position. The decision became immediately enforceable due to the danger that TP EmiTel would exercise the right to an appeal, causing the adverse situation on the market to become permanent. The company filed an appeal with the SOKiK, contesting UOKiK's decision in its entirety.

On 19 October 2009 the court issued a judgement¹¹⁷ stating that the relevant market had not been correctly identified in the case, and overturned the decision. UOKiK, together with the ZPMP, filed an appeal. On 13 May 2010 the Appeal Court in Warsaw acknowledged that the appeal was justified¹¹⁸, overturned the contested judgement¹¹⁹, and referred the case to the SOKiK for re-examination. The Appeal Court stated that the SOKiK's findings with regard to the incorrect definition of the relevant market by UOKiK meant that the SOKiK had an obligation to reach its own conclusions and define that market - which was not done in the case in question.

Following re-examination of the case, in a judgement¹²⁰ of 18 December 2012, the SOKiK again overturned UOKiK's decision. The court found that the relevant market had been incorrectly identified, and that thus the preliminary condition for prohibiting abuse of a dominant position had not been fulfilled. TP EmiTel, UOKiK and ZPMP filed an appeal against the judgement.

In a judgement of 15 May 2014 the Appeal Court rejected all of the appeals. Both parties filed cassation appeals. The case is awaiting judgement by the Supreme Court. UOKiK contested the standpoint taken by the courts, which amounts to the assertion that failure to correctly identify the relevant market in a case concerning abuse of a dominant position means that the decision is without foundation and was issued prematurely¹²¹.

¹¹⁰ A motion can be filed for re-examination of a case with respect to a decision concerning general product safety, and subsequently a complaint can be filed with the Voivodship Administrative Court in Warsaw.

¹¹¹ Case file XVII Ama 16/13.

¹¹² Decision DOK-2/2012.

¹¹³ Case file XVII Ama 160/11.

¹¹⁴ Decision DOK-4/2010.

¹¹⁵ Case file VI ACa1260/13.

¹¹⁶ Decision DOK-95/07.

¹¹⁷ Case file XVII Ama 66/08.

¹¹⁸ Case file VI ACa 126/10.

¹¹⁹ Case file XVII Ama 66/08.

¹²⁰ Case file XVII Ama 172/10.

¹²¹ If cassation appeals are accepted for review, the Supreme Court issues judgement on the nature of the effects of overturning UOKiK's decision being contested in the appeal, i.e. whether in such a case the antitrust proceedings that were concluded by issuing that decision are still being conducted, or whether, if UOKiK intends to look again at whether the allegations are justified, it has to commence new proceedings.

SOKiK judgement of 18 June 2014 concerning an appeal against a decision issued by UOKiK by Polkomtel Sp. z o.o. (Plus network operator)¹²²

In December 2009 UOKiK conducted simultaneous inspections at the premises of five companies: Polska Telefonia Cyfrowa (PTC), Polkomtel, P4, Info TV FM and NFI Magna Polonia. The actions were taken with the consent of a court as part of preliminary proceedings. The goal was to determine whether a competition-restricting agreement could have been concluded with regard to mobile television services. In the course of the measures taken, two undertakings - Polkomtel and PTC - obstructed the inspection, leading UOKiK to institute proceedings to impose fines on them.

It was ascertained that Polkomtel had not handed over a hard disc belonging to UOKiK on which the persons carrying out the inspection had saved copies of e-mail inboxes of employees working on the mobile television project. Moreover, the company prevented UOKiK representatives from promptly commencing the inspection - and each delay is an opportunity for an undertaking to destroy or conceal evidence. Polkomtel also failed to provide the persons conducting the inspection with complete documentation pertaining to its role in the mobile television project, only making available sections that it had selected.

UOKiK fined the company PLN 130 689 900¹²³ for failure to cooperate, which was 66 percent of the maximum fine provided for by law. Polkomtel appealed to the SOKiK. The court amended the contested decision, lowering the fine imposed on the undertaking to PLN 3 960 300. UOKiK did not agree with the SOKiK's judgement, and appealed against the judgement to the Appeal Court in Warsaw. UOKiK requested that the judgement be changed and that the original amount of the fine be upheld, or that it be overturned. It questioned the findings of the court of first instance with regard to the facts of the case, the way the acts performed by Polkomtel had been classified, and the application of incorrect criteria for determining the amount of the fine. In UOKiK's view the significantly decreased penalty imposed on the undertaking did not fulfil a repressive, preventative, or rehabilitative function. The case is pending. Polkomtel also filed an appeal against the SOKiK's judgement, attempting to have the fine overturned by courts in its entirety.

3.5. Application of EU competition law

Competition-restricting practices are prohibited under the TFEU. Where the activities of an undertaking affect trade between EU Member States, EU legislation requires administrative offices and courts to apply that treaty directly (art. 101-102 of the TFEU)

in parallel fashion to national competition law. In 2014 UOKiK conducted proceedings in three cases in which it applied EU and Polish legislation in parallel. All of them are pending¹²⁴.

Poland's level of activity with regard to application of art. 101-102 of the TFEU is less than that of other EU countries¹²⁵. The highest number of cases initiated on the basis of the TFEU were instituted by: France (236), Germany (192) and Spain (130). Nevertheless, when compared with Slovakia and the Czech Republic UOKiK is the leader in terms of the number of notifications (29).

UOKiK conducts inspections with searches only in justified cases - when a prohibited agreement might exist on a particular market and there is no generally available evidence for this, for example official documentation. Undertakings have an obligation to cooperate during an inspection. UOKiK can fine an undertaking as much as the equivalent of EUR 50 m for failure to cooperate. Inspections are one of the most effective methods of obtaining evidence. Over recent years, inspections have made it possible to break up many harmful cartels operating on various markets. The parties in the cartels often derived unjustified gains due to price-fixing or market sharing for a long period of time at the expense of competitors and consumers.

¹²⁴ 1. Antitrust proceedings relating to abuse by Polkomtel Sp. z o.o., T-Mobile Polska SA and Polska Telefonia Komórkowa Centertel Sp. z o.o. of a collective dominant position on the national retail mobile telephone market (under art. 102 of the TFEU).
2. Antitrust proceedings concerning suspected entering into of a competition-restricting agreement by manufacturers of boards made of ligneous materials - Kronospan Szczecinek, Kronospan Mielec, Pfeleiderer Grzejewo, Pfeleiderer Prospan and Kronopol (under art. 101 of the TFEU).
3. Antitrust proceedings against Grabikowski-Grabikowska P.P.H.U. INEX Sp. j., Pro-Wet Śnioch, Wiese Sp. j. and IDT Biologika GmbH, Am Pharmapark with its seat in Germany concerning the entering into by those undertakings of competition-restricting agreements on the national market for supply of vaccines for rabies in wild foxes (under art. 101 of the TFEU).

¹²⁵ Proceedings instituted on the basis of the TFEU in the period from 1 May 2004 - 31 March 2015, see <http://ec.europa.eu/competition/ecr/statistics.html>.

4

Market surveillance and product safety

4.1. Product safety

UOKiK carries out surveillance of safety of products other than foodstuffs intended for consumers (such as furniture, children's clothing and functional items for children, barbecues, barbecue lighters and sports equipment). Direct inspections on premises of undertakings are conducted however by the Trade Inspection Authority (Inspekcja Handlowa - IH) at its own initiative or at the request of UOKiK¹²⁶.

Upon receiving information from the IH or other sources, UOKiK institutes administrative proceedings if it determines that the product presents a danger to life or health of users. At that time it can impose specific obligations on a manufacturer or distributor, for example prohibit the product from being placed on the market or order that a warning be issued to consumers (for example by making an announcement in the press), eliminating the danger, withdrawing a product from the market or recalling a product¹²⁷. It can also fine the entity responsible for placing the product on the market up to PLN 100,000.

Effectiveness of UOKiK's actions based on the example of inspections of children's clothing products



21 warnings sent by UOKiK to manufacturers/distributors

7119 products withdrawn from market

41476 products in which danger was eliminated

¹²⁶ The President of UOKiK confirms plans for inspections performed by the Trade Inspection Authority, whether planned or performed in connection with the voivodship inspection authorities' own duties.

¹²⁷ Recall of a product means that the undertaking is required to buy back the product from users at the price at which it sold it regardless of the level of wear. A consumer who has proof of purchase may make such a claim to the distributor from which it purchased the product. If the consumer does not have proof of purchase, it contacts the manufacturer directly.

In 2014 UOKiK handled **299** cases concerning general product safety¹²⁸ and completed **224** of them. The most common were actions concerning clothing products for children (186), items for children (45) and oil lamps (39). Out of **121** UOKiK decisions issued, in **19** instances it imposed specific obligations on undertakings, and in **14** instances fines.

One area which is under continual surveillance is the **pyrotechnic products market**. These products are used increasing frequently, not only in the New Year. In 2014 the results of inspections conducted by the IH of fireworks showed that most of the products fulfilled the requirements specified in current legislation, and in cases of questioned products undertakings carried out the modifications voluntarily.

Table 12. Data concerning inspections conducted in connection of surveillance of the market with respect to pyrotechnical products

| Period for which inspections were carried out | 1 January - 31 December 2014. |
|---|--|
| Authorities checking compliance of pyrotechnic products with basic requirements | <ul style="list-style-type: none"> voivodship inspectors of the Trade Inspection Authority labour inspectors |
| Authorities conducting administrative proceedings in cases of products which did not comply with basic requirements | <ul style="list-style-type: none"> the President of UOKiK regional labour inspectors <p>Customs authorities are an additional element of the market surveillance system.</p> |
| Number of undertakings inspected | 115 (6 manufacturers, 10 importers, 47 wholesalers, 52 retailers) |
| Number of products tested | 668 types of products |
| Number of questioned products | 54 types of product (8 percent of all products inspected) |
| Irregularities found | Certain information and warnings concerning safe use missing (17 cases), incorrect labelling (16 cases), information in the Polish language not provided (4 cases) etc. |
| Results of inspections | Modifications performed by undertakings |

¹²⁸ Act of 12 December 2003 on General Product Safety (consolidated text, Journal of Laws of 2015, item 322).

¹²² Case file XVII AmA 145/11.

¹²³ Decision DOK-1/2011.

REPORT ON ACTIVITIES 2014

Market surveillance and product safety

Register of dangerous products

Products which UOKiK considers not to be compliant with safety requirements are listed in the Register of Dangerous Products. In 2014 a further 32 were put on the list.

Voluntary notification from undertakings

Undertakings notify UOKiK about irregularities and modification measures voluntarily more and more frequently. The information received is then placed on the UOKiK's website. Progress with modification measures is also monitored. In 2014 undertakings submitted 116 voluntary notifications of commenced campaigns. The statistics show that most of the notifications (95) involved motor vehicles. The other information concerned for instance articles for children, electrical devices, and toys.

The Rapex System

The Rapex System (*Rapid Alert System for Non-Food Consumer Products*) makes possible rapid exchange of information between Member States and the European Commission concerning dangers presented by consumer products. Each week the EC issues notifications on its website about dangerous products reported by Member States. At UOKiK [there is a contact point for the system](#).

In 2014 UOKiK placed 48 notifications in the system. The largest group of reported products was toys and items for children (26). In 50 cases, comments on the notifications submitted by authorities in other EU countries were submitted to the EC. From among the products reported by the Member States, 48 had been placed on the EU market for the first time by Polish entities (of which 33 originated from Polish manufacturers).

4.2. Compliance assessment programme

UOKiK monitors the system of non-food products in terms of compliance with basic requirements stipulated in so-called New Approach Directives¹²⁹. On the basis of the Act on the Compliance Assessment Programme, it conducts administrative proceedings and, if it determines that a specific product does not comply with the basic requirements, it issues a decision ordering it to be withdrawn from the market and places it on a special register¹³⁰. In 2014 UOKiK conducted 405 cases and concluded 291 of them. The proceedings related mainly to toys (197), and

next – electrical devices (90) and machines (17). As a result UOKiK issued 242 decisions, while in 24 cases it imposed obligations specified in the act.

[Effectiveness of the actions of UOKiK based on the example of inspections of toys](#)



116 notifications sent to undertakings concerning non-compliance sent to undertakings

8867 products from which irregularities were eliminated

67829 products withdrawn from trade

The register of products which are non-compliant with basic, detailed, or other requirements

UOKiK's duties include among other things maintaining a register of products which are non-compliant with basic, specific, or other requirements, available on the UOKiK's website. In 2014 79 products were placed on the list.

Working with specialised authorities

Upon receiving information about products which are not compliant with basic requirements UOKiK may for instance order an inspection or forward the relevant information to the responsible specialised authority. Inspection of products available on the market is dealt with among others by the Trade Inspection Authority (IH), which is subordinate to UOKiK. The Trade Inspection Authority performs its duties with the assistance of the voivodship inspectors and the inspection and analysis laboratories that assist it. In 2014 in 29 cases, UOKiK ordered inspections by the IH voivodship inspectors, and in two cases the State Labour Inspectorate.

ICSMS System

Since March 2014 implementation has been conducted in Poland of the Information and Communication System for Market Surveillance (ICSMS), which enables information to be gathered and exchanged between authorities responsible for surveillance of EU

Member State markets about products which do not comply with requirements specified in harmonisation legislation within the Acquis Communautaire. In UOKiK there is a **Polish contact point**. In 2014 UOKiK placed 6 notifications in the system, and in 10 cases took measures in response to reports from other Member States.

4.3. Supervision of the Trade Inspection Authority (IH)

UOKiK plans, coordinates and monitors inspections performed by voivodship inspectors of the Trade Inspection Authority concerning food and non-food services and items, and also analyses the results of those inspections. It also performs duties related to inspection of quality of fuels.

Table 13. Number of inspections conducted by voivodship inspectors of the Trade Inspection Authority ordered by UOKiK in the years 2012, 2013 and 2014

| Item inspected | Number of inspections in 2012 | Number of inspections in 2013 | Number of inspections in 2014 |
|--|-------------------------------|-------------------------------|-------------------------------|
| Agricultural goods and foodstuffs | 2360 | 9751 | 2518 |
| Non-food items and services | 1372 | 4463 | 1244 |
| General product safety | 1162 | 1469 | 1148 |
| Compliance with New Approach Directives ¹³¹ | 1827 | 2130 | 1541 |

In 2014 20 nationwide inspections of agricultural and grocery items were conducted, including one on the basis of an EC plan. Particular attention was paid to dairy and meat products on offer at the inspected retail outlets at the lowest prices. In the period from October 2013 until June 2014, inspectors at the Trade Inspection Authority (IH) tested 2 784 product batches. It questioned 20 percent of them due to incorrect labelling and 13 percent due to poor quality. Most of the objections related to offal, processed meat, and butter. In the case of all grocery products questioned

by the Inspection Authority as a result of laboratory tests, decisions were made to withdraw products which did not comply with legislation or manufacturers' declarations as a result of the inspections. IH inspectors instituted proceedings to impose fines on undertakings offering products which did not comply with legislation and which were falsified. If a product was questioned in the course of laboratory tests the parties being inspected were charged for the costs.

On 13 December 2014 the Regulation of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers was introduced. Food labels on packaging must be clearly legible, indelible, comprehensible, and not be misleading or missing any vital information.

In Q III 2014 - at the same time as the Agricultural and Food Quality Inspection Authority (IJHARS) - IH inspectors checked the quality and labelling of products sold as *home-made, traditional, natural, no preservatives, GMO-free*, and similar. The criteria examined were the list of ingredients, type of product, the layout and display of information on the label or at the point of sale, and the graphic layout of the packaging. In 160 stores of various kinds the inspectors inspected 966 product batches. One in three was questioned. Similar actions are a contributing factor in the ceasing by manufacturers of inaccurate labelling of food products.

As in 2013 - in cooperation with IJHARS and official food inspection authorities in all of the EU states - an inspection was carried out of the quality of products containing beef¹³² to check for possible false labelling of horsemeat.

In addition to this, nationwide inspections were conducted in 33 areas covering non-food items and services - one of which was the **automotive market**. In connection with an amendment to the Road Traffic Act, which provides for penalties for placing vehicles, parts and elements of their fittings on the market without the required certificate of initial fitness, the Trade Inspection Authority conducted a test-run for an inspection with regard to the above. During this inspection irregularities were revealed at 25.6 percent of inspected undertakings and with respect to 7.8 percent of all of the inspected products.

4.4. UOKiK's laboratories

UOKiK manages the works of nine accredited laboratories that perform tests to help with inspections conducted by the Trade Inspection Authority with regard to fuels,

¹²⁹ These concern more than 20 groups of products, such as electrical appliances (including electrical devices and white goods), toys, personal protective equipment, building materials, machinery, and lifts. Only items for which there are basic requirements specified in legislation should bear the CE mark.

¹³⁰ Register of products that are non-compliant with the basic, detailed, or other requirements.

¹³¹ The figures given concern planned inspections. A single product can be subject to a number of acts of law, for example electrical appliances are subject to two directives - the low voltage directive and directive restricting the use of certain hazardous substances in electrical and electronic equipment.

¹³² https://uokik.gov.pl/news.php?news_id=10296&news_page=3.

toys, textile products, agricultural and food items, and other non-food items. The IH then uses the information about the questioned samples to take measures to restore legal compliance, and therefore above all - to withdraw products that do not meet the requirements from the market.

In 2014 the laboratories tested more than **4700** samples; **1992** of them were questioned due to not being compliant with legal requirements or requirements declared by the undertaking. All of the UOKiK's laboratories operate under a management system compliant with standard PN-EN ISO/IEC 17025, which guarantees credible and reliable results of tests of products. One of the elements confirming the competence of laboratories is participation in proficiency testing¹³³ - in 2014 the laboratories took part in **252** tests.

4.5. Fuel quality inspection system

On UOKiK's website there is a [list of petrol stations and wholesale warehouses](#) with results of inspections scheduled in view of complaints made by drivers about stations that offer fuel of inadequate quality. The list is updated once a month.

The results of the inspections conducted in 2014 revealed that:

- the quality of samples of liquid fuel was questioned more frequently than in the previous year, for example **3.87 percent** of fuel samples (petrol and diesel oil) of the **931** samples tested did not meet the required quality - in 2013 this was 3.92 percent of samples;
- in the case of liquefied petroleum gas (LPG) less irregularities were found compared to the year before - the inspection revealed an irregularity rate of **2.29 percent** of the **480** samples taken (in 2013 2.34 percent of samples were questioned).

UOKiK issued **77** decisions ordering undertakings to cover the cost of testing in cases in which the samples tested did not meet the required quality.

5

State aid

State aid projects or changes to the conditions for making use of state aid require notification to the EC - this is to ensure that all undertakings compete on a level playing field. Funding granted in connection with so-called "group exemptions"¹³⁴ is an exception. *De minimis* aid, i.e. aid not exceeding EUR 200,000 gross over a period of three calendar years (in the case of the road forwarding sector - EUR 100,000) is also not covered by the notification requirement.

Whether state aid granted to undertakings in the EU is lawful is determined solely by the European Commission. UOKiK does not have the power to issue

decisions in this regard. It only conducts a preliminary assessment of cases of individual funding and aid programmes in terms of compliance with EU law. In connection with this power, in 2014 UOKiK issued **54** opinions, including **23** concerning aid programmes, **30** relating to individual aid and 1 concerning individual aid for restructuring. Although UOKiK's position is not binding, in practice it is very often taken into consideration. On the basis of reports from institutions that grant aid, each year UOKiK draws up and presents to the Council of Ministers a report on state aid granted in the previous year. The report is then approved by the Sejm.

Table 14. Data concerning state aid for 2014

| | |
|--|-----|
| Number of applications for an opinion | 638 |
| Number of government proposals (normative acts, strategies, programmes, information, reports) analysed to determine whether particular funding can be classed as state aid | 571 |
| Number of projects notified to the EC via UOKiK | 23 |
| - projects concerning individual aid | 16 |
| - projects concerning aid programmes | 6 |
| Number of favourable decisions issued by the EC for projects | 21 |
| Number of projects withdrawn | 7 |
| Number of projects analysed by the EC as part of the so-called "preliminary review" | 34 |
| Number of projects for which a formal enquiry were conducted ¹³⁵ | 1 |
| Number of projects notified to the EC via UOKiK in connection with group exemptions | 30 |
| - projects relating to aid programmes | 10 |
| - projects relating to individual aid | 20 |

¹³³ Proficiency testing makes it possible to confirm the quality of the results obtained and the technical competence of a particular laboratory. Participation is a basic activity required in order to meet standard PN-EN ISO/IEC 17025:2005 (a standard harmonised with EU norms).

¹³⁴ The EC has the power to issue regulations as a kind of advance confirmation that certain types of aid are compatible with the common market and that therefore no prior notification or clearance from the EC is needed. These are projects that are covered by so-called "group exemptions", and *de minimis* aid.

¹³⁵ The statistics also cover applications filed in previous years, reviewed by the EC in 2014.

6

Legislative works

Selected projects for which opinions were issued and notifications filed by UOKiK in 2014:

- operational aid for renewable energy under an auction procedure;
- an aid programme for reconstruction of a thermal energy network in Jasło destroyed during flooding in 2010;
- aid for undertakings operating on the basis of a permit to conduct business activity within special economic zones;
- individual aid for OGP Gaz-System S.A. for an investment in a natural gas transmission grid in Poland;
- individual aid for Wyższa Szkoła Techniczna in Katowice;
- individual aid - football stadium in north-east Poland with training facilities.

Funds for restructuring of the Polish state airline PLL LOT S.A.

In recent years PLL LOT S.A. has found itself in severe financial difficulties, and has recorded a loss for each financial year since 2008. Being unable to overcome these financial difficulties, LOT applied to the Minister of Treasury for state aid, and the application was granted. Next, on 14 December 2013, a proposal was submitted to the European Commission. In mid-May 2014 the EC issued a decision approving aid to bail out PLL LOT S.A., at the same time requiring Poland to submit by 20 June 2014 a plan for restructuring or winding up of the company, or confirmation of return of the loan by way of which aid to bail out the company was provided. Accordingly, Poland submitted a plan for restructuring LOT S.A. on 30 July 2014. The EC issued a decision¹³⁶ concerning aid for restructuring for PLL LOT S.A. (the aid having been found to be compatible with the internal market) and approved the restructuring plan. The aid, which was released in two tranches, produced tangible effects. Since 2013 the financial standing of LOT has been improving. Losses on the core area of business activity, which in 2012 were PLN 146.5 m, had fallen to PLN 3.8 m by 2013, and in 2014 the company made a profit on the core area of business activity of PLN 97.6 m.

Gdynia-Kosakowo airport - difficult decisions made by the EC

The case concerns alterations that the Gdynia City Authorities and Kosakowo municipal authorities decided to make to the military airport in Babie Doły. They formed the company Port Lotniczy Gdynia-Kosakowo and invested public funds (EUR 52 m) in converting the military facility into a civil one. On 21 August 2011 the President of the City of Gdynia (acting additionally on behalf of the Kosakowo municipal authorities) applied to UOKiK for an opinion on the funding granted to the company. In an opinion of 17 April 2012 UOKiK stated that recapitalisation of the airport constituted state aid and that funding of this kind was contrary to the applicable EU legislation. Next - at the request of the President of the City of Gdynia - the project was notified to the EC for the purpose of legal certainty.

On 11 February 2014 the EC confirmed UOKiK's standpoint that recapitalisation of the airport constituted illegal state aid and that the funds provided gave the recipient an unfair competitive advantage (in particular over the airport in Gdańsk). The EC therefore ordered that the funds be recovered. In response the entities granting the aid asked the companies to return the funds, plus interest. Gdynia-Kosakowo airport was not capable of paying the amount due and filed for bankruptcy¹³⁷.

At the same time, the Gdynia City Authorities and Kosakowo municipal authorities filed motions contesting the EC's decision with the CJEU. At the request of UOKiK, Poland acceded to both of the cases as an intervening party, pointing out incorrect classification by the EC of expenditures related to performance of a public project as constituting returnable state aid.

As a result of intervention on the part of the Polish authorities, on 26 February 2015 the EC overturned the first decision and issued another decision superseding it, upholding its position but reducing the amount to be returned by the amount of the expenditure incurred for a public project. The EC thereby agreed to all of the proposals made by the Republic of Poland in connection with the intervention.

UOKiK's part in legislative works is an essential element of creation of the legal framework for development of competition and providing effective protection of consumer interests. In 2014 UOKiK analysed in total more than 2 thousand projects and standpoints on Sejm projects, issuing opinions on them with regard to their potential implications for competition and the situation of consumers.

At UOKiK's initiative, in 2014 work was conducted on proposals for:

- an amendment to the Act on Competition and Consumer Protection and the Code of Civil Procedure (amendment of competition protection legislation)¹³⁸ together with the secondary legislation:
 - » for a regulation issued by the Council of Ministers on filing of notification of the intent to concentrate¹³⁹ (to make easier interpretation of legislation regulating the procedure for filing notification of the intent to concentrate, UOKiK published *Clarifications on the Criteria and Procedures for Filing Notification of a Concentration*),
 - » for a regulation on the manner and the procedure for deciding not to impose or lowering a fine (the leniency regulation)¹⁴⁰,
 - » for a regulation issued by the Council of Ministers on calculation of turnover of undertakings participating in a concentration¹⁴¹;
- the core aims for the Act on Alternative Dispute Resolution (implementation of the ADR Directive and ODR regulation)¹⁴²;

- the core aims for an amendment to the *Act of 16 September 2011 on the Rights of a Purchaser of a Dwelling Unit or a Detached House* (amendment to the Property Development Act)¹⁴³. UOKiK analysed the functioning of the property development sector one year after the new legislation came into force.

- a regulation issued by the Council of Ministers concerning exemption of certain types of agreements for transfer of technology from the ban on competition-restricting agreements¹⁴⁴;
- a regulation issued by the Council of Ministers establishing a regional aid map for the years 2014-2020¹⁴⁵;
- a regulation issued by the Council of Ministers amending the regulation on the scope of information provided by an entity applying for *de minimis* aid¹⁴⁶;
- a regulation issued by the Council of Ministers amending the regulation on *de minimis* aid certificates and *de minimis* aid in agriculture or fishing¹⁴⁷.

*Clarifications on the Criteria and Procedures for Filing Notification of a Concentration with the President of UOKiK*¹⁴⁸ were also drawn up, which do not have legislative status.

¹³⁸ The amendment to the Act on Competition and Consumer Protection was signed into law by the President of Poland on 30 June 2014 and came into force on 18 January 2015.

¹³⁹ The proposal for the regulation was approved by the Council of Ministers on 23 December 2014. The regulation came into force on 18 January 2015.

¹⁴⁰ The proposal for the regulation was approved by the Council of Ministers on 23 December 2014. The regulation came into force on 18 January 2015.

¹⁴¹ The proposal for the regulation was approved by the Council of Ministers on 23 December 2014. The regulation came into force on 18 January 2015.

¹⁴² The proposal for the regulation was approved by the Council of Ministers on 31 March 2015.

¹⁴³ On 31 December 2014 the proposal was published on the Government Legislation Centre Public Information Bulletin Website and UOKiK's Public Information Bulletin website, and submitted for consultations.

¹⁴⁴ In 2014 work was continuing at UOKiK on a proposal for the regulation. On 27 February 2015 the proposal for sent for public consultations and interdepartmental consultations.

¹⁴⁵ The proposal for the regulation was approved by the Council of Ministers on 30 June 2014. The regulation came into force on 1 July 2014. It specifies the areas of Poland in which regional aid is permitted, the maximum amount of that aid, and the types of business activity for which regional aid is not permitted.

¹⁴⁶ The proposal for the regulation was approved by the Council of Ministers on 24 October 2014. The regulation came into force on 15 November 2014.

¹⁴⁷ The proposal for the regulation was approved by the Council of Ministers on 24 October 2014. The regulation came into force on 15 November 2014.

¹⁴⁸ In 2014 work was continuing at UOKiK on Clarifications. On 23 January 2015 the Clarifications were signed by the President of UOKiK.

¹³⁶ SA.36874 (2013/C, ex 2013/N).

¹³⁷ On 7 May 2014 the court issued a ruling declaring liquidation bankruptcy of the company.

In 2014 UOKiK participated in government and non-government legislative projects, including:

- the Act on Healthcare Services Financed from Public Funds¹⁴⁹;
- an act amending the Energy Act and certain other acts¹⁵⁰;
- an act amending the Act on Collective Supply of Water and Collective Discharge of Sewage;
- the Act on Insurance and Reinsurance;
- an act amending the Act on Financial Market Supervision, the Banking Act, and certain other acts;
- the core aims of a legislative proposal amending the Act on Access to Business Information;
- a regulation issued by the Minister of Administration and Digitisation amending the regulation on information resources designated to be accessed in the Central Public Information Repository.

Amendment to the Act on Competition and Consumer Protection and the Code of Civil Procedure (amendment of competition protection legislation)¹⁵¹

The core aims of the amendment were in particular:

- the closing of the current loopholes and reinforcing competition and consumer protection by way of:
 - » introduction of a tool for more effective detection and elimination of competition-restricting practices;
 - » extension of the time period under the statute of limitations for competition-restricting practices from one to five years;
 - » introduction of the option of a fine for a person managing an undertaking for intentional participation in a competition-restricting agreement;

- » simplifying the way in which concentration control proceedings are conducted.

- increasing consumer protection among other things by enabling public warning of practices infringing collective interests of consumers (the so-called “public warning list”).

The Regulation issued by the Council of Ministers on filing of notification of intent to concentrate¹⁵² specifies the structure of the so-called “WID” form, giving a list of information and documents which should be included in notification of the intent to concentrate (appendix to the regulation). The document also states the amount of the fee for motions for institution of antitrust proceedings concerning concentration and the procedure for paying that fee.

The Regulation on the method and the procedure to be followed when requesting the full immunity from or reduction of a fine (leniency regulation)¹⁵³ covers procedural and technical issues relating to the leniency programme, concerning among other things the place in which motions for a fine not to be imposed or lowering of a fine are submitted, the procedure for submitting additional information for or withdrawing the motion, and the rules as to how UOKiK informs applicants of the method of review. The regulation will make it easier for undertakings and persons in managerial functions to apply under the leniency programme.

The Regulation issued by the Council of Ministers on the procedure for calculating the turnover of undertakings who are party to a concentration¹⁵⁴ specifies the method for calculating the turnover of undertakings, which is one of the criteria for assessing whether the President of UOKiK has to be notified of the intent to concentrate. The rules for these calculations have been made more precise.

Implementation into the Polish legal system of the Directive of the European Parliament and the Council on alternative dispute resolution for consumer disputes - an assessment of the effects of the legislation¹⁵⁵

Towards the end of 2013, in connection with adoption of the Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes, the process of implementation of that directive into the Polish legal system was commenced.

The directive provides for creation of an alternative dispute resolution system, which will cover all disputes between consumers and undertakings, including cross-border agreements and agreements concluded online. In 2014 UOKiK drew up the core aims of a legislative proposal on alternative dispute resolution for consumer disputes, adopted by the government on 31 March 2015. According to the core aims of the proposal, the optimal solution for Poland will be to maintain and expand the hybrid system, in which there are alternative dispute resolution institutions, both private (formed for example by organisations of undertakings in a particular sector) and public, which are part of the authorities responsible for individual market sectors.

Alternative dispute resolution methods are to be transparent, quick, and beneficial to consumers and undertakings - this is an opportunity to avoid long and expensive court litigation where disputes arise. If methods of this type are used, the dispute is usually resolved within 90 days. Despite the advantages described above, resolution of disputes in arbitration is still not used broadly enough in Poland (see data below), and UOKiK will be working to change this.

It is not possible to calculate the exact number of disputes that go to alternative dispute resolution, and therefore the effectiveness of the currently functioning ADR system can be assessed on the basis of the number of disputes settled following court referral to ADR. In 2014 a mere 281 civil cases (in 2013 - 275), 547 commercial cases, 574 family cases and 59 labour law cases were resolved upon affirmation by a court of a settlement reached before an arbiter. The percentage of settlements reached in civil cases was therefore 8.5 percent, in commercial cases - almost 18 percent, in family cases - 43 percent, and in labour law cases - almost 20 percent.

Source: Minister of Justice data

Economic analysis of effects of implementation of the ADR Directive

UOKiK conducted an analysis for the purpose of the core aims for implementation of the ADR Directive. The analysis showed that transposition of the directive into the Polish legal system would result in pecuniary costs of two kinds. For undertakings that enter into agreements with consumers, new disclosure obligations will arise (the requirement to modify agreement and correspondence templates, and changes to the information given on websites). UOKiK's Department of Market Analyses calculated the pecuniary equivalent of those outlays. The second source of costs of implementing the legislation is the resultant increase in the number of consumer disputes submitted to ADR entities that settle them. Forecasts were therefore

produced of the increase in the number of cases of this kind in various transposition scenarios into the Polish legal system, and the rise in pecuniary costs of operation of the ADR system for consumer disputes was estimated¹⁵⁶.

Examples of work on legislative proposals in which UOKiK played a part

A proposal for an amendment to the Act on Healthcare Services Financed from Public Funds and certain other acts (Ministry of Health)¹⁵⁷

The proposal concerned in particular changes in three areas:

- » improvement of the standard of care of oncology patients;
- » improvement of management of waiting lists for healthcare services and of management of the process of entering into agreements for provision of healthcare services;
- » improvement of the way in which the National Health Fund (NFZ) operates.

UOKiK questioned in particular the proposal to exclude the NFZ from the Act on Competition and Consumer Protection. A change of this kind could be deemed to be potentially harmful for maintaining desired aspects of competition in the public healthcare system, and, consequently, for development of the medical services market. The objections were acknowledged by the Ministry of Health.

Act on Insurance and Reinsurance (Ministry of Finance)

The Ministry of Finance is working on an Act on Insurance and Reinsurance aimed at strengthening the position of consumers on the financial market. The proposal also implements the Solvency II Directive¹⁵⁸ into the Polish legal system. Solvency II will regulate issues relating to insurance-based investment products and increase the level of consumer protection due to broader disclosure obligations and regulation of the issue of fees and withdrawal from an agreement¹⁵⁹.

UOKiK took an active part in work on the legislative proposal. The following suggestions were accepted:

¹⁴⁹ The legislative proposal was drawn up by the Ministry of Health.

¹⁵⁰ The legislative proposal was drawn up by the Ministry of Economy.

¹⁵¹ The amendment to the Act on Competition and Consumer Protection was signed into law by the President of Poland on 30 June 2014 and came into force on 18 January 2015.

¹⁵² The proposal for the regulation was approved by the Council of Ministers on 23 December 2014. The regulation came into force on 18 January 2015.

¹⁵³ The proposal for the regulation was approved by the Council of Ministers on 23 December 2014. The regulation came into force on 18 January 2015.

¹⁵⁴ The proposal for the regulation was approved by the Council of Ministers on 23 December 2014. The regulation came into force on 18 January 2015.

¹⁵⁵ On 31 March 2015 the government approved the core aims of the proposal for the Act on Alternative Dispute Resolution.

¹⁵⁶ The forecasts were prepared on the basis of data presented in the regulatory impact assessment drawn up by the EC during work on the directive and data concerning the costs of operation of ADR entities currently existing in Poland.

¹⁵⁷ The legislative proposal was drawn up by the Ministry of Economy.

¹⁵⁸ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

¹⁵⁹ On 3 July 2015 the legislative proposal was submitted to the Sejm (for an opinion to be issued by the Legislative Bureau at the Chancellery of the Sejm).

- » that rights of the insured be strengthened in insurance products on someone else's account (the policy holder is prohibited from charging remuneration or other benefits for offering the possibility of use of insurance cover; ensuring that the insured has the relevant information about the conditions of the agreement before giving consent to inclusion in insurance cover);
- » introducing the obligation for an insurance company to analyse the needs of the policy holder or the insured prior to concluding an insurance-based investment product;
- » the Financial Supervision Authority (KNF) being given the power to monitor the insurance-based investment product market;
- » that insured be afforded the right to withdraw from agreements for life insurance-based investment products concluded subsequent to the date on which the act comes into force and subsequent to receipt for the first time of annual information about the level of benefits due under the concluded insurance agreement. In addition an obligation has been imposed on an insurance company to pay the value of the premiums paid in, which is decreased by no more than 4 percent¹⁶⁰;
- » that the possibility be introduced for ADR (by the Insurance Ombudsman) for disputes between consumers and insurance companies concerning insurance-based investment products;
- » the obligation for insurance companies to place the general insurance terms and conditions (GITC) on their websites;
- » that a rule of interpretation favouring the insured be introduced in cases of ambiguous wording of provisions in an agreement.

Proposal for amendment of the Energy Act and certain other acts (Ministry of Economy)¹⁶¹

The aim of the proposal is to ensure that *Regulation 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency* is applied. The comments mainly concerned the need for more precise wording of legislation regulating UOKiK's cooperation with the URE and with the KNF in order to ensure a coordinated approach to counteracting abuses on the wholesale energy markets. In the proposal, the obligation provided for, of exchange of "protected information" between those institutions, was too broad. Also, UOKiK was not included on the list of entities that can demand disclosure of information constituting a business secret on the basis of the regulation, which

could lead to access being restricted to information indicating breach of the Act on Competition and Consumer Protection. The comments submitted in this regard were acted upon.

Other projects

UOKiK also worked with other departments and organisations with regard to compliance with currently applicable law - including the Ministry of Economy as the department responsible for drafting acts of law concerning the country's energy policy. In 2014 work continued on a proposal for an amendment to the Act on the System of Monitoring and Inspection of the quality of Fuel - due to the requirement to implement the Directive of the Parliament and of the Council.

UOKiK was also involved in legislative works and implementation of a package of eight sector directives¹⁶² on market surveillance. The new legislation is intended to make the system of market surveillance with regard to non-food products in Poland more effective. This means that the internal EU market, to which free-flow of goods is fundamental, can function in a unified manner. In addition, the new act is to introduce an effective system of penalties, which translates into a high level of consumer protection and facilitates elimination from the market of dishonest commercial entities that offer dangerous products or products not complying with EU regulations.

UOKiK's part in legislation works carried out in the EU

In connection with work within the European Union Affairs Committee, UOKiK worked actively with members of the Council of Ministers and representatives of other government administration authorities on matters relating to the Republic of Poland's membership in the EU.

Work on a regulation on the European TSM - Telecom Single Market¹⁶³

UOKiK played an active part in work at an EU level on a motion concerning the Regulation of the European Parliament and of the Council laying down the measures concerning the European single market for electronic communications. The aim of this legislation is to achieve a connected continent, having regard for competition and consumer protection issues on the telecommunications market. The proposed

regulation will replace or amend the regulations in the *Telecoms Package*, which the EC has deemed to be ineffective.

As envisaged by the EC, the overall purpose of the proposed regulation is to achieve a single electronic communications market in which:

- » citizens and businesses can access electronic communications wherever they are provided in the Union, without cross-border restrictions or unjustified additional costs;
- » companies providing electronic communications networks and services can operate and provide them irrespective of where they are established or their customers are situated in the EU.

The proposed regulations are intended as a means of response to the needs of the European telecommunications market, among other things by:

- » abolishing roaming charges (by 15 June 2017);
- » regulation of charges for international calls within the EU;
- » net neutrality and guaranteeing an open Internet.



¹⁶⁰ UOKiK proposed that agreements concluded prior to the date the act came into force should also be covered by this right, but this suggestion was not implemented.

¹⁶¹ The legislative proposal was drawn up by the Ministry of Economy.

¹⁶² Harmonised with the [Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l10141), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l10141>.

¹⁶³ On 8 July 2015 the governments of EU countries confirmed the agreement with the European Parliament concerning roaming charges and net neutrality, concluded at the end of June 2015. See [the agreed upon draft version](#).

Social research and market analysis

A major element of implementation of competition policy is market studies and analysis - on a nationwide and local level. This is in order to monitor the level of competition in selected segments of the economy. Also, this is a means of collecting evidence for ongoing proceedings and analyses of consolidation processes. The findings of analyses can sometimes be the basis for instituting proceedings concerning prohibited market practices, and a starting point for a discussion on the needs and areas of change on individual markets. The results of the studies that were most extensive and most important for the economy are made public, for instance during debates held by UOKiK¹⁶⁴.

In 2014 the main office and branch offices of UOKiK conducted in total 28 studies, of which 20 concerned the national market, and 8 the local markets.

Selected studies and market analysis conducted by UOKiK in 2014.

Consumers on the property development market (January 2014)

The report was drawn up one year after enactment of the Act on the Protection of the Rights of a Purchaser of a Dwelling Unit or Detached House. The aim was to determine whether undertakings providing property development services meet the obligations provided for in new legislation and to eliminate the use by undertakings of prohibited contractual clauses. As part of an inspection conducted from April until December 2013, UOKiK analysed 1162 templates of agreements for sale of flats or houses on the primary market, 565 information prospectuses, and 1239 contracts actually concluded. Of 93 inspected undertakings, objections were raised with respect to the practices of 89 entities, against which UOKiK took action. In addition, 470 prohibited contractual clauses were questioned.

Report on a study of the residential property development market - the primary market (March 2014)

A study of the residential property development market was conducted from March until November 2013 as part of preliminary proceedings, and covered more

than 1000 entities, among them developers, housing cooperatives, and banks. The principal aim of the study was to assess the changes that occurred on the property development market following the enactment on 29 April 2012 of the Act on the Protection of the Rights of a Purchaser of a Dwelling Unit or Detached House. Above all, the opinions of undertakings on application of selected provisions in that act were analysed, as well as figures showing application of the act in practice - with respect to both the national market and the local markets in the major Polish cities, i.e. cities of more than 100,000 inhabitants. As part of the study of the market, proposals were also collected in a survey of entities concerning the legislative changes to the Act on the Protection of the Rights of a Purchaser of a Dwelling Unit or Detached House. As a result of the study a report was published on *the findings of research into the residential property development market - primary market*.

The most important findings of the report were:

- » the act evidently had an effect on the market - before the act came into force there was a rise in the number of investments, and from the moment it came into force a decrease could be seen.
- » a decrease in the number of residential units financed using the purchaser's funds or a bank credit facility, in favour of other forms of financing (probably property developers' own capital) demonstrates the impact of the Act on the Protection of the Rights of a Purchaser of a Dwelling Unit or Detached House and the way in which investments are financed.
- » an analysis of competition on the local markets revealed that only in three cities were there more than 50 property developers selling residential units - there was a high level of competition on the markets on which a large number of residential units are sold.
- » the study also determined the effect the act had on current lending activity of banks - some banks modified their practice with regard to reviewing applications for an investment or mortgage credit facility, and started to require additional documentation, such as an information prospectus with appendices or a notarised property development contract.

Settlement of consumer disputes in arbitration in Poland - UOKiK's report (May 2014)

The document describes the Polish system of ADR in consumer disputes (i.e. which do not involve common courts and in which the decision as to the dispute is left to the parties). The legal and institutional grounds, and the practice of pursuit of claims in Poland and other EU countries were presented. A summary was given of experiences of recent years with regard to the operation of permanent consumer arbitration tribunals which are part of the Trade Inspection Authority and mediation, and the current body of rulings of the European Consumer Centre (ECC) was also presented. The report also contains information on the existing restrictions and describes a range of changes that await Poland due to introduction of a new Act on ADR for Consumer Disputes.

half of the respondents said that they read the contract before paying for a holiday, while in 2012 this figure was one third. Consumers also know more about how to file complaints if they have objections as to the quality of services.

Social research conducted by UOKiK in 2014

Awareness among business undertakings of ADR for consumer disputes (April 2014)

The aim of this study, which was conducted among 301 undertakings, was to determine the extent to which undertakings are familiar with ADR and their opinions on this subject. 72 percent of respondents said they were familiar with ADR, and 83 percent said they would like to settle disputes by way of mediation or before an arbitration tribunal. Undertakings were also asked what factors they considered to favour these methods of dispute resolution, and what factors were a hindrance. The main conclusion revealed by the study was that both consumers (76 percent) and undertakings are interested in ADR, and that the role of UOKiK, consumer ombudsmen, and industry institutions is to educate them further.

Consumers on holiday - a report by the IPC Research Institute for UOKiK (May/June 2014)¹⁶⁵

A social study was carried out on a representative group of 1075 Poles from 5-12 May 2014 for the purpose of comparison with similar studies commissioned by UOKiK in previous years (as part of the campaign *before going on holiday - what you need to know*¹⁶⁶). The results of the surveys showed that Polish consumers are getting better at asserting their rights. This can be seen in the responses given by people who were asked whether they read through contracts before choosing a travel agent, and whether they check whether terms and conditions are legally compliant. In 2013,

¹⁶⁵ A study examining the same issues was conducted in 2015.

¹⁶⁶ Since 2010 UOKiK has been involved in the Before going on holiday - what you need to know campaign. During the campaign of this kind conducted in 2014 together with UOKiK, 35 institutions posted information on their websites on safety, rights, and obligations which people should review and remember before the summer holiday break.

¹⁶⁴ More information can be found on this subject in chapter 8 of this report.

Competition and consumer protection awareness campaigns

Information and education measures are an integral part of UOKiK's activities. They are aimed at raising awareness of the scope of powers of UOKiK among all market participants.

8.1. Public appearances made by the management of UOKiK

An essential element of measures to promote conduct compatible with competition and consumer protection law (advocacy), are public appearances by the management of UOKiK. In addition to case law, which is official interpretation of legislation, they indicate the values, aims, and priorities which UOKiK uses as a guide in its activities.

Speech made by the President of UOKiK Adam Jasser for the opening of the IX Academic Society for Competition Law (ASCOLA) Conference, June 2014)¹⁶⁷

The subject of the meeting of lawyers and economists specialising in competition law and policy was competition protection procedures. The President of UOKiK emphasized that *knowledge of markets, undertakings and the economy in general is key to just and effective application of antitrust procedures.*

Speech made by the President of UOKiK Adam Jasser for the opening of the conference *the Act on Consumer Rights - opportunities and threats* (September 2014)

The subject of the conference was the new Act on Consumer Rights. Adam Jasser noted that *the changes introduced in the new Consumer Rights Act do not bring about a win-lose situation. They are beneficial to consumers and undertakings alike. The former are afforded new rights, and the rights they have at the moment are reinforced, while undertakings will begin*

to feel the direct benefits of the legislation being standardised, especially in cross-border business.

Inauguration lecture given by the President of UOKiK Adam Jasser at the Faculty of Management at Warsaw University (October 2014)

In his inauguration lecture for the 2014/2015 academic year, Adam Jasser said to the students present: *Future managers need to be aware that a market cannot function in a healthy way, and there is no economic prosperity, without fair competition, and without good old-fashioned business integrity, which means the obligation of every firm to treat its business partners, and above all its customers - consumers, fairly.*

An efficient compliance regime requires determination on the part of the board - speech made by the President of UOKiK Adam Jasser at the III Nationwide Compliance Conference (November 2014)

UOKiK was also represented at the annual meeting of the Compliance and AML (anti-money laundering) community in the banking, capital market, and insurance sectors. In his speech, Adam Jasser emphasised that introduction of an efficient compliance regime requires commitment and determination on the part of the management board, but that it is a good investment for the future. *In an age in which business integrity is in short supply and the imbalance in the information available to consumers and undertakings is abused, compliance programmes enabling businesses to operate within the law and in accordance with best practices and ethically, are much needed. This in turn will reduce the risk of illegal actions and a response to illegal actions on the part of regulatory authorities such as UOKiK.*

8.2. Social campaigns and conferences

Initiatives promoting new consumer rights

On 25 December 2014 the Act on Consumer Rights came into force. It became UOKiK's priority with regard to social communication to inform all market participants of the changes introduced in the new legislation. In October an awareness campaign was launched aimed at undertakings (mailing, press releases) - i.e. at the group that in addition to familiarising itself with the new rights of consumers was required to adapt websites for their online stores and the wording of their conditions of service on those websites to comply with those new rights. A collection of information about the new act can be found at prawakonsumenta.uokik.gov.pl¹⁶⁸, which was launched on 3 November 2014. On this website answers have been published to questions concerning purchases online, off-premises, and in a conventional store. Government administration and non-government organisations took part in the campaign to promote the website, including the Ministry of Justice, Chancellery of the President of the Council of Ministers, and the Association of Polish Consumers. In addition, 49 institutions, such as television and radio broadcasters, and broadcasters of advertisements on LCD carriers, also became partners of the scheme.

The next stage of the campaign, aimed at consumers, started in January 2015. Posters¹⁶⁹ giving information about the rules for submitting complaints were displayed in post offices, and consumers were reminded about the special website set up and materials that can be downloaded: brochures, leaflets and diagrams giving information about complaints. Among these were: *The consumer handbook* (brochure), *Consumer regulations for businesses* (brochure), *The warranty. How to make a complaint* (leaflet), *How to purchase* (leaflet) and *Shopping online* (leaflet).

At the beginning of 2015, short clips *You Have Rights* were launched, providing details of two key consumer rights: the right to submit a complaint and the right to withdraw from an agreement when purchasing online. Advertisements were played on the radio and on television¹⁷⁰, on the Internet, and on LCD displays in public municipal transport, department stores, cash machines, and newspaper kiosks¹⁷¹.

UOKiK also made sure that information was provided about the new act for persons who assist consumers on a daily basis - training was held for consumer ombudsmen, Trade Inspection Authority employees, and consumer organisations.

¹⁶⁸ The statistics for the campaign show that the website prawakonsumenta.uokik.gov.pl had 597 686 unique visits.

¹⁶⁹ More than 5,000 posters were provided, in two formats.

¹⁷⁰ Number of times the clips were played on the radio: 3732, and played on television: 551.

¹⁷¹ The clips were shown on LCD screens more than 12 300 000 times.



Loans and investments

Once again UOKiK was involved in the social campaign *Don't let yourself get taken in. Read before you sign*. The campaign, first introduced in 2012, was organised jointly by seven public institutions, the Bank Guarantee Fund, the Financial Supervision Authority, the Ministry of Finance, the Ministry of Justice, the National Bank of Poland, the Police, and UOKiK. The aim was to draw consumers' attention to the risk related to taking out high-interest and short-term loans and uncertain investments. The website www.zanim-podpiszesz.pl was set up as part of the campaign.

Initiatives promoting competition and consumer protection regulations

Amendment to the Act on Competition and Consumer Protection

The second task, after the Act on Consumer Rights, was preparing consumers and undertakings for the coming into force of the amendment to the Act on Competition and Consumer Protection. For this reason, on 16 January 2015 - just before the amendments to the legislation came into force - the website www.ustawa-antymonopolowa.uokik.gov.pl was launched.

¹⁶⁷ <https://uokik.gov.pl/download.php?plik=15167>.

It provides information about the most important changes, namely:

- making the concentration control system more efficient;
- introducing new solutions within the leniency programme for parties to illegal agreements and people responsible for breaching competition rules;
- the possibility of warning consumers publicly about particularly dangerous practices;
- introducing remedies;
- enabling undertakings to voluntarily enter into settlements in antitrust cases

UOKiK will monitor the effects of the act and take measures to have it reviewed and amended if necessary.

Funeral services market - awareness campaign

One of the areas which UOKiK has monitored in recent years from the point of view of existence of competition is the funeral and cemetery services market. Since 2000 UOKiK has issued more than 100 decisions, and at the end of 2014 was conducting five cases on this market.

Practice shows that many breaches are a result of inadequate knowledge of competition legislation. For this reason UOKiK prepared a special handbook in 2014 on *Provision of cemetery and funeral services - obligations of an entity managing a cemetery under the Act on Competition and Consumer Protection*, backed up by an awareness campaign. The handbook describes the cemetery and funeral services market, gives examples of prohibited practices based on UOKiK's decisions and SOKiK case law, and gives advice as to how to act in compliance with the law. Entities managing cemeteries¹⁷² (mainly municipal authorities, parishes, and curia) were provided with the publication and it was welcomed with interest. Sector organisations also supported the campaign: the Polish Funeral Chamber and the Polish Funeral Association, which distributed the handbook among their members.

¹⁷² Mailing which UOKiK sent to 3397 users of the Catholic Church Statistics Institute (Instytut Statystyki Kościoła Katolickiego) database.

Conferences and events at UOKiK

The Property Development Act in practice – the market participant perspective (5 February 2014)

The debate triggered a discussion about practical aspects of the functioning of the Property Development Act and the problems encountered by customers of property development firms. The starting point for the talks was the results of UOKiK's report *the Consumer on the Property Development Market*.

A gesture was made towards consumers in the form of a consumer advice desk available during the conference, with experts giving consumer advice with respect to property development services.

Debate marking World Consumer Day - consumer law according to the forthcoming changes (18 March 2014)

The meeting concerned a discussion about the government proposal for the Act on Consumer Rights, implementing EU regulations into the Polish legal system and also systemising and integrating regulations on quality of an item sold. The participants in the conference discussed the practical aspects of the proposed legislation (which subsequently came into force on 25 December 2014), which on one hand affords consumers more rights, while on the other imposing more obligations on undertakings. The participants also attempted to resolve doubts and reach conclusions about provisions that required interpretation at the time.

ADR in consumer disputes – the current situation, areas of change (28 May 2014)

The debate triggered a discussion on the subject of implementation into the Polish legal system of the ADR Directive, in which Poland is taking measures to maintain and expand the hybrid ADR system. The starting point for the talks was the results of UOKiK's report *ADR in consumer disputes in Poland*.

The Act on Consumer Rights - opportunities and threats (Łódź, 15 September 2014)

The meeting, organised in cooperation with the Faculty of Law and Administration at Łódź University and the Centre for Antitrust and Regulatory Studies (Centrum Studiów Antymonopolowych i Regulacyjnych - CARS), was an opportunity to discuss the Act on Consumer Rights, which implements the Directive of the Parliament and of the Council on Consumer Rights. Participants in the discussion agreed that the new legislation will strengthen the market position of consumers and will create new prospects for undertakings, for which it will be easier to operate on foreign markets due to standardisation of EU legislation.

8.3. Promotional competitions and campaigns

For the sixth time a contest was held in which awards were given for the **best master degree dissertation** on the subject of issues relating to competition protection, and for the fourth time in the consumer category. The next time the competition is held it will include a category for best doctoral thesis.

In April 2014 the **X Greater Poland Consumer Knowledge Competition**, sponsored by the President of UOKiK and Marshal of the Greater Poland Region, was held, which is intended for pupils of upper-secondary school age upwards. More than 550 pupils from the Greater Poland Region took part in the competition. The event was organised jointly with UOKiK's branch office in Poznań.

UOKiK took part in the **18th Science Picnic** (31 May 2014) - the largest popular science event in Europe. People attending the picnic were able to perform many experiments and thereby learn about the research methods employed by the Specialist Laboratory for Textile Products and Instrumental Analysis in Łódź and the Specialist Toy Laboratory in Lublin.

Cooperation with the mass media

8.4. What the media say about us

Evaluation of the activities of UOKiK by foreign sector media

In an annual ranking in *Global Competition Review (Rating Enforcement)* in 2014 UOKiK was given a three-star rating (*good*) and *consistent*, as in the years 2012 and 2013.

| year | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|--------|-----------------------------|------------------------------|------------------------------|------------------------------|----------------------|----------------------|----------------------|
| rating | ★★★ ↓ below expectations | ★★★★ ↑ above expectations | ★★★★ ↑ above expectations | ★★★★ ↑ above expectations | ★★★★ ↔ consistent | ★★★★ ↔ consistent | ★★★★ ↔ consistent |
| level | fair | fair | fair | good | good | good | good |

In 2014 there were almost 5000 press articles, 8264 publications online, and 246 television and radio features concerning decisions issued by UOKiK and other UOKiK's activities. UOKiK was mentioned on social networking sites (almost 9600 times) and in foreign online publications (almost 300 times - on the websites *Policy and Regulatory Report*, *Global Competition Review* and *MLex Market Insight*).



The fundamental aim of UOKiK's cooperation with the media is to reach the public with information, and thus at the same time - raise awareness of all market participants.

UOKiK works with the nationwide, regional, and local media. In 2014 it issued 210 press releases, of which 37 concerned protection of competition, 122 - consumer protection, and 34 - concentration control. There were 12 press releases on local topics released to the regional

media. The President and officials at UOKiK published comments and articles in nationwide daily newspapers and specialised press (including *Rzeczpospolita* and *Dziennik Gazeta Prawna*), as well as foreign periodicals (including the *Journal of European Competition Law and Practice*, *ECN Brief*, and the *European Antitrust Review* 2015). Some selected publications were:

- » **Journal of European Competition Law and Practice**, *Independence and accountability*. Author Adam Jasser, President of UOKiK (December 2014), on the basis of a speech given at the 10 Annual Global Competition Law Centre Conference in Brussels (November 2014) ¹⁷³;
- » **The European Antitrust Review 2015** (annual, published 2014) summarising UOKiK's achievements in 2014¹⁷⁴;
- » **Article by UOKiK's Chief Economist Wojciech Szymczak** on the telecommunications market in a European and domestic context, published in *Rzeczpospolita* (September 2014).

In addition, UOKiK conducted campaigns intended for the media in cooperation with public institutions and non-government organisations. The first of these, *Practices of door-to-door salesmen - know your rights*, was held on 2 June 2014. It was attended by 22 institutions, including the Prosecution General, Commissioner for Human Rights, Energy Regulation Office, and Office of Electronic Communications.

The next campaign, *Before going on holiday - what you need to know* (launched 13 June 2014) was joined by 35 partners, including the National Police Headquarters, the Ministry of Foreign Affairs, and the Ministry of National Education. This was the fifth time that information was provided as to what should be borne in mind before going on holiday.

Providing information in UOKiK's Public Information Bulletin (BIP)

- » - in 2014 617 applications for access to public information were filed with UOKiK and reviewed.

Raising awareness with regard to state aid

UOKiK accommodated the needs of potential recipients of state aid, and in autumn 2014 it published a series of articles in *Dziennik Gazeta Prawna* written by officials at UOKiK. The series commenced with a text on *de minimis* aid. The articles that followed concerned new guidelines issued by the EC concerning state aid for bail-outs and restructuring of undertakings, the combining by one recipient of various kinds of *de minimis* aid, and changes concerning state aid in the form of reimbursement for remuneration paid to young workers.

8.5. Publications

In 2014 particular attention was paid to awareness of consumers and undertakings in connection with the

enactment of the new Act on Consumer Rights (see **Social campaigns and conferences**). All publications are distributed free of charge among interested entities and are available at www.uokik.gov.pl.

- » *The lowest price bracket* (December 2014) - this was produced following an inspection by the Trade Inspection Authority, which from October 2013 until June 2014 checked for the first time the quality and labelling of the cheapest food products all over Poland.
- » *ADR in consumer disputes in Poland* (April 2014) - this publication gave details of types of proceedings in which consumers can pursue their rights. The particulars of institutions that mediate in ADR for consumer disputes were also given.
- » *Handbook for consumers interested in concluding a property development agreement* (January 2014) - provides practical information and step-by-step instructions about what to check before concluding an agreement with a property developer, how to make a property developer accountable for obligations, and what to do when it becomes necessary to withdraw from an agreement.



¹⁷³ <https://uokik.gov.pl/download.php?plik=15746>.

¹⁷⁴ <http://globalcompetitionreview.com/reviews/62/sections/210/chapters/2505/poland-office-competition-consumer-protection/>.

9

International cooperation and contact with EU institutions

UOKiK is a member of international organisations responsible for competition and consumer protection at a national, European, and international level. The key areas of cooperation include the European Union, International Competition Network, the OECD, and the International Consumer Protection Network.

telecommunications, energy, transport, insurance, and banking and payment markets.

The cartel group was responsible among other things for updating the Leniency Model Programme; the energy group focused on the fuel, electricity, and gas market. The foodstuff group prepared the process of implementation of a new regulation creating a common agricultural market organisation. A regulation on the interchange fee was the subject of the discussion in the payment and banking markets group. UOKiK's role in the works of that group was particularly important due to the ongoing Polish proceedings concerning the interchange fee and a series of regulatory and non-regulatory initiatives which arose in Poland due to the need to systemise this issue (resulting in the enactment in January 2015 of an act setting a limit for the interchange fee). The main subject of the work of the telecommunications group was network sharing - an essential issue in the context of preliminary proceedings being conducted by UOKiK into the structure of the national telecommunications market and the rules for cooperation between telecommunications operators.

In 2014, Poland was selected to be vice-chair of the concentration group - jointly with France and the European Commission Directorate General for Competition. The term of office is until the end of 2015. The appointment of a Polish authority to the function of vice-chair is recognition of Poland's activities on an EU level.

UOKiK took part in meetings of the Chief economists and plenary sessions of the European Competition Network (ECN), at which the most important horizontal issues - from the point of view of competition policy - concerning the functioning of the Network, are discussed. UOKiK has also been involved in the ECN's activity with regard to public commentary by publishing articles in the periodical *ECN Brief*.

9.1. Multilateral cooperation



European Competition Network

In 2014 UOKiK's officials took part in working groups and working subgroups for cartels, concentration control, penalties, cooperation and procedures, computer forensics, restrictions on internet sales, foodstuffs,

An important tool facilitating collection of information about experience of competition authorities of EU Member States is submission by antitrust authorities of informal requests for information. In 2014 UOKiK prepared **responses to 52 queries**, concerning among other things advertising on the pharmaceutical market, concentration control procedures, and responsibility of natural persons with regard to breach of competition law or compliance programmes. In connection with proceedings and market studies conducted by UOKiK, **10 requests for information were submitted to members of the ECN**. These related among other things to restrictions on the prescribing of homeopathic medicines by doctors, online payments, postal services, the railway market, the functioning of the retail pharmaceutical market, definition of a capital group, and labour-related ethics in the context of rules for procedure with undertakings. The responses received to the latter turned out to be very useful when editing [UOKiK's rules for contact with enterprises](#), published in January 2015.

International Competition Network (ICN)

UOKiK is a member of the International Competition Network (ICN) - a platform for cooperation with more than 130 competition authorities from around the world. In 2014 representatives of UOKiK took part in the works of **five working groups in the network**: the cartel group, unilateral market practices group, efficiency of antitrust authorities group, and antitrust law and concentration control promotion group. UOKiK's experts also attended the **XIII ICN Annual Conference**, at which they chaired a panel summarising a project concerning cooperation of authorities with courts and also played an active role in a session on communication in the context of efficiency of activities of an antitrust authority.

THE OECD

The OECD is one of the most important international fora for discussing competition law and policy issues. In 2014, at sessions of the **Competition Committee** and working groups under it, UOKiK's representatives presented Poland's experiences among other things in competition with regard to consumer protection on the financial services market, in pharmaceutical distribution, counteracting corruption and promoting competition, proceedings concerning concentrations which are not notified, and leniency programmes.

Consumer Policy Network (CPN)

UOKiK's management representative attended meetings of the Consumer Policy Network at director-general level, organised by the EC twice a year. These are a



platform for European consumer protection authorities to exchange experiences on current horizontal issues concerning protection of the weakest market participants, at domestic and EU level. Among the most important topics discussed in 2014 were group filing of claims by consumers, work on the ODR platform, and experience of consumer protection authorities with respect to sales pyramids.

Consumer Protection Cooperation (CPC) Committee

UOKiK took part in a series of regular meetings of the Consumer Protection Cooperation Committee, and also a workshop organised within the CPC network, on improving judges' knowledge on application of *Regulation (EC) 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws*.

International Consumer Protection and Enforcement Network (ICPEN)

In connection with cooperation within the ICPEN, in 2014 UOKiK took part in an annual internet sweep of websites intended for sensitive consumer groups. Of the 95 websites examined, irregularities were found on 17, concerning for instance misleading information about products or consumer rights.

Cooperation with respect to safety of products and market surveillance

Since Poland's accession to the EU, UOKiK has been actively involved in international control projects relating to safety of non-food products.

In 2014 UOKiK joined the initiative *Joint Action 2013 - control of safety of toys, and the project Joint Action 2014 - control of pyrotechnic products and control of power tools*. In addition, interest was announced in *EEPLIANT 2014 Energy Efficiency Complaint Products 2014*, aimed at improving cooperation and reinforcing market surveillance authorities in enforcement of eco-design and energy consumption labelling legislation¹⁷⁵, for example in the form of laboratory tests and exchange of information as to inspection best practices.

9.2. Bilateral cooperation

Development of direct contact of the Polish competition authority with its counterparts in Poland's partner countries in the EU and elsewhere is an important area of cooperation with entities abroad.

Support for a newly created antitrust authority in Georgia - cooperation in development

UOKiK was involved in a project intended to provide expert assistance for the newly created Georgian competition protection authority. Polish experiences are to play a part in permanent systemic changes and reform of competition law in Georgia. The training and workshops are summarised in *Dimensions of Competition Law and Policy*, which contains a series of texts by recognised authorities in the field of competition law in Europe and the world. The authors featured included Andreas Mundt, President of the German competition protection authority (Bundeskartellamt), and Carles Esteva Mosso, Acting Deputy Director General for mergers at the Competition Directorate-General of the European Commission.

9.3. International meetings and conferences

Decentralised Lunch Talk - 10 years of regulation 1/2003

In May 2014, in cooperation with the Global Competition Law Centre, UOKiK organised the *Decentralised Lunch Talk to mark the tenth anniversary of Council Regulation (EC) No. 1/2003 of 16 December 2002 on*

the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. During the meeting, UOKiK presented its experiences with regard to application of regulation 1/2003 and its participation in the ECN. Poland made positive comments on the issue of convergence with regard to the procedure of cooperation with other ECN antitrust authorities. It was also mentioned that the process of convergence of the competition protection legal regimes of the EU Member States should proceed in phases while observing the principle of procedural autonomy.

¹⁷⁵ The European Parliament and the Council adopted Directive 2009/125/EC on eco-design for energy-related products, establishing certain limits on consumption of energy and other raw materials in order to reduce the environmental of energy-consuming products for the whole of their lifecycle. The EC is issuing regulations for Directive 2001/125/EC which require manufacturers of products subject to this legislation to develop innovative eco-design solutions and are also intended to change the attitude of consumers to the issue of saving energy.

Postscript

As the year 2014 came to an end and the year 2015 began, important changes were occurring for UOKiK - a new act of law came into force on consumer rights, which was soon followed by an amendment to the Act on Competition and Consumer Protection. The most important changes, which now render the competition protection regime complete, were the extension of the time limit under the statute of limitations for competition-restricting practices from one year to five years in cases of bid rigging, introduction of personal financial liability of managerial personnel when a business enters into an anti-competitive agreement, expansion of the leniency programme, and giving undertakings an opportunity of voluntary settlement in exchange for a ten percent reduction of a penalty. The level of consumer protection has also been increased by introducing the institution of public warning of practices infringing collective interests of consumers (the so-called "list of public warnings"). Work is ongoing to produce guidelines and tips for application of the new legal institutions.

A two-phase procedure has been introduced for assessment of concentration of undertakings - **the effect three months from the implementation of the new procedure was reduction of the duration of proceedings to 28 days (in 2014 it was 58 days).**

The legislative changes coincided with the 25th anniversary of the functioning of competition law in Poland and UOKiK's measures to transform the Polish economy. In April 2015 a session was organised which was attended by representatives of the government and state institutions, former presidents and vice-presidents of UOKiK, and representatives of the academic community and of competition law-oriented practice.

Polish Prime Minister Ewa Kopacz emphasised in her address the role of UOKiK in the process of system change. Ms Kopacz also pointed out that further work was needed to strengthen the mechanisms regulating the market and protecting consumers. In order to protect consumer interests effectively in relationships with financial institutions, UOKiK was given an additional PLN 5 m for institutional reinforcement. The funds will be used to support consumer protection on the financial market, which will be achieved by expediting proceedings concerning infringement of collective consumer interests, eliminating prohibited contractual clauses, and increasing the potential for analysis of signals received by UOKiK from the market. Institutions selling unit-linked insurance and other high-investment-risk financial products, and the shadow bank "payday" loan market, will continue to be surveyed.

There are also plans for a second amendment to the Act on Competition and Consumer Protection, this time intended to give consumers better protection. UOKiK has drawn up proposals for solutions to eliminate

from the market effectively unlawful actions towards consumers. On 7 July 2015 the Council of Ministers approved the proposal providing among other things that offering financial services which are not suited to a customer's needs (misselling) will not be permitted, and giving UOKiK the power to issue interim decisions to react more quickly to practices that endanger collective interests of consumers. A decision of this kind will require an undertaking to cease specified activities, thereby preventing further dangers arising.

The year 2015 has also seen greater openness towards the surrounding community, new channels of communication, and communication founded on knowledge. In addition to further measures to expand the *competition and consumer protection network*, UOKiK has created a channel on Twitter. This is because UOKiK's priority is not only to state what decisions and penalties have been imposed, but also to educate and share knowledge and best practices (*advocacy*). UOKiK also intends to achieve the highest possible level of transparency of its activities for the public and undertakings. To this end, *Clarifications of rules for contact with undertakings, Procedures and criteria for filing notification of a concentration, and rules for publication of information concerning results of market studies* were published. As of 2015 UOKiK will publish information on its website about court judgements, both those which maintain the current line adopted in judgements, and those which overturn it. This is related to the priority of transparency of activity.

Another efficiency measure that has been introduced is the separation of strategic and operational activities of UOKiK's body that deals with competition - the Department of Competition Protection. The objective of the strategic activities will be to identify threats to competition by analysing information and signals from the market, and make an initial assessment of signals received by UOKiK's headquarters about potential competition-restricting practices. The department's strategic activity will include working with sector regulators, proposing standpoints, and reactions of UOKiK to signals from other authorities, and identifying threats to competition during the legislative process. The department's operational activities will relate to administrative proceedings conducted for the purpose of prosecution and combating cartels, and protecting competition against monopolistic practices.

Organisational chart



Appendix - List of abbreviations

- ABW** (*Agencja Bezpieczeństwa Wewnętrznego*) - Internal Security Agency
- BFG** (*Bankowy Fundusz Gwarancyjny*) - Bank Guarantee Fund
- CARS** (*Centrum Studiów Antymonopolowych i Regulacyjnych*) - Centre for Antitrust and Regulatory Studies
- CBA** (*Centralne Biuro Antykorupcyjne*) - Central Anti-Corruption Bureau
- CPC** - Consumer Protection Cooperation
- CPN** - Consumer Policy Network
- ECN** - European Competition Network
- GDDKiA** (*Generalna Dyrekcja Dróg Krajowych i Autostrad*) - General Directorate for National Roads and Motorways
- GIODO** (*Generalny Inspektor Ochrony Danych Osobowych*) - Inspector General for Personal Data Protection
- ICN** - International Competition Network
- ICPEN** - International Consumer Protection and Enforcement Network
- IH** (*Inspekcja Handlowa*) - Trade Inspection
- KIO** (*Krajowa Izba Odwoławcza*) - National Chamber of Appeal
- KNF** (*Komisja Nadzoru Finansowego*) - Financial Supervision Authority
- KRS** (*Krajowy Rejestr Sądowy*) - National Court Register
- KRUS** (*Kasa Rolniczego Ubezpieczenia Społecznego*) - Agricultural Social Insurance Fund
- MAiC** (*Ministerstwo Administracji i Cyfryzacji*) - Ministry of Administration and Digitisation
- MF** (*Ministerstwo Finansów*) - Ministry of Finance
- MIR** (*Ministerstwo Infrastruktury i Rozwoju*) - Ministry of Infrastructure and Development
- MS** (*Ministerstwo Sprawiedliwości*) - Ministry of Justice
- MZ** (*Ministerstwo Zdrowia*) - Ministry of Health
- NBP** (*Narodowy Bank Polski*) - National Bank of Poland
- NFZ** (*Narodowy Fundusz Zdrowia*) - National Health Fund
- NIK** (*Najwyższa Izba Kontroli*) - Supreme Audit Office
- OECD** - Organisation for Economic Co-operation and Development
- SA** (*Sąd Apelacyjny*) - Appeal Court
- SOKiK** (*Sąd Ochrony Konkurencji i Konsumentów*) - Court of Competition and Consumer Protection
- UKE** (*Urząd Komunikacji Elektronicznej*) - Office of Electronic Communications
- UOKiK** (*Urząd Ochrony Konkurencji i Konsumentów*) - Office of Competition and Consumer Protection
- URE** (*Urząd Regulacji Energetyki*) - Energy Regulatory Office
- UZP** (*Urząd Zamówień Publicznych*) - Public Procurement Office
- WIIH** (*Wojewódzki Inspektorat Inspekcji Handlowej*) - Voivode Inspectorate of the Trade Inspection
- ZBP** (*Związek Banków Polskich*) - Polish Bank Association
- ZPMP** (*Związek Pracodawców Mediów Publicznych*) - Union of Public Media Employers
- ZUS** (*Zakład Ubezpieczeń Społecznych*) - Social Insurance Institution