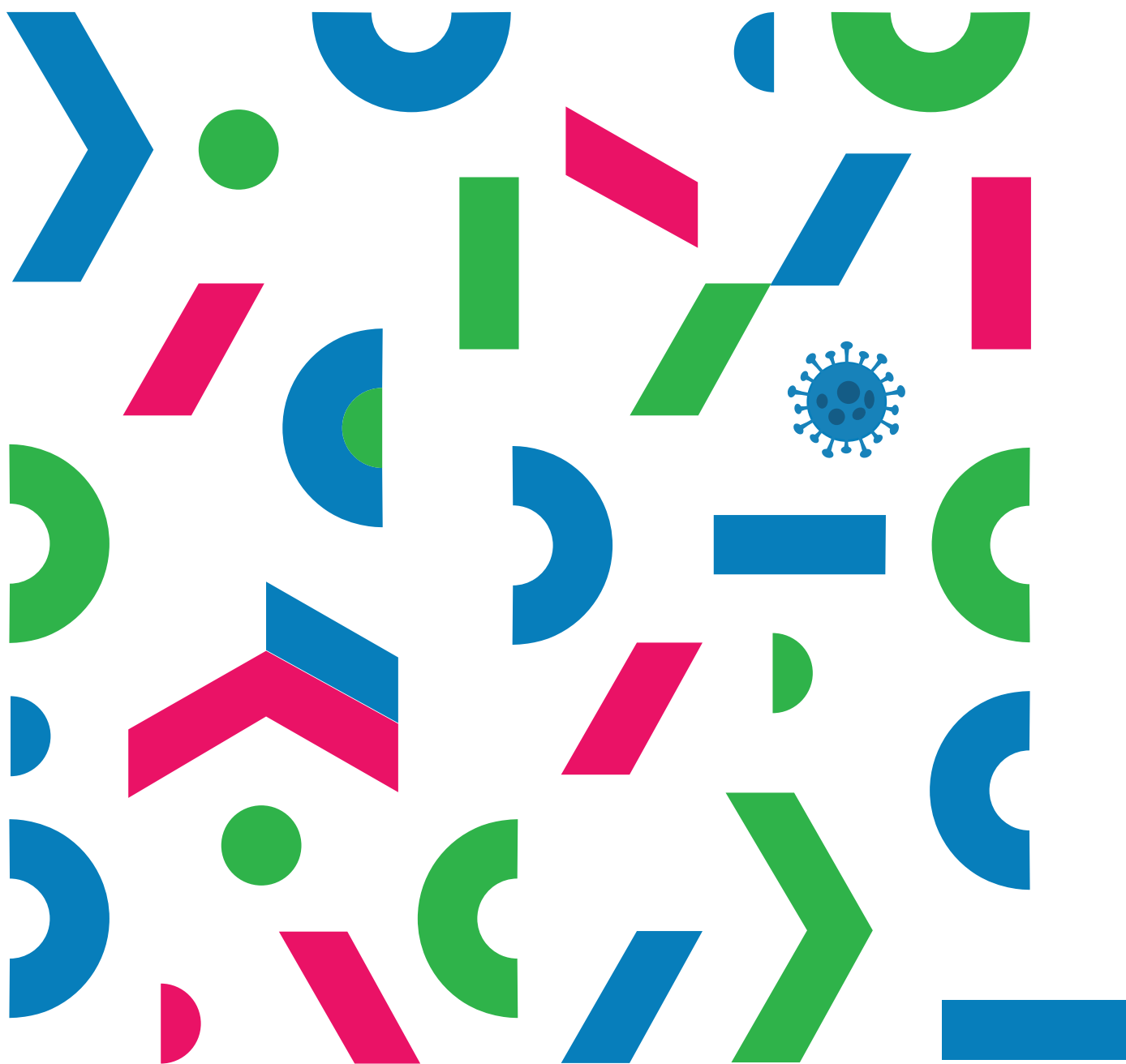




Office of Competition and Consumer Protection

Report on UOKiK activities in 2020



Report on UOKiK activities **in 2020**



Warsaw 2021

Table of content



Foreword 4

**UOKiK – key
information** 6

**Calendar of
events** 10

Competition protection

- 1.1** Competition-restricting practices 20
- 1.2** Concentration control 37
- 1.3** State aid 44
- 1.4** Contractual advantage 52
- 1.5** Payment gridlocks 56
- 1.6** Court jurisdiction in competition protection cases 60



Consumer protection

- 2.1** Practices violating collective consumer interests and prohibited clauses in model contracts 64
- 2.2** Supervision over the Trade Inspection 88
- 2.3** Product safety and market surveillance 92
- 2.4** Laboratories 97
- 2.5** Fuel quality control system 98
- 2.6** Out-of-court dispute resolution system 100
- 2.7** Cooperation with consumer ombudsmen and consumer organisations 102
- 2.8** European Consumer Centre 104
- 2.9** Court jurisdiction in consumer protection cases 106



**Information
and educational
activities** 110

Legislative work

- 3.2.1** National legislation 118
- 3.2.2** International legislation 126
- 3.2.3** Preliminary ruling matters 128

**Social research and
market analysis** 134

**International
cooperation** 136

Conclusions 142



Tomasz Chróstny

President of the Office of
Competition and Consumer
Protection

2020 was supposed to be a special year for the Office of Competition and Consumer Protection. Back in January, we believed its uniqueness would be because of the Office's 30th anniversary. However, it quickly became apparent that this year would become special because of something that would affect nearly everyone in the world – the COVID-19 pandemic.

The new reality required us to undertake rather uncommon actions. We immediately became involved in the government's process of preparing the anti-crisis shield legislation. We prepared a package of changes to protect consumers and gained new powers. Thanks to our initiative, legislation was enacted to limit the non-interest cost of consumer credit. The solution was adopted to protect consumers who lost income due to the pandemic from the trap of excessive debt. A relief in the form of credit holidays was introduced as well, enabling borrowers who lost their main source of income as a result of the pandemic to suspend repayments for 3 months. The new powers gained by the President of the Office concern the control of investment projects that protect strategic Polish undertakings against hostile takeovers by entities from outside the European Union, the European Economic Area and the Organisation for Economic Cooperation and Development.

The pandemic period is also a busy time in terms of state aid initiatives. The Office worked with other ministries on an unprecedented scale in drafting 20 government aid programmes to grant state assistance. By the end of 2020, aid was provided to citizens more than 8.5 million times, with more than 7.5 million of them being related to the coronavirus crisis alone.

We also realised that the crisis could tempt large entities to act to the disadvantage of smaller ones. This is why, based on the contractual advantage laws, we checked whether the 100 largest players in the agri-food indus-

try paid their trading partners on time and whether they changed their trade policies towards such partners. Thanks to this intervention by the Office, most undertakings paid their arrears and withdrew from contractual changes that were unfavourable to their counterparties. More than PLN 0.5 billion of overdue receivables were transferred to suppliers, which would not have been possible without the Office's intervention.

The actions related to the ongoing pandemic did not prevent us from fulfilling our daily duties and pursuing our mission to safeguard competition and protect consumers. The decisions issued perfectly reflect this approach. The ruling on entities that decided to build the Nord Stream 2 pipeline without the required consent of the President of the Office has made headlines. In terms of competition protection, it is also worth noting the first decisions with penalties for managers personally responsible for restrictive practices. 2020 also saw the first actions concerning payment gridlocks – as many as 100 proceedings against large companies that did not pay on time. We were also involved in the fight against unfair use of contractual advantage in the agri-food sector. In 2020, we paid special attention to the relationships of large retailers with their suppliers. The President of the Office issued, among others, a decision in which he found that the owner of the Biedronka chain used unfair discounts and initiated explanatory proceedings regarding the practices of 19 other chains.

In the area of consumer protection, we have also stepped up our efforts to combat pyramid-type incentive schemes. The President of the Office issued the first decision against a trader who solicited consumers to participate in such an illegal scheme. We were also active in the financial market. This resulted in decisions against banks regarding, among other things, prohibited clauses on foreign currencies in mortgage loan agreements. Additionally, as a result of the intervention of the President of the Office, 14 banks committed to a proportional refund of fees for a previously repaid consumer loan or credit in 2020 alone.

These settlements are only some examples. In total, the President of the Office issued as many as 1,087 decisions in 2020, with 273 of them concerning the area of competition protection and 814 pertaining to consumer protection. 2020 was also a record year in terms of financial penalties imposed, which exceeded PLN 30 billion.

However, the Office's efforts focus on more than just enforcement. Our mission is also to educate consumers and businesses alike. In this context, it is worth mentioning our "Check, read, ask" campaign, which warns consumers against such things as investing in pyramid-type incentive schemes and the so-called alternative investment projects. We also began a series called the "UOKiK tests". Our laboratories have examined and compared the quality of various everyday products. Their results allow consumers to make more conscious purchases.

Decisions, proceedings and legislative activity of the President of the Office are communicated to the public on an ongoing basis. What happens at the Office is also vital. In 2020, the Office changed its structure to accommodate its new competencies. Despite the pandemic, we have recruited new specialists in law, economics, and IT and are building a team of experts to enable us to carry out our responsibilities more effectively.

As already mentioned, 2020 was also the Office's 30th anniversary. Its slogan was "30 years for undertakings, for consumers" – and it guides us in all our activities. I encourage everyone to read the full report and see everything that we accomplished in this difficult year.

Tomasz Chróstny

UOKiK – key information

Who are we?

The President of the Office of Competition and Consumer Protection (hereinafter: the Office or UOKiK) is a central government administration authority responsible for making and implementing the competition and consumer protection policy in Poland.¹ The activities of the Office are financed from the state budget.

The mission of the Office is to increase the welfare of consumers through the effective protection of their interests and to promote the development of competition while respecting the principles of openness and dialogue in relations with market participants.

What we do?

The tasks of the Office are focused on ensuring proper conditions for the functioning of competition, as well as protecting the interests and safety of consumers.

Management

President of the Office

Tomasz Chróstny (in office from 27 January 2020)

Director General

Katarzyna Prus-Stachyra (in office from 1 September 2020)

Areas of activities of the President of UOKiK

Competition protection

combating anti-competitive practices used by undertakings	controlling the concentration of undertakings	monitoring aid granted by the state	eliminating practices involving the unfair use of contractual advantage	counteracting payment gridlocks (excessive delays in commercial transactions)
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Consumer protection

eliminating practices violating the collective consumer interests	eliminating prohibited clauses in model contracts	supervising the Trade Inspection	carrying out market surveillance and ensuring the safety of non-food products	monitoring the out-of-court consumer dispute resolution system	advising in cross-border issues within the framework of the European Consumer Centre	funding for consumer advice through helpline and e-advice system
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Other areas

information and educational activities	legislative activities	social research and market analysis	international cooperation
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¹ The President of the Office of Competition and Consumer Protection acts

under the Act of 16 February 2007 on Competition and Consumer Protection

(Polish Journal of Laws of 2021 item 275), hereinafter referred to as the "Act".

Office of Competition and Consumer Protection in figures – 2020

93,7

PLN million – BUDGET²

30,9

PLN billion – FINES IMPOSED ON UNDERTAKINGS, including:

PLN 187.2 million for competition-restricting practices

PLN 315 million for practices violating collective consumer interests

PLN 129.3 million in relation to the recognition of model contract clauses as prohibited

PLN 29.3 billion for failure to report the intention to implement a concentration or for implementing a concentration without obtaining the required consent from the President of the Office

PLN 725.1 million for unfair use of contractual advantage

PLN 646 thousand thousand for violations in relation to the Act on Conformity Assessment and Market Surveillance Systems

PLN 316.2 thousand in relation to the general product safety

PLN 213.6 million for failure to provide information/provision of false/misleading information

PLN 50 thousand for failure to cooperate in the course of inspection/search

PLN 31.1 thousand for failure to enforce/delay in the enforcement of the decision

535

EMPLOYEES

1087

DECISIONS, including:

273
in the area
of competition protection

814
in the area
of consumer protection

² Budget implemented in 2020.

Organisational changes at UOKiK

In 2020, the organisational structure of the Office was changed in order to adjust it to new tasks and to strengthen the effectiveness of the operations of the Office.³

The key changes included

the establishment of:

- **organisational units related to the new area of competence of the President of the Office – payment gridlocks: Department for Analysis Development, Department for Combating Payment Gridlocks and Support Department for Combating Payment Gridlocks,**
- **Department for Bid Rigging Prevention** – its tasks are focused on the prevention of bid-rigging, which will enable the Office to detect and combat bid-rigging more effectively,
- **Department of Contractual Advantage** – the establishment of the department (in addition to the team already operating in the Branch Office in Bydgoszcz) will strengthen the resources dedicated to combating prohibited practices on the agriculture and food market,
- **International Cooperation Office** – the office took over the tasks related to international cooperation, previously performed by the Executive Office; the change aims at intensifying cooperation with the European Commission, working groups and EU Member States,

→ **Department of Communication** – a new organisational unit took over the tasks related to media policy and education, previously performed by the Executive Office and the Press Office; the implemented solution will result in more effective coordination of information and educational activities of the Office,

→ **Office of IT and Security** – this solution led to an increase in cybersecurity and modernisation of the IT structure, also in the context of remote work resulting from the coronavirus pandemic,

the liquidation of:

- Branch Office in Warszawa – its tasks were taken over by competent units of the head office – Department of Competition Protection and Department of Protection of Collective Consumer Interests,
- Department of Consumer Analyses – its tasks were taken over by the Department of Market Analyses; the change was aimed at creating a uniform analytical division in the Office, the task of which will be to analyse the market behaviour of undertakings in terms of their compliance with both antitrust law and consumer protection regulations.

³ Regulation No. 272 of the Prime Minister of 20 December 2019 on the charter of the Office of Competition and Consumer Protection (Monitor

Polski of 2019, item 1198) entered into force on 3 January 2020; Regulation No. 77 of the Prime Minister of 5 June 2020 amending the regulation on the charter

to the Office of Competition and Consumer Protection (Monitor Polski item 498) entered into force on 17 June 2020.

Organisational structure
(as of 31 December 2020)

Offices

Executive Office
Office of Human Resources, Training and Organisation
Office of Budget and Administration
International Cooperation Office
Office of IT and Security

Departments

Department of Communication
Department of Legal Affairs
Department of Market Analyses
Department of Competition Protection
Department for Bid Rigging Prevention
Department of Concentration Control
Department of State Aid Monitoring
Department of Contractual Advantage
Department of Protection of Collective Consumer Interests
Department of Trade Inspection
Department of Market Surveillance
Department of Laboratories
Department for Combating Payment Gridlocks
Support Department for Combating Payment Gridlocks
Department for Analysis Development

Branch Offices

Branch Office in Bydgoszcz
Branch Office in Gdańsk
Branch Office in Katowice
Branch Office in Kraków
Branch Office in Lublin
Branch Office in Łódź
Branch Office in Poznań
Branch Office in Wrocław



1

JANUARY

- 01.01**
The President of UOKiK new powers in the area of payment gridlocks
Under the new legislation (the Act amending certain regulations in order to limit payment gridlocks), the President of UOKiK was given the authority to conduct proceedings and impose fines on the largest debtors in the market. The purpose of these changes is to improve the liquidity of Polish undertakings.
- 14.01**
A fine of more than PLN 120 million for Volkswagen Group Polska Sp. z o.o.
This is so far the highest penalty imposed by the President of UOKiK for practices that violate collective consumer interests (decision DOZIK-2/2020). Volkswagen misled consumers about the emission levels of its vehicles (the so-called dieselgate). Other competent authorities in EU countries have also taken action against the company.
- 17.01**
The only conditional approval issued in 2020
Vectra has received approval from the President of UOKiK (decision DKK-25/2020) to take over Multimedia Polska. Nonetheless, certain conditions aimed at preventing the limiting of competition on the local cable TV and ISP markets have been imposed on the company. It was obliged to sell its networks in 8 cities and allow consumers in 13 others to switch operators at no cost.

- 27.01**
Appointment of Tomasz Chróstny as the President of UOKiK
Tomasz Chróstny was appointed President of the Office of Competition and Consumer Protection by the Prime Minister. He had previously served as the Vice President of UOKiK.

2

FEBRUARY

- 03.02**
GetBack bonds – Idea Bank SA to refund its clients
In 2020, the President of UOKiK continued his actions concerning the GetBack bond case. In addition to the decision against Idea Bank (RBG-1/2020), he issued another 4 decisions in this case. Allegations against the undertakings concerned the way they communicated their bond risks and the sales of financial products unsuited to their consumers' needs (misselling).
- 12.02**
Initiation of control measures – country of origin labelling of fruit and vegetables
Controls were conducted in three stages between February and June. A total of 395 retail outlets were inspected in the first half of the year as part of the inspection plan and ad hoc orders of the President of UOKiK. Trade Inspection inspectors found issues with 358 product lots (10.2 per cent of the total amount checked) due to incorrect indication of the country of origin or complete lack thereof.

3

MARCH

- 02.03**
Statement of the President of UOKiK on the interpretation of Art. 49 of the Act on consumer credit
The statement was issued in the context of the CJEU judgment of 11 September 2019 in Case C-383/18 (Lexitor). The President of the Office indicated that, in the case of early repayment of a loan, banks and lending institutions should use the straight-line method in calculating the loan refund costs. In 2020, 14 banks committed to using the method indicated by the President of the Office.
- 11.03**
UOKiK signs an agreement with Allegro Sp. z o. o. – solid fuel boilers
The cooperation was aimed at preventing trade in solid fuel boilers that do not meet the requirements specified by the regulations. As a result of the agreement, nearly 300 offers of non-compliant boilers were removed from the Allegro website in 2020.
- 31.03**
Rules on lower non-interest loan costs enter into force
The temporary reduction in non-interest loan costs is a solution prepared by the President of UOKiK in connection with the COVID-19 pandemic. It was adopted as part of the government's legislation package called the "anti-crisis shield" to help borrowers who found themselves in a difficult spot.

4

APRIL

- 02.04**
The first in a series of 2020 decisions on pyramid-type incentive schemes
The London-based Global I Gold Online Limited offered benefits to consumers in exchange for encouraging others to join or promote the scheme. In the decision (RWR-3/2020), the President of UOKiK prohibited such practices. This was the first of 5 decisions issued in this area in 2020.
- 13.04**
30th anniversary of UOKiK
On 13 April 1990, the Antimonopoly Office was established; it was renamed Office of Competition and Consumer Protection in 1996 and has functioned under this name ever since. Over the years, the President of UOKiK has acquired new competencies in the area of competition and consumer protection. The anniversary's slogan was "30 years for undertakings, for consumers".
- 17.04**
Signing of the first contract for laboratory testing of solid fuel boilers
The Office tested 48 boiler models for compliance with the applicable harmful emissions levels between May and December, under a contract with a certified laboratory. The laboratory studies were part of controls conducted in 2020, which covered a total of 658 boiler models offered to consumers in the market.

21.04

First explanatory proceedings under the "COVID-100" action

The President of UOKiK commenced a series of explanatory proceedings into whether major food manufacturers and retail chains were paying their suppliers on time. A total of nearly 100 undertakings were asked for clarification in this regard. As a result of actions taken by the Office, most of them have repaid the outstanding receivables, amounting to more than PLN 500 million.

23.04

Statement of the President of UOKiK on clauses to commercial credit holidays

The statement addressed the effects and circumstances of entering into amendments to commercial credit holidays agreements. The President of the Office pointed out, among others, that it is unjustified to apply clauses concerning confirmation of the debt balance in amendments or applications for deferment of credit instalments. As a result, banks that used this type of clause in annexes declared that they would be removed as early as April. At the same time, they committed not to enforce these clauses for annexes that have already been concluded.

27.04

European Commission approves assistance for SMEs under the Financial Shield

The Commission (EC) approved the government aid scheme in the form of repayable grants for small and medium-sized undertakings. Implemented by the Polish Development Fund, the scheme's total estimated value amounted to PLN 75 billion. The Office notified the EC about this case on 23 April 2020.



MAY

11.05

Release of a waste market research report

The study covered the market situation from 2014 to 2019 and included all installations using the most popular mechanical-biological waste treatment method in Poland. The report outlines the problems and causes of rising prices of waste treatment, as well as recommendations to improve market efficiency.

25.05

European Commission approves assistance for large undertakings under the Financial Shield

The Office notified the Commission about this case on 18 May 2020. It concerned the government assistance programme for large undertakings. It was implemented by the Polish Development Fund and took the form of liquidity loans; the programme's total estimated value was PLN 10 billion.



JUNE

17.06

Organisational changes at the Office

The Office's new bylaws came into effect, bringing significant organisational changes. The latter was aimed at strengthening the efficiency of the Office's operations. These included the creation of a Department for Bid Rigging Prevention and a Department of Contractual Advantage.

17.06

Initiation of the first proceedings on payment gridlocks

The President of UOKiK initiated 51 proceedings concerning payment gridlocks against undertakings that may have had the largest arrears in payments to their counterparties. These include manufacturers of automotive products, household appliances, logistics companies, as well as trading companies. These entities were selected after analysing data obtained from the National Revenue Administration.

24.06

"Credit holidays" come into effect

"Credit holidays" allow consumers to suspend loan repayments in some circumstances temporarily. This solution was prepared by the President of UOKiK as part of the government's "anti-crisis shield" programme to help mitigate the impact of COVID-19.



JULY

01.07

Transfer of food quality control to IJHARS

Since 1 July, the Agricultural and Food Quality Inspection (IJHARS) has been responsible for food quality control at all stages of trade. Employees of Trade Inspection provincial offices, who had previously specialised in food inspection, have been transferred to IJHARS. Additionally, the Office handed over 5 food laboratories to IJHARS.

15.07

UOKiK initiates the "Check, read, ask!" campaign

The campaign aimed to warn consumers about the dangers of the so-called alternative financial investments, as well as false health care and treatment products and services. More than 80 radio and television stations and 35 public entities joined the campaign on a non-commercial basis.

24.07

New investment control regulations come into force

The President of UOKiK gained new powers to protect Polish undertakings of strategic importance to public order, health, and security. Any investment by non-EU, non-EEA and non-OECD entities in the full acquisition, acquisition of a significant share or acquisition of a controlling interest in a covered entity must be reported. The investment control regulations are part of the government's Anti-Crisis Shield 4.0.

24.07

A PLN 3.5 million fine for fraudulent sales at trade shows

The Comfort Med+ company (decision RPZ-4/2020) concealed the sales character of the meetings to which it had been inviting unaware consumers. It also provided false information during the show and limited the right to withdraw. This is the highest penalty imposed by the President of UOKiK in 2020 for violating consumer rights at trade shows.



AUGUST

05.08

A fine of PLN 115 million for improper price labels in Biedronka stores

The President of UOKiK issued the decision (RBG-6/2020) based on the results of controls carried out by the Trade Inspection. The numerous irregularities discovered included such things as charging a higher price at the checkout than the one indicated on the store shelf, as well as a lack of product price information.



SEPTEMBER

04.09

The highest penalty for bid-rigging in 2020

Nearly PLN 13.5 million in fines was imposed by the President of UOKiK on 6 manufacturers of wooden railway sleepers (decision DOK-2/2020). They concluded a bid-rigging arrangement concerning the supply of products for PKP PLK and agreed upon the precise rules for submitting bids and their value with each other, among other things.

11.09

Property for rent – next proceeding initiated

In 2020, the President of UOKiK initiated 4 proceedings as a result of research concerning the property rental sector. Allegations were brought against CGA Invest Sp. z o.o., Gent Holding SA, Infinity Zieleniec Ski & Spa Sp. z o.o. Sp. k. and Seaside Park Sp. z o.o. The main issue that was called into question was how consumers were being informed about the rate of return. In three cases, the allegations also concerned providing misleading information regarding investment financing or a complete lack of such information.

16.09

Compensation for consumers in the telecommunications market

In the decision (RBG-9/2020), the President of UOKiK accepted the commitment of UPC Polska Sp. z o.o. The company notified consumers of changes to the terms of service, even though the contracts did not provide for such an option. Compensation for consumers took the form of product (packages of UPC Polska services), as well as cash (invoice discounts, partial refunds or rebates).

28.09

Commitment to change anti-competitive practices

The SAR Marketing Communication Association influenced its members' autonomy in bidding and used unauthorised information sharing practices. The President of UOKiK ordered SAR (decision DOK-3/2020) to cease the practices violating the competition principles and remove their effects.



OCTOBER

06.10

The decision on Nord Stream 2 – a record fine for 6 companies

This precedent-setting decision (DKK-178/2020) is the result of more than 2.5 years of proceedings against Gazprom and 5 other international entities responsible for financing the Nord Stream 2 pipeline. It confirmed that the companies had entered into several NS2 financing agreements despite UOKiK President's objection to such a joint transaction. The President of UOKiK imposed the maximum possible financial sanctions on the companies involved – over PLN 29 billion on Gazprom, as well as over PLN 234 million on the other participants in the consortium.

08.10

Investment control – the first decision of the President of UOKiK

The Cayman Islands-based H&F Fund received approval from the President of UOKiK to acquire the "Polish ePayments" Electronic Payment Processing Centre (decision DKK-179/2020). The transaction did not raise concerns with the Office in terms of possible risks related to access to specific technologies or software.

12.10

First report under the "UOKiK tests" programme

A report on coloured fabric washing powders was the first one published under the new educational initiative of the President of the Office, i.e. "UOKiK tests". The project aims to provide consumers with reliable information about the quality of products offered on the market to enable them to make informed purchasing decisions. In November and December, UOKiK released 2 more reports, which concerned dishwasher tablets and dishwashing liquids.

16.10

A PLN 40.7 million fine for PKO BP SA for using prohibited contractual clauses

In the decision (DOZIK-16/2020) the President of UOKiK stated that PKO BP Bank had used imprecise and ambiguous clauses regarding the determination of foreign currency exchange rates and converted credit instalments based on them. In 2020, the President of UOKiK imposed financial sanctions on 6 banks for applying prohibited clauses in the amendments to mortgage loan agreements relating to foreign currencies. The total amount of penalties exceeded PLN 122 million.

28.10

Use of the leniency and voluntary submission to penalty programmes

Yamaha Music Europe agreed upon the minimum resale prices for music equipment in online stores in Poland with distributors (decision DOK-4/2020). The final penalty for the company exceeded PLN 0.5 million. Normally, the penalty would have been much higher; however, the company took advantage of the leniency programme. As such, Yamaha Music Europe cooperated with the Office and provided compelling evidence of collusion that helped in issuing the decision. The penalty imposed upon Yamaha Music Europe was further reduced because the company submitted to it voluntarily.

11

NOVEMBER

16.11
European Commission approval for extension of aid programmes
 UOKiK, which coordinated the process of preparing aid programmes to provide support due to COVID-19 at the national level, submitted a group notification to the Commission to extend the duration of these programmes. The EC's approval enabled Polish undertakings to apply for funds under government programmes until 30 June 2021.



12

DECEMBER

03.12
First penalty imposed by the President of UOKiK upon a managing person
 The President of UOKiK imposed a financial penalty of PLN 200,000 on a managing person at Veolia Energia Warszawa for intentionally restricting competition in the Warsaw heating market (decision DOK-5/2020). Companies belonging to the Veolia group were also fined.

11.12
The highest penalty imposed so far by the President of UOKiK for using contractual advantage
 Jeronimo Martins Polska – the owner of the "Biedronka" store chain – was fined more than PLN 723 million for using unfair contractual advantage in relations with suppliers of agri-food products between 2018 and 2020. These practices consisted in the company unilaterally determining the amounts of discounts already after the delivery of goods.

15.12
Orange Polska SA undertakes to return money from the prepaid accounts
 The decision against Orange (DOZiK-18/2020) concludes a series of proceedings of the President of UOKiK against the 4 largest mobile operators in Poland. Apart from Orange Polska, the operators of T-mobile and Play networks have also committed to returning unused prepaid card funds to consumers.

22.12
European Commission approves state aid for PLL "LOT" SA
 The EC approved 2 aid measures amounting to about EUR 650 million (PLN 2.9 billion) to support the Polish Airlines "LOT" in connection with the COVID-19 pandemic. UOKiK initiated the proceedings before the Commission in October 2020 by pre-notifying the project.

30.12
First decision of the President of the Office on the so-called solicitors promoting pyramid-type incentive schemes
 The decision (RGD-12/2020) concerned a YouTuber who persuaded consumers to participate in three different pyramid-type incentive schemes. This was also the first penalty imposed by the President of UOKiK on an undertaking who had not been running a formally registered business.

30.12
Largest fitness chains in Poland punished for market sharing
 16 business owners and 6 managers entered into an illicit arrangement to divide the Polish fitness market (decision DOK-6/2020). As a result, consumers were limited in their ability to choose which chains to use in their city. The President of UOKiK imposed penalties totalling over PLN 32 million on 8 companies, whereas the penalties for the 6 individuals directly involved in the arrangement amounted to about PLN 800,000.



Competition protection

The key task of the President of the Office of Competition and Consumer Protection is to ensure the proper functioning of competition in the market. To this end, the authority detects and combats practices restricting fair competition between undertakings. The President of the Office also intervenes in the agricultural and food market, eliminating unfair trade practices in relations between market participants. The authority also has the right to control concentrations and monitor state aid granted to businesses. New competencies from 2020 include the prevention of payment gridlocks in commercial transactions and investment control in order to protect Polish undertakings of key importance to public order, safety and health.



1.1 Competition-restricting practices

The competition-restricting practices include **prohibited agreements** and the **abuse of a dominant position**. They lead to the disruption of free-market mechanisms. For consumers, this means higher prices, less choice, and poorer quality of products and services offered. For undertakings, this means difficulty in entering the market or distributing their goods and services.

The Act on Competition and Consumer Protection¹ prohibits entering into any agreements, the aim or effect of which is to eliminate, restrict or distort competition. Such arrangements may include, among other things, **price-fixing**, **market sharing** or **bid-rigging agreements**, as well as agreements concerning production volumes, restriction of market access or elimination of other entities from the market.²

There are two types of competition-restricting agreements:

- **horizontal** – directly relating to the conditions of competition between competitors,
- **vertical** – concerning relations between undertakings operating on different levels of trade, e.g. manufacturer-distributor.

The abuse of a dominant position consists in unilateral actions taken by an undertaking (or several undertakings), which may involve, among others, hindering market competition between competitors or imposing less favourable terms and conditions of cooperation on trad-

ing partners than would be possible under conditions of effective competition.

Having a dominant position is not prohibited under the Act on Competition and Consumer Protection. It is presumed that an undertaking whose market share is at least 40 per cent has a dominant position. In practice, each case is subject to an individual assessment by the authority, and the decisive criterion is the actual market power held by an entity and not just its percentage market share.

It is prohibited to abuse a dominant position, among other things, by directly or indirectly setting unfair prices (including excessively high or abnormally low prices), using onerous contractual terms bringing an undertaking unjustified benefits, and taking actions aimed at unfairly preventing new entities from entering into the market or preventing the development of existing ones³.

The President of the Office may conduct two types of proceedings in connection with a suspected violation of the prohibition of using competition-restricting practices: explanatory and antitrust proceedings.

Explanatory proceedings are initiated in relation to a suspected violation of antitrust law. They are conducted with regard to a specific matter, not against any specific

entities. If it is stated that the provisions of the Act on Competition and Consumer Protection may have been violated, explanatory proceedings may result in the initiation of antitrust proceedings against a specific entity.

The President of the Office may take **soft calls** in relation to undertakings without initiating proceedings. Their aim is to obtain explanations from entities or to indicate the need to change their market actions due to the possible illegal nature of such actions. In 2020, the President of the Office took **63 soft calls** in the field of competition protection. They were taken in relation to undertakings operating in the following sectors:

- emptying of domestic sewage treatment plants,
- water and sewage industry,
- administration of municipal cemeteries,
- market of radio-based vehicle location and recovery services,
- advertising services in search engines,
- medical waste disposal,
- truck servicing and food wholesale.

Antitrust proceedings concerning competition-restricting practices are conducted in relation to a suspected violation of competition rules by a specific entity. Before issuing a decision, the President of the Office shall

provide the party or parties to the proceedings with a **detailed justification of allegations**. If given practice is considered to be competition-restricting practice, the President of the Office issues a decision stating the violation and ordering the entity to cease using the practice if it is still used at the time of issuing the **decision**. In such cases, a fine of up to 10 per cent of the turnover achieved in the financial year preceding the year in which the decision is issued may be imposed on the undertaking.

In the course of explanatory or antitrust proceedings, the Office may conduct an inspection or search on the company's premises,⁴ the aim of which is to obtain information that may constitute evidence in the case. In 2020, **7 controls** and **2 searches** were conducted.

It is possible to issue a **commitment decision**⁵, if the material collected in the course of proceedings makes it possible to substantiate a violation of the law. This occurs on the initiative of the undertaking, which presents the Office with a proposal of specific actions aiming at ceasing the violation or removing its effects. After accepting the content of the commitment, the President of the Office issues a decision imposing specific conditions that the undertaking has to fulfil. The main benefit for the undertaking is that it is not found to have been involved in the alleged practice and that no fine is imposed.

In connection with antitrust proceedings against an undertaking, the President of the Office may also conduct **proceedings against managing persons**⁶. This applies to both current and former employees. Such persons are liable if they have permitted the conclusion of prohibited

¹ Act of 16 February 2007 on Competition and Consumer Protection (Polish Journal of Laws of 2021 item 275), here-

inafter referred to as the "Act".

² Art. 6 sec. 1 of the Act contains examples of competition-restricting

agreements.

³ An exemplary list of practices involving the abuse of a dominant posi-

tion is included in Art. 9 sec. 2 of the Act.

⁴ Controls and searches are conducted under the Act on Competition and Consumer Protection: controls – Art. 105a, searches – Art. 105n.

⁵ Such a solution is set forth in Art.

12 of the Act.

⁶ Persons who manage a company, e.g. the persons who are members of the management body, as well as persons who effectively determine the

direction of the company's activities but are not members of its management body and who do not hold management functions may be considered to be managing persons. The question

of whether a natural person should be considered to be a managing person is examined on a case-by-case basis based on the analysis of individual circumstances of the case.



agreements through their intentional actions or omissions. A fine of **up to PLN 2 million** may be imposed on them by the President of the Office. To clarify the rules on how sanctions are determined, the Office published "Clarification of the method of determining fines for managing persons under Article 106a and 111 of the Act on Competition and Consumer Protection" in July 2020.⁷

Notifications and reports

The Office gains information about competition-restricting practices mostly by analysing notifications and reports made by consumers, undertakings, public institutions and law enforcement authorities. It is possible to notify the Office of suspected illegal market practices through a **written notification** or anonymously using the **whistleblower programme**.

A whistleblower is understood as current, or former employees of an undertaking who have information that is not publicly available and that can be used as evidence of violations. Information on illegal arrangements between competitors is particularly valuable to the Office. The Office may also be notified of the abuse of a dominant position by an undertaking. Material for analysis includes handwritten notes from meetings, correspondence (sent by email or by post, text messages), information from a calendar with planned or held meetings. To ensure better protection of whistleblowers, the Office operates **a notification platform through which a suspected violation of competition law may be reported**. All information obtained in this way is analysed in detail and based on such information, the Office may take further actions.

Whistleblowers may use a special online form available at <https://report.whistleb.com/pl/uokik>.

More information about the whistleblower programme can be found at <https://konkurencja.uokik.gov.pl/sygnalista/>.

In 2020, the Office received **686 notifications** and **506 anonymous reports under the whistleblower programme**. Although the number of reports decreased by 1,000 compared to 2019, the reports received provided more valuable evidence. The platform makes it easier for whistleblowers to organise the information they provide and indicates what kind of data is important for the Office. The reports received mainly concerned suspected abuse of a dominant position, but also the possible conclusion of prohibited agreements. Notifications made through the platform mostly concerned the activities of undertakings providing e-commerce, telecommunication and transport services.

The Office's additional knowledge of potentially anti-competitive practices of undertakings comes from its own observations, e.g. conclusions drawn from market research (for more information, see 3.3 Social research and market analysis) and from the so-called white intelligence.⁸

Cooperation with the Office

The initiation of proceedings by the President of the Office may result in a severe fine, but antitrust laws give the undertaking a chance to avoid it. The prerequisite is to cooperate with the Office. **The leniency programme** applies to entities involved in prohibited agreements; based on the programme, fines imposed on undertakings and managing persons may be lifted in full or significantly reduced. **Voluntary submission to a penalty** applies to all types of violations (anti-competitive agreements, abuse of a dominant position) and allows for a reduction in the amount of the fine. Cooperation brings real benefits to both the applicant and the market from which the prohibited practice is more quickly eliminated.

⁷ The document is available online at: <https://konkurencja.uokik.gov.pl/ramy-prawne-i-decyzje-uokik/>.

⁸ White intelligence involves gathering information from publicly available sources, such as advertisements, online

forums, and media reports.

Leniency programme

Agreements between undertakings are often secret, and their participants try to hide all traces of making mutual arrangements. **A leniency programme is an instrument that increases the effectiveness of detection of the most serious cases of collusion on the market.**

An undertaking or manager involved in an arrangement to restrict competition (whether horizontal or vertical) may apply for either a reduction in the penalty or a full immunity from it. The condition is for the undertaking or manager to discontinue the unlawful practice and cooperate with the Office by providing evidence or information indicating the existence of such prohibited arrangements. Attaining a full immunity from the penalty is particularly facilitated in cases where the given entity submits a so-called leniency application before the Office starts to suspect that a violation may have occurred.

The website konkurencja.uokik.gov.pl presents the most important issues concerning the actions taken by the President of the Office in the scope of competition protection:

- characteristics of competition-restricting practices,
- course of a typical case in the scope of competition protection,
- fines imposed by the President of the Office on undertakings and natural persons,
- leniency programme, including "Explanations of the President of the Office on the leniency program" and a full template of the leniency application,
- The Whistleblower programme, including the address of the platform that can be used to submit anonymous alerts,
- notifying the Office of a possible violation of competition principles,
- reporting bid-rigging to the Office,
- useful legal acts and the Office's clarifications, database addresses of decisions and judgments in the field of competition protection law.

The leniency programme applies to both undertakings and managing persons who have intentionally committed an antitrust violation through any action or omission related to their position. In the case of the latter, a managing person must submit a special application and provide the required evidence and information – to the extent possible given their position at the company involved and their personal role in the antitrust agreement.

Only the first applicant in the given case may seek the full immunity from the fine. Other entities may seek to have it reduced, with the amount of such a reduction depending on the order in which the given application is submitted, as well as the quality of the information and evidence provided to the Office.

A leniency application submitted by a manager on his or her own behalf does not cover the undertaking for whom he or she works. In contrast, pursuant to the Act on Competition and Consumer Protection, an application filed by an undertaking covers all its managing persons as well.

A yet additional incentive for parties involved in such illegal arrangements may be the so-called leniency plus. Leniency plus allows applicants to have their financial penalty reduced further if they present unknown facts about another anti-competitive arrangement. This is only possible if no investigation or antitrust proceeding is yet pending in such a new case.

In 2020, UOKiK received **3 leniency applications**, while **4 decisions** were issued considering applications filed in previous years.



Voluntary submission to the penalty⁹

Since 2015, the antitrust law enables undertakings against whom proceedings are initiated to obtain a 10 per cent reduction in the fine. This is done as part of proceedings initiated either by the Office or at the request of a party, provided that the said party submits **a statement on voluntary submission to the penalty** and acknowledges both the amount of the penalty determined by the President of the Office, as well as the fact that it had been informed of the charges by the Office and had had an opportunity to respond to them. For entities that participate in the leniency programme and receive a further penalty reduction as part of it, the total reductions received may be cumulative. This procedure assumes that the undertaking will waive its right to appeal the decision before the court of law, allowing the whole process to end sooner. **In 2020, the President of the Office issued 3 decisions related to the procedure of voluntary submission to a penalty, with 6 undertakings and one managing person taking advantage of it.**

Organisational changes at the Office of Competition and Consumer Protection to enable more effective enforcement of competition law:

- establishing the Department for Bid Rigging Prevention,
- strengthening analytical and investigative functions – working on tools for verifying tender proceedings using statistical analysis methods, enabling early detection of symptoms of bid-rigging; work in this area is being carried out in cooperation with the Public Procurement Office, which is building a repository of information on tender proceedings as part of the e-Procurement Project,
- working on tools to analyse the situation in individual markets to detect potential anti-competitive agreements at an early stage.

⁹ The procedure for voluntary submission to a penalty is outlined in Art.

89a of the Act on Competition and Consumer Protection.

Transparency policy of UOKiK

A vital element of the Office's activities is the implementation of the policy of transparency towards all market participants.

It consists in increasing the transparency of all actions taken. This is enabled by such things as:

- publication of explanations and guidelines explaining how the Polish antitrust authority operates (e.g. "Clarification of the method of determining fines for managing persons under Article 106a and 111 of the Act on Competition and Consumer Protection"),
- measures facilitating the exercise of rights of the parties to the proceedings – making available a special room for viewing case files to attorneys of undertakings.

New competition protection proceedings in 2020

64

explanatory proceedings

7

antitrust proceedings concerning competition-restricting practices – all concerning horizontal agreements and bid-rigging

11

proceedings initiated on suspicion of violating Art. 101 and 102 of the Treaty of the Functioning of the European Union (TFEU) – 10 explanatory proceedings and 1 antitrust proceeding

¹⁰ Proceedings to impose a penalty due to the provision of false or misleading information or failing to provide

2

concerning the verification of the execution of a decision

6

proceedings related to the imposition of a penalty¹⁰

information, as well as failing to cooperate during the control.

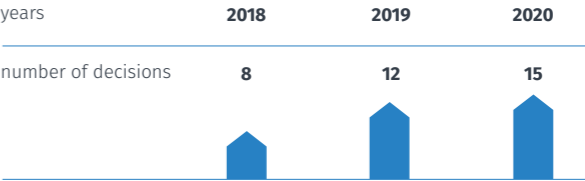
Competition protection decisions issued in 2020

Decisions concerning competition-restricting practices, including: 15

- decisions concerning horizontal agreements 12
- decisions regarding vertical agreements 2
- decisions on abusing of a dominant position 1
- decisions on imposing fines on undertakings (40 financial penalties totalling PLN 187.2 million)¹¹ 13
- decisions based on national and EU legislation 4
- decisions taking into account the application of the leniency procedure 4
- decisions with the application of the voluntary submission to a penalty procedure 3
- commitment decisions 1
- decisions on bid-rigging 6

Decisions on imposing penalties for failing to provide information or providing false or misleading information 5

Competition protection decisions issued in the years 2018 and 2020



¹¹ Financial penalties are imposed for a particular practice, and as such, more than one such penalty may be

imposed through a single decision.



1.1
Competition-restricting practices

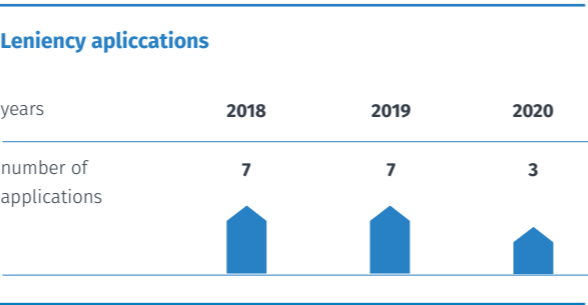
1.2
Concentration control

1.3
State aid

1.4
Contractual advantage

1.5
Payment gridlocks

1.6
Court jurisdiction in competition protection cases



Other measures taken in 2020



processing notifications on anti-competitive practices



processing anonymous notifications under the Whistleblower programme

63

new soft calls taken against undertakings¹²

2

searches conducted¹⁴ at 6 companies

7

controls carried out¹³ at 13 companies

12

detailed justifications of allegations

¹² The President of the Office may take soft calls against an undertaking in competition and consumer protection matters pursuant to Art. 49a of the Act on Competition and Consumer

Protection.

¹³ Represents the number of proceedings in which inspections were conducted at businesses.

¹⁴ Represents the number of pro-

ceedings in which a search was conducted. In 2020, the number of searches was lower than in previous years due to restrictions related to the COVID-19 pandemic. Field activities were

conducted only before the pandemic outbreak, as well as during the period when restrictions were loosened.

The decisions with the highest total fines imposed on businesses in 2020 in cases concerning competition-restricting practices

Total amount of fines: **PLN 187.2 million**

<p>DOK-5/2020</p> <p>PLN 120 million</p> <p>(3 fines in total)</p> <p>Veolia Energia Warszawa SA, Veolia Energia, Jacky Lacombe – a managing person at Veolia Energia Warszawa SA – for market sharing, price-fixing and bid-rigging in the Warsaw heat market</p>	<p>RBG-7/2020</p> <p>PLN 17.1 million</p> <p>(a total of 4 fines)</p> <p>Polmass SA, Ekoplon Sp. z o.o. Sp. k. – for sharing the livestock feed market</p>
<p>DOK-6/2020</p> <p>PLN 32.6 million</p> <p>(a total of 14 fines)</p> <p>Bartosz Gibała, operating under the business name of Bartosz Gibała Platinum, Benefit Systems SA, Platinum Wellness Sp. z o.o., Yes to Move Sp. z o.o., Baltic Fitness Center Sp. z o.o., Calypso Fitness SA, EFC Fitness SA, Fitness MCG Sp. z o.o., Bartosz Konrad Gibała – a managing person at Platinum Wellness Sp. z o.o., Adam Kędzierski – a managing person at Benefit Systems SA, Mikołaj Nawacki – a managing person at Calypso Fitness SA, Jakub Mateusz Raniszewski – a managing person at Zdrofit Sp. z o.o., Ireneusz Sęk – a managing person at Fabryka Formy SA, Izabela Walczewska-Schneyder – a managing person at Benefit Systems SA – for sharing the fitness market</p>	<p>DOK-2/2020</p> <p>PLN 13.5 million</p> <p>(a total of 6 penalties)</p> <p>Trade-Port Sp. z o.o., Track Tec SA, ThyssenKrupp GfT Polska Sp. z o.o., Nasycalnia Podkładów SA, Nasycalnia Podkładów w Czeremsze Sp. z o.o., Kolejowe Zakłady Nawierzchniowe "Bieżanów" Sp. z o.o. – for bid-rigging in a tender for the supply of wooden railroad sleepers</p>

Overview of activities

Proceedings under national and EU legislation

The President of the Office may conduct proceedings under EU regulations (Art. 101 and 102 of the Treaty on the Functioning of the European Union),¹⁵ if the **practice under investigation is likely to affect trade between the EU Member States**. In such instances, Polish and EU competition laws are applied in parallel. In 2020, the President of the Office initiated **11 proceedings** in this respect – 10 explanatory proceedings and one antitrust proceeding. In addition, he issued **4 decisions** pursuant to Art. 101 TFEU.

As a member of the European Competition Network (ECN) comprising the European Commission and the na-

tional competition authorities of the EU Member States, the President of the Office can count on multilateral cooperation in issuing decisions in proceedings conducted under the EU regulations. All planned decisions are notified to the EC so that competition law can be applied consistently and uniformly across the EU.

An example of this cooperation was the decision¹⁶ regarding Yamaha Music Europe (based in Rellingen, Germany), issued in 2020. The company was fined **for fixing minimum resale prices for music equipment in online stores in Poland with its distributors**. The proceedings concerning this case were conducted under the Act on Competition and Consumer Protection and EU Council Regulation 1/2003,¹⁷ with the final ruling being consulted with the European Commission. Yamaha Music Europe's practices were also investigated by antitrust authorities

¹⁵ Treaty on the Functioning of the European Union (TFEU) (OJ. U. EU C 326/47).

¹⁶ Decision DOK-4/2020.

¹⁷ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implemen-

tation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L001 4.1.2003, consolidated version

in OJ L. EU L 148, 11.6.2009).



1.1 Competition-restricting practices

1.2 Concentration control

1.3 State aid

1.4 Contractual advantage

1.5 Payment gridlocks

1.6 Court jurisdiction in competition protection cases

from Austria and the United Kingdom. In 2020, these authorities issued decisions regarding the company's price-fixing practices concerning the resale of music equipment.

Yamaha Music Europe is a manufacturer of music equipment sold under Yamaha, Line 6, and Steinberg brands, which is marketed both in Poland and other countries. The antitrust proceedings revealed that **Yamaha Music Europe set the minimum prices at which its products were to be sold by online distributors**. Initially, the prices were agreed upon using a specific mathematical formula; afterwards, an online price list was used to determine the minimum prices. Additionally, Yamaha Music Europe representatives directly indicated the minimum prices to be charged to online stores. Not only did the company impose the prices, but it also monitored their application. It would intervene if one of its counterparties attempted to sell music equipment cheaper and would punish it through such means as revoking preferential terms it had previously granted. The illicit arrangement lasted 13 years – from 2004 to 2017. To obtain evidence, the Office conducted searches at musical instrument distributors.

The President of the Office fined Yamaha Music Europe more than PLN 0.5 million. While normally the fine would have been much higher, Yamaha Music Europe actively worked with the Office during the proceedings. **Yamaha Music Europe submitted an application under the leniency programme**. Nonetheless, it could not hope for a complete immunity from fine, as the evidence on record showed that it solicited its business partners to participate in the illicit arrangement. Instead, the company received a 50 per cent reduction in the fine because it presented valid evidence to confirm the price-fixing arrangement, which helped the Office issue a decision. The company also received a further 10 per cent reduction in the fine as it **voluntarily submitted to the penalty**.

The decision is final and legally binding, Yamaha Music Europe did not appeal to the court and paid the fine.

Private enforcement of competition law

Anyone who has suffered damage as a result of a violation of competition law by an undertaking **may seek compensation for such damage in a court of law**. A lawsuit before a civil court (a district court is competent in this respect) may be filed by a counterparty or competitor of the entity that has engaged in anti-competitive practices, as well as consumers who have purchased products subject to such infringement. Injured parties may also take legal action through their representatives, such as business or consumer organisations.

Lawsuits may concern such things as practices recognised in the decisions of the President of the Office or the European Commission as arrangements limiting competition, abuse of a dominant position, as well as violations for which no proceedings have been conducted, and no decision of a competition protection authority has been issued.

Importantly, one may initiate proceedings before a Polish court in case of any damage occurring in Poland, even in cases where the registered office of the undertaking is located in another EU Member State.

In proceedings concerning damages that are already pending, the President of the Office may provide **an important opinion regarding the case**, e.g., concerning the competence of Polish courts to deal with infringements found by the European Commission.

Claims can be asserted under the Act on private enforcement of competition law¹⁸ which entered into force in 2017.

The Communication¹⁹ and Practical Guide²⁰ published by the European Commission are helpful resources for estimating the amount of damage.

First penalties for managing persons

In 2020, the President of the Office **imposed penalties on managing persons directly involved in anti-competitive arrangements for the first time**. The decisions were made in cases of bid-rigging in the Warsaw heat market, as well as market sharing practices involving major fitness chains.

In December 2020, the President of the Office fined the Veolia Polska Group companies nearly PLN 120 million for an arrangement with the PGNiG Group companies concerning **market sharing, price-fixing and bid-rigging in the heat market**, which resulted in increased heating prices in Warsaw.²¹ PGNiG Termika handles heat generation and sales while Veolia Energia Warszawa supplies and sells heat to such end-users as housing cooperatives, communities, companies, schools and offices. The illegal cooperation dates back to the 2012-2013 period when Veolia announced the construction of its own co-generation plant in Warsaw, and PGNiG Termika became active in the heat sales market, taking away Veolia's customers. The Office's findings indicate that the companies entered into an anti-competitive agreement in 2014 and agreed to share the market and not compete with each other. As a result of these arrangements, Veolia cancelled the construction of its co-generation plant in Warsaw, and PGNiG Termika agreed to cease supplying heat to end-users. The companies were also consulting with each other in terms of their pricing and bidding strategy. The lack of competition was beneficial to both entities because they did not have to worry about losing their strong positions in the markets they dominated. Although the direct arrangements were made by PGNiG Termika and Veolia Energia Warszawa, the parent companies of both companies – PGNiG and Veolia Polska – were involved in the illicit practice as well. They were the ones who initiated the arrangement in the first place and knew about and accepted all subsequent illegal dealings. **This is the first time in the history of the Office that fines have been imposed on a corporate officer responsible for entering into an illicit arrangement**. The President of the Office found that the then presidents of the Management Boards of Veolia Energia Warszawa



financial penalty for a managing person

and PGNiG Termika intentionally led to the restriction of market competition through such actions as actively participating in the implementation of illegal activities, as well as determination of their scope. The financial penalty was imposed on the Veolia Group companies, as well as a managing person at Veolia Energia Warszawa.²² **Companies belonging to the PGNiG group avoided fines as they decided to cooperate with the Office under the leniency programme**, admitting to taking part in illegal arrangements and providing valuable evidence. This information made it possible to search the headquarters of Veolia Energia Warszawa, among others. This allowed the undertakings to avoid fines exceeding PLN 486 million. The decision is not final and legally binding; Veolia group companies and the managing person have appealed to the Court of Competition and Consumer Protection.

The second decision²³ that involved fining managers directly involved in anti-competitive practices concerned **the Polish fitness services market** and was issued based on both Polish and EU legislation. In December 2020, the President of the Office determined that **16 undertakings and 6 managers entered into an illegal arrangement**. Antitrust proceedings initiated in 2018 showed that the arrangement was in place for about 5 years, and the undertakings involved had divided the market in such a way as to avoid competing with each other. The parties to this anti-competitive arrangement were Poland's leading fitness chains, including Calypso Fitness, Fitness Platinum, Fabryka Formy, Zdrofit, Fitness Academy, as well as Benefit Systems SA – the Multisport card operator. Benefit controlled the implementation

¹⁸ Act of 21 April 2017 on private enforcement of competition law (Polish Journal of Laws of 2017, item 1132).
¹⁹ Communication from the Commis-

sion on quantifying harm in actions for damages based on breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union can be found

at [https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52013XC0613\(04\)&from=EN](https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52013XC0613(04)&from=EN).

²⁰ A practical guide accompanying

the Commission's Communication is available at https://ec.europa.eu/competition/antitrust/actionsdamages/quantification_guide_pl.pdf.

²¹ Decision DOK-5/2020.

²² The decision imposed fines on

Veolia group companies: Veolia Energia Warsaw – PLN 92,208,077.56 and Veolia

Poland – PLN 27,546,221.35, as well as on a managing person at Veolia group – PLN

200,000.00.

²³ Decision DOK-6/2020.



of the agreement and served as a coordinator and arbitrator for the clubs while intensively building up its own market position at the same time. Other companies wanted to maintain a strong position in cities where they had already established their operations and benefited from participation in Benefit's Multisport programme. As part of the arrangement, the participating entities engaged in various market-sharing contacts with each other, including correspondence, phone calls, and meetings. Companies exchanged information on opening new clubs, as well as any new locations they were interested in. If one party already had plans for the given area, the other would agree to withdraw. Thus, the entities involved did not compete for new customers with the scope of their price, offer, or standard of service. The President of the Office found that 6 managers from Platinum Wellness, Benefit Systems, Calypso Fitness, Zdrofit and Fabryka Formy were also individually responsible for participating in the arrangement. It was they who decided on the nature of the market sharing practices and agreed upon all the relevant details in this regard. **The total fine imposed on the undertakings amounted to over PLN 32 million,²⁴ whereas the fine for the managers totalled about PLN 800 thousand.** When determining the amount of the fines, the President of the Office took into account that the fitness industry was particularly affected by the COVID-19 restrictions, and as such, their amount was reduced accordingly. Additionally, **the Calypso group companies and a managing person at the Calypso group cooperated with the Office under the leniency procedure and voluntarily submitted to the penalty.** This resulted in a 60 per cent reduction in the amounts of fines imposed on them. The decision is not final and legally binding; the undertakings appealed to the Court of Competition and Consumer Protection.

Undertaking to change contested practices

The antitrust laws prohibit agreements whose purpose or effect is eliminating, restricting, or otherwise infringing competition. **Resolutions or other actions by as-**

sociations of undertakings, as well as their statutory or self-governing bodies, may also be deemed to be such agreements. In December 2019, the President of the Office initiated antitrust proceedings in connection with anti-competitive practices allegedly taken by the SAR Marketing Communication Association.²⁵ SAR is an association of more than 120 agencies engaged in creating and providing services related to promotion and advertising. The Office's objections pertained to findings regarding the participation of these agencies in tenders, as well as illegal information exchange organised by SAR. In the course of the proceedings, the premises of the undertakings were searched, and evidence confirming allegations was discovered. SAR restricted its members' independence by obliging them to refrain from participating in tenders, in which no **rejection fee** was offered for preparing a creative concept. Additionally, SAR created a special electronic platform through which the members informed each other about participating in tenders, monitored the number of entities competing for the contract, and checked if SAR members participate in tenders without rejection fees. Practices of this kind constituted an arrangement that could affect competition. Ultimately, **the President of the Office obliged SAR to change the contested practices and remove their effects.**²⁶ The association was to emphasise in its official documents that the rules and manner of participation in tenders are an individual decision of each member, as well as to withdraw or rescind the existing documents containing the solutions called into question by the Office. Additionally, SAR agreed not to provide its members or others with an electronic platform for exchanging tender information to ensure that the data regarding bidding or competition proceedings was limited to publicly available sources. The implementation of the above commitment means that from now on, SAR members can decide whether to participate in tenders independently and autonomously. Also, no SAR member will be able to invoke any organisation documents indicating the mandatory application of rejection fees.

²⁴ As part of this decision, the President of the Office imposed penalties on 8 businesses. Most of the remaining businesses ceased their activities after the initiation of the proceedings and

were taken over by Benefit Systems. The company incurred additional penalties as a result of their violations. The fine imposed on Benefit Systems exceeded PLN 26 million and was the highest

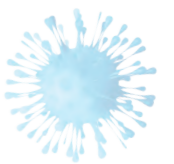
among all those imposed by the President of the Office in this case.

²⁵ Since SAR's practices may have affected trade between the EU Member States, the President of the Office

conducted proceedings in connection with the violation of Polish and EU regulations.

²⁶ Decision DOK-3/2020.

COVID-19 – market monitoring and email contact for undertakings



With the emergence of the pandemic caused by the SARS-CoV-2 virus in 2020, the Office took steps to **monitor the market for new violations and launch a new channel for communicating with undertakings.**

The President of the Office conducted **proceedings in the markets for products vital to preventing the spread of the coronavirus**, i.e. tests, laboratory test reagents, medical supplies (masks), and alcohols for disinfection. These actions were aimed at determining whether anti-competitive practices like prohibited arrangements or abuse of a dominant position were taking place due to the growing demand for medical supplies. Examples of such actions include a case where the Office reviewed whether wholesalers terminated contracts or restricted the supply of such agents to hospitals to force hospitals to purchase the products at higher prices. In the end, the investigation did not provide evidence for anti-competitive practices allegedly taken by the traders. Other proceedings involved the supply of medical oxygen used by medical facilities in treating COVID-19. The Office has set up a special helpline to allow hospital directors to report legal violations. The Office also clarified the rules for cooperation between undertakings operating online food order and delivery services and the gastronomic sector. One important aspect analysed in this case was the amounts of commissions charged during the pandemic.

To meet the needs of businesses, the Office has also set up **a special email address for the duration of the pandemic: covid-konkurencja@uokik.gov.pl.** It allows undertakings to obtain an informal opinion from the Office on whether temporary actions they plan to undertake due to the coronavirus restrictions are consist-

ent with the competition law. Opinions issued by the Office primarily assesses whether the positive effects of cooperation between business entities outweigh their possible anti-competitive consequences. The measures employed by undertakings are also examined to determine if they are necessary to mitigate the impact of the pandemic and whether they actually achieve their objectives, e.g., increasing production, optimising supply.

Additionally, **a subsite has been added to the Office's website; it contains information on business conditions** during the pandemic, including such issues as COVID-19 and state aid, coronavirus and competition law – guidelines for undertakings, unfair use of contractual advantage during COVID-19. The subpage is available at: www.uokik.gov.pl/dla_przedsiębiorcow.php. More information: 1.3 State aid, 1.4 Contractual advantage, 3.1 Information and educational activities.

The initiative to launch a special communication channel for undertakings was proposed by the **European Competition Network (ECN)**, which has included the President of the Office since 2004. The national competition protection authorities of the EU Member States and the European Commission have announced a common statement on the application of competition law during the pandemic. As part of this statement, they have undertaken to provide informal guidance to undertakings in cases where there is doubt about the legality of actions that undertakings plan to conduct jointly. For more information, please see: 3.4 International Cooperation.



Activities on the pharmaceutical market

In 2020, the activities of the President of the Office also focused on **the pharmaceutical sector entities**. Antitrust proceedings were continued against Solgar Polska, a domestic distributor of dietary supplements, including vitamins, herbs and micronutrients. The Office suspects that **the company may have agreed with retail distributors on minimum resale prices** for Solgar brand dietary supplements. Consequently, consumers could not buy these products cheaper than the predetermined price. The violations may have included sales in brick-and-mortar and online shops. Charges were also brought against managers of Solgar Polska, who may have been directly responsible for the anti-competitive agreements. There is a penalty for participating in an agreement restricting competition of up to 10 per cent of turnover, and managers involved in the violation – a fine up to PLN 2 million. As the practice may have affected trade between EU countries, the President of the Office for Competition and Consumer Protection is conducting proceedings on the basis of Polish and EU regulations.

In September 2020, the Office conducted searches at 4 pharmaceutical wholesalers and controls at two IT software suppliers. The Office was investigating whether there was an agreement between the companies, prohibited by competition law, involving **the exchange of commercial information**, e.g. on the prices of medicines. This practice may go beyond simply monitoring competitors' activities and adjusting the strategy accordingly. According to the information gathered by the Office, arrangements between wholesalers could have been made through special software that made it possible, for example, to verify the prices applied by competing entities. Based on the analysis of the information gathered, the President of the Office will make a decision on whether to initiate antitrust proceedings in 2021.

UOKiK's activities on digital markets

In 2020, further actions were taken by the President of the Office in the rapidly growing digital markets, particularly

with respect to online platforms. There are great social and economic benefits to the growth of these services, but there is also a risk that online undertakings will abuse their growing market position. On the one hand, the activities focused on conducting proceedings and counter-acting harmful practices on the grounds of competition law and, on the other hand, on engaging in legislative work on the regulation of digital platforms.

The President of the Office continued the antitrust proceedings initiated in 2019 against Allegro.pl – the owner of the most popular e-commerce platform in Poland and, at the same time, the largest e-commerce company in Poland. The main allegation is that **Allegro.pl favours its own sales activity** at the expense of other sellers present on the platform. This may constitute an abuse of a dominant position in the domestic market for intermediary services in online sales offered on e-commerce platforms. The issue of the dual role played by Allegro.pl, in this case, was examined – it is a counterparty providing intermediation services to other traders, but also their competitor, as it sells its products within the so-called Official Allegro Store. As the website owner, the company could use the information available to it about its functioning and consumer behaviour to better position its own offers. As a result, independent sellers' products may have been chosen less frequently by shoppers. In 2020, the allegations against the company were verified.

In September 2020, the President of the Office initiated another action regarding Allegro.pl. **An explanatory proceeding was initiated into the rules of cooperation of this company with users – professional and incidental sellers.** Under the new charging rules included in the regulations, the commission covers the whole transaction made on the platform, i.e. the price of the goods and shipping costs paid by the buyer. These changes were received poorly by website users, who directed numerous complaints to the Office. As part of the proceedings, the President of UOKiK will also examine the terms and conditions for charging and refunding fees in the event of the buyer withdrawal from an agreement concluded via Allegro.pl. The Allegro Smart service will also be analysed.²⁷

Last year, the Office was also involved in the European Commission's legislative work on the Digital Service Code. These included a proposal for a regulation aimed strictly at large online platforms acting as "gatekeepers" (Digital Market Act) and the so-called New Competition Tool. More information: 3.2.2 International Legislation.

Market sharing agreements

A market sharing agreement can be as dangerous restrictive practice as price collusion. Instead of competing fairly with each other, undertakings determine that they will not compete in a selected area and divide territory, goods, or customer groups among themselves. As a result, contractors lose the opportunity to purchase the product from the selected vendor or receive more expensive offers.

An example of such practice constituted 2 agreements concluded between producers and sellers of industrial animal feed – Polmass company and its competitors: Ekoplon and separately Agro-Netzwerk Polska. These involved **sharing the domestic market for the sale of milk replacers for cattle**. These are specialised products used by growers in the early stages of calf rearing. In both cases, the companies agreed not to compete with each other for those customers to whom products were supplied by the other co-operator. During this time, they monitored whether the other party was adhering to the agreed terms and reacted when the contracting party did not comply. This situation may have limited the ability of cattle producers, feed distributors, and dairies, among others, to choose animal nutrition products and may have affected the price level of those products. Evidence of both anti-competitive agreements was provided by searches at the headquarters of the 3 companies. In the case of the first conspiracy between Polmass and Ekoplon, the arrangements concerned 2 groups of feed products used in cattle rearing – milk replacers and mineral and vitamin mixtures and lasted in 2008-2016 and 2008-2015, respectively. Polmass and Agro-Netzwerk Poland, in turn, have divided the market of milk-substitute formulae between themselves

within the framework of 7-year-long cooperation. In the decisions closing the proceedings, the President of the Office for Competition and Consumer Protection found that the undertakings had entered into agreements restricting competition and imposed heavy financial penalties on them. The total sanction for Polmass and Ekoplon amounted to over PLN 17 million,²⁸ while in the latter case, the penalty of over PLN 2.5 million was incurred only by Polmass.²⁹ The penalty against Agro-Netzwerk Poland was waived because it had benefited from the leniency programme and provided valuable evidence of the agreement. The decisions are not legally binding; Ekoplon and Polmass appealed to the Court of Competition and Consumer Protection.

3 DAF truck dealers, Wanicki from Mogilan, DBK from Olsztyn and WTC from Długołęka, may have concluded market sharing agreements. Evidence obtained by the Office, among others, during searches at the premises of undertakings, points to the prohibited activities. The President of UOKiK initiated antitrust proceedings against them in March 2020 in connection with a suspected anti-competitive agreement in 2017-2018. It consisted of assigning specific territories to the entities and agreeing that each of them would only bid in public tenders for the sale of DAF vehicles in its own territory and refrain from bidding in the territory "assigned" to another dealer. This was not the first intervention by the President of UOKiK in connection with possible collusion between DAF truck dealers. DBK and WTC are also parties in another antitrust proceeding conducted against 5 undertakings selling trucks of this brand. It is suspected that traders may have acted simultaneously in two collusive arrangements with different entities.

Price collusion in the retail compressor market

Walter Kompressortechnik Polska is a manufacturer of compressors, i.e. machines and equipment for producing and processing compressed air. The brand's products are used in a wide range of industries and services, such as auto repair shops, larger plants as a stand-in air source, and smaller manufacturing and service companies. The

²⁷ In the course of the proceedings, the President of UOKiK is also analysing

the new Allegro.pl regulations in terms of prohibited clauses (more informa-

tion: 2.1. Practices violating collective consumer interests and prohibited

clauses in model contracts).

²⁸ Decision RBG-7/2020.

²⁹ Decision RBG-14/2020.



company sells them through independent distributors operating nationwide with stationary and online machine, pneumatic and power tool stores. Distributors sell Walter products directly to end-users or to resale agents.

The findings show that from mid-2016 through May 2017, Walter was the organiser of an agreement restricting competition in the domestic market for retail sales of compressors. **It imposed minimum prices on distributors to resell its products online.** Thus, the devices could not be offered at prices lower than those set by Walter. The trader disciplined trading partners who did not implement the arrangements. The distributors themselves also monitored each other's activities and informed Walter of deviations from the conspiracy. The company drew up the "Regulations for dealer cooperation in online sales of the Walter Kompressortechnik Polska product range". It was sent out electronically to all distributors and cooperating intermediaries conducting online retail sales. In addition to the minimum resale prices for Walter products online, the document set out, among other things, the maximum discount that can be given for online sales. The regulations also prohibited offering customers free of charge additional goods or services (so-called freebies). Non-compliance with the rules of cooperation was punishable by reducing the discounts of the dealer or intermediary.

During the proceedings, the Office **carried out a search** at the premises of Walter Kompressortechnik and collected, among other things, the necessary evidence to establish the prohibited agreement. During the proceedings, the company **discontinued the practice and actively cooperated** with the Office. The final fine exceeded PLN 129 thousand.³⁰ **The company voluntarily submitted to the penalty and did not appeal the decision.**

Bid-rigging agreements

Combating bid-rigging is of particular interest to the President of the Office, as **it is one of the most serious violations of competition law.** They lead to a distortion of the competition between the participants in the tender procedure and limit the ability of the contracting authority to select the most advantageous offer. As a result, state funds are not spent rationally, and prices are set above the level that would exist under conditions of effective competition.

A bid-rigging is an agreement on the terms of bids, particularly on the scope of work or the price, between bidders or between bidders and the organiser of a tender procedure.

In order to obtain evidence in cases of bid-rigging, the President of the Office conducts proceedings (explanatory and antitrust), including controls and searches. Market research and open-source intelligence are also valuable sources of information. In addition, signals of irregularities are provided by law enforcement authorities, institutions responsible for the control of public procurement, and the participants in the tenders themselves – contracting authorities and companies.

In 2020, the President of the Office conducted **38 proceedings** to determine whether a bid-rigging agreement had been entered into and issued **6 decisions** in this respect. In addition, **16 market studies** consisting of monitoring public tenders related to the spending of EU funds were carried out³¹ (more information: 3.3 Social research and market analysis).

In September 2020, the President of the Office found³² that there was **bid-rigging in the tender procedure organised by PKP TLK for the supply of wooden railway sleepers in 2014–2015.** The parties to the prohibited agreement were 6 manufacturers of these products, who were the only ones in Poland who could supply them to the contracting authority, namely Kolejowe Zakłady Nawierzchniowe Biezanów together with its subsidiaries – Trade-Port and Sleeper Treatment Plant in Czeremcha, as well as ThyssenKrupp GFT Polska, Track Tec and Sleeper Treatment Plant in Koźmin Wielkopolski. The purpose of the collusion was to avoid competition for the contract and to secure a higher price for its performance.³³ The tender was divided into two tasks, and **the undertakings agreed among themselves exactly who is to bid in them and what price to propose in it.** The first task was to be won by Track Tec, and the second by the ThyssenKrupp-KZN Biezanów consortium. The total number of sleepers delivered in these two tasks was to be divided in a ratio: 45 per cent for Track Tec and 55 per cent for the ThyssenKrupp-KZN Biezanów consortium. In addition, sleeper prices in the submitted bids were expected to increase by 3 per cent in comparison to prices from 2013 for deliveries in 2014 and by 5 per cent in 2015. Entities that did not tender were to participate as subcontractors. Findings were made in 2013-2014 during meetings in hotels and restaurants in Katowice, Krakow and Warsaw and during telephone conversations. The initiators of the collusion were Track Tec and KZN Biezanów. Initially, the agreement was only for them, and then they induced others to participate. The President of UOKiK imposed penalties on the participants in the tender collusion in the total amount of nearly PLN 13.5 million. The undertakings have appealed the decision to the Court of Competition and Consumer Protection.

Other decisions regarding bid-rigging agreements:

- RLU-5/2020 – tender for repair and construction services in the area of Lubelskie and Mazowieckie provinces,
- RKR-3/2020 – tender for the purchase of agricultural machinery and equipment for institutional entities.

Industries and markets investigated under collusive bidding proceedings:

- winter maintenance and summer cleaning of traffic routes, squares and stairs outside the roadway (construction works, forestry),
- supply of goods and services related to road construction and maintenance,
- surveying and mapping services,
- repair and construction services (including, e.g. demolition of post-mining facilities),
- forestry services,
- tree trimming, planting and care services,
- programming and IT services,
- organisation of transport of school children to educational institutions,
- medical device sales,
- disposal of medical devices.

³⁰ Decision RŁO-11/2020.

³¹ Market research was conducted in the form of explanatory proceedings.

³² Decision DOK-2/2020.

³³ Ultimately, this plan failed because PKP PLK cancelled the tender due to suspicion of bid-rigging.



1.1
Competition-restricting
practices

1.2
Concentration control

1.3
State aid

1.4
Contractual advantage

1.5
Payment gridlocks

1.6
Court jurisdiction in competition
protection cases

In the next two proceedings, the President of the Office for Competition and Consumer Protection examined the issue of **application of the mechanism of placing and withdrawing bids** by companies – tenderers. The first case involved a public procurement organised by the municipality of Tarnobrzeg in 2014. It concerned the supply and assembly of arrangement walls for the needs of the Tarnobrzeg Industrial and Technological Park project carried out with EU funds. The cheapest offer was submitted by Janusz Kurek Firma Budowlana J&S from Kazimiera Wielka, but after the results were announced, it resigned from signing the contract. Thus, the municipality chose the company Brimat Rzeszów, which offered almost twice the price. The authority found that there was an anti-competitive agreement between the traders to choose the more expensive offer. Thus, the participants in the tender collusion were fined a total of nearly PLN 375 thousand.³⁴ This was the first decision of the President of UOKiK issued in connection with the **programme of examining tenders co-financed with EU funds**. The decision was appealed to the Court of Competition and Consumer Protection.

In the second case, the proceedings were initiated as a result of signals received from undertakings competing with 3 companies from Małopolska, which took part in tenders for school transport. According to the collected information, Transport and Tourism Company "Jakubas" Krystyna Jakubas, Transport and Service Company Magdalena Jakubas and Euro Bus Marek Jakubas attempted in an illegal way to influence the outcome of 10 public procurements, of which in 6 cases they succeeded in achieving their goal. The ordering parties were Małopolska municipalities and educational institutions. Under the assignment and withdrawal mechanism, **the winning bidder resigned from signing the contract if its proposal was the most advantageous**. It did not provide missing docu-

ments, such as a carrier's license or a certificate from the CEIDG. In this way, a second, more expensive bid from another collusive participant was selected. The President of UOKiK imposed penalties on undertakings in the total amount of almost PLN 200 thousand.³⁵ Only one participant in the agreement appealed this decision to the Court of Competition and Consumer Protection.

Undertakings can bid as a **consortium** of different companies. Antitrust law permits this form of cooperation, but if the participants in a consortium have the ability to carry out the contract on their own, they should do so without cooperation that restricts competition. The same applies if it is possible to perform services with fewer partners than those in the consortium. This issue was addressed by the President of UOKiK in antitrust proceedings initiated in April 2020 against **7 companies participating in tenders organised by municipalities in Wielkopolska**. Most of the 15 public procurement procedures for municipal waste collection, transport, and management were won by a consortium of 7 companies: Remondis Sanitech Poznań, SUEZ Zachód, Przedsiębiorstwo Usług Komunalnych Artur Zys, KDS, EKO-TOM Turguła, ORDO Poznań and Przedsiębiorstwo Usług Komunalno-Transportowych Vikom. The Office suspects that the consortium's creation was merely a pretext to establish a bid-rigging arrangement and avoid competing for contracts. This is because the parties comprising the consortium are mostly large companies that could bid on their own or as part of a consortium with fewer entities. After winning the tenders, the companies typically worked independently in the area they had been operating in previous years. This may also confirm that they were able to perform the services ordered without the assistance of others. The proceeding was continued in 2021.

1.2 Concentration control

The President of the Office is tasked with preventing excessive concentration of undertakings that could lead to permanent changes in the market structure. For this purpose, the authority evaluates the largest transactions that have or may have an impact on competition in Poland.

Concentrations may have various forms, including a merger, the acquisition of control over another entity, the creation of a joint venture, and the acquisition of part of the assets of another entity.

The obligation to notify the intent to concentrate applies to undertakings whose total turnover exceeded **EUR 1 billion worldwide or EUR 50 million in Poland** in the year preceding the notification.

The President of the Office **approves concentration** if it will not significantly restrict market competition. Otherwise, the President of the Office **prohibits concentration**. In some cases, **conditional concentration may be approved if certain conditions are met** (e.g. resale of a portion of the assets), provided that market competition will not be significantly restricted once such conditions have been met. Additionally, the Act on Competition and Consumer Protection provides for **an extraordinary approval** of a transaction despite its anti-competitive effect in cases where such a transaction will significantly contribute to economic development or technical progress or will have a positive impact on the national economy.³⁶

If undertakings consolidate without the prior approval of the President of the Office – even unintentionally – they may be fined up to 10 per cent of last year's turnover. Additionally, they face fines of up to EUR 50 million if they fail to provide information during proceedings conducted by the Office. **In 2020, the total amount of penalties imposed exceeded PLN 29 billion.**

Concentration control proceedings can proceed in two stages. Most transactions are finalised at stage 1 – they do not require in-depth analysis and do not raise concerns in terms of their impact on competition. The President of the Office has one month to finalise such cases. More complex cases, requiring further market analysis or ones where there is a reasonable likelihood that competition will be restricted as a result of the concentration, proceed to stage 2 of the procedure. The President of the Office must issue a resolution informing the parties to the proceedings about this fact and gains another 4 months to finalise the proceedings.

Objections to company concentration

In cases where there is a reasonable likelihood that competition will be significantly restricted as a result of company concentration, the President of the Office presents the parties with objections to the proposed transaction (the so-called competition concern). Such objections contain the reasons for their issue but do not prejudice the outcome of the case. This allows the undertaking to become acquainted with the potential decision while the proceedings are still pending and comment on the statement of the President of the Office before the final decision is issued. In 2020, objections were issued in one case.

Both national antitrust authorities and the European Commission are authorised to assess the market effects of concentration transactions. In principle, the President of the Office has jurisdiction over concentrations whose intended effects occur within the territory of Poland and do not have a **Community dimension** at the same time. The latter is determined by the amount of turnover achieved by the participants concluding the transaction. Generally, the EC examines transactions in which the combined worldwide turnover of all the undertakings concerned exceeds EUR 5 billion, with the combined EU turnover of each of at least two participants in the concentration exceeding EUR 250 million. Companies concluding a transaction with a Community dimension

³⁴ Decision RKR-11/2020.

³⁵ Decision RKR-1/2020.

³⁶ Art. 18-20 of the Act on Competition and Consumer Protection describe

various types of decisions ending the proceedings of President of UOKiK in

concentration control cases.



1.1
Competition-restricting practices

1.2
Concentration control

1.3
State aid

1.4
Contractual advantage

1.5
Payment gridlocks

1.6
Court jurisdiction in competition protection cases

may apply to the EC to have its effects investigated by a member state if it is likely to affect competition in that state significantly.³⁷ In such a case, the Commission may refer the matter to the national antitrust authority if the latter agrees to assess the effects of such a transaction.

Furthermore, in 2020, the President of the Office analysed 337 concentrations reported to the EC with regard to their impact on the Polish market and whether to file an application to take over in the given case.

UOKiK's concentration control activities in 2020

New concentration control proceedings	264	Other data	
Total number of decisions, including:	243	return of notification of the intention to consolidate	22
concentration approvals	242	proceedings that reached stage 2	11
conditional approvals	1	average time of proceedings at stage 1	33 days ³⁸
Decisions terminating proceedings at stage 1	233	average time of proceedings at stage 2	190 days ³⁹
Decisions terminating proceedings at stage 2	10	cases reviewed in terms of the impact of concentration on the Polish market in connection with proceedings before the European Commission	337
Decisions imposing a penalty for failure to notify of an intended concentration	3	new explanatory proceedings to determine whether there exists a notification obligation ⁴⁰	2
Decisions imposing a penalty for failure to provide information	2		
Total amount of fines	PLN 29.29 billion		

Concentration approvals in 2018-2020

years	2018	2019	2020
concentration approvals	228	261	242
conditional approvals	0	5	1

³⁷ National competition authorities have similar powers in certain cases.

³⁸ Actual case review time, including time limits covered by the exemption

under Art. 96 sec. 2 of the Act on Competition and Consumer Protection.

³⁹ Actual case review time, including time limits covered by the exemption

under Art. 96a sec. 8 of the Act on Competition and Consumer Protection.

⁴⁰ In 2020, the President of the Office did not conduct any research concern-

ing the state of concentration of the economy.

The UOKiK's concentration control activities in 2020

In 2020, The President of the Office conducted 264 new concentration control proceedings, which resulted in 243 decisions, including 242 ordinary approvals and one conditional decision. Not a single concentration action was prohibited.

Overview of activities

Penalty for the establishment of Nord Stream 2 without the approval of the President of UOKiK

This precedent-setting decision by the President of the Office⁴¹ is the result of more than 2.5 years of proceedings against Gazprom and 5 international entities responsible for financing the Nord Stream 2 (NS2) gas pipeline: the French Engie Energy (jurisdiction of incorporation: Switzerland), the German Uniper, the Austrian OMV, the Dutch-British Shell and the German Winter-shall (these four companies are registered in the Netherlands). The issue consisted in determining whether the undertakings jointly formed a company responsible for the construction and operation of the NS2 pipeline without the required approval of the President of UOKiK.

The President of the Office analysed the case of the Nord Stream 2 construction project in 2016. At the time, it was determined that the planned concentration of Gazprom and 5 international companies could lead to a restriction of competition. Their joint venture aimed to design, finance, build and operate Nord Stream 2, a natural gas pipeline running from Russia's Baltic coast to an exit point near Greifswald, Germany. Facing objections from the Office, the participants withdrew the concentration application, which meant that the concentration was prohibited. In 2017, the President of the Office reopened the case after the media reported new arrangements between participants in the Nord Stream 1 consortium. The proceeding confirmed that the 6 companies entered into several NS2 financing agreements at the time, despite the President's objection to the establishment of a joint venture. This is because both the creation of the joint venture, to which the Office did not agree, as well as the conclusion of the subsequent contracts, had the same purpose – to finance the construction of the Nord Stream 2 pipeline.

In assessing the degree of infringement, the President of the Office found that the companies never abandoned their intention to consolidate but rather implemented it in a different form. None of them notified the Office, i.e. the Polish antitrust authority, about these actions. The

implementation of the project thus constituted a violation of competition law, which has resulted in increasing the dependence of gas consumers in the internal market on a single supplier – Gazprom. Such a situation may result in serious consequences for both the Polish and EU economies, particularly through territorial limitations in natural gas supplies and an increase in gas prices for end consumers, in particular, Polish consumers.

The companies financing the pipeline acted intentionally, and as such, were punished with a maximum fine of 10 per cent of the annual turnover in each case. The President of the Office imposed a fine of over PLN 29 billion on Gazprom and over PLN 234 million on other consortium participants. It also ordered the parties to terminate the NS2 pipeline financing contracts. This will make it possible to revert to the state of competition that had existed before the concentration.

Nord Stream 2 case at UOKiK

December 2015	6 companies apply to the President of the Office for permission to form a joint venture to construct and operate the Nord Stream 2 gas pipeline
July 2016	The President of the Office issues objections to the concentration because it may restrict competition
August 2016	Transaction participants withdraw the application following the President's objections – the proceedings are terminated
April 2017	The President of the Office initiates proceedings based on information published by the media
April 2018	Commencement of proceedings against Gazprom and 5 international entities for concluding transactions without the approval of the President of the Office
November 2019	Engie Energy is fined for failing to cooperate with the Office
July 2020	Gazprom is fined PLN 212.9 million for failure to provide information in the proceedings concerning the consortium's formation (decision DKK-141/2020)
October 2020	The President of the Office issues decision DKK-178/2020, imposing maximum possible fines for the 6 companies for concentration without the President's approval, as well as an order to terminate the concluded contracts

⁴¹ Decision DKK-178/2020.



1.1
Competition-restricting
practices

1.2
Concentration control

1.3
State aid

1.4
Contractual advantage

1.5
Payment gridlocks

1.6
Court jurisdiction in competition
protection cases

Penalties for non-cooperation

In connection with the proceeding into the formation of a consortium to finance the construction of the Nord Stream 2 gas pipeline without the required approval, the President of the Office asked Gazprom for documents relevant to the case – primarily contracts for the transmission, distribution, sales, supply, and storage of gaseous fuels. However, the company declined to provide this information.⁴² As a result, the President of the Office fined Gazprom nearly PLN 213 million for non-cooperation.⁴³ This is the maximum fine provided by law for failure to provide information at the request of an antitrust authority; it is an equivalent of EUR 50 million.

Another decision of the President of the Office of Competition and Consumer Protection imposing a financial penalty for non-cooperation concerns Linde Gaz Polska in Kraków.⁴⁴ When evaluating one of the reported concentration cases in the liquid carbon dioxide market, the President of the Office decided to conduct a market survey and send inquiries to all undertakings operating in this area. Such entities are legally required to provide all the necessary information and documents; otherwise, they may be fined. Linde Gaz failed to respond by the established deadline; its reply was delivered two months later. As a result, Linde Gaz was fined PLN 120 thousand.

The President of UOKiK gains new powers to protect companies of strategic importance

Starting July 2020, the President of Office has been given new responsibilities in the area of protecting Polish undertakings of strategic importance to public order, security, and health. These responsibilities stem from the amended provisions of the Act on Investment Control,⁴⁵ part of the government's Anti-Crisis Shield 4.0. Their adoption was necessitated by the deteriorating economic situation due to the coronavirus pandemic, as well as the risk of domestic companies being taken over by investors from non-EU, EEA, and OECD countries.

As such, any investment resulting in the full acquisition, acquisition of a significant share, or acquisition of dominance in a protected entity by non-EU, EEA, and OECD entities⁴⁶ is subject to supervision by the President of the Office. The protection applies to undertakings based in Poland, whose revenue from sales and services in Poland exceeds the equivalent of EUR 10 million in one of the two financial years preceding the intent to take over.

At the same time, such entities must also meet one of the conditions provided for in the Act on Investment Control:

- being a public company, regardless of the type and industry of their business,
- possessing property that is disclosed on the list of facilities, installations, equipment, and services that comprise critical infrastructure or developing or modifying software for applications provided for by the Act,
- being engaged in one of the industries specified in the Act – particularly energy, fuel, chemicals, armaments, telecommunications, IT, medical or meat, milk, grain, fruit and vegetable processing companies.

The entity making the transaction must notify the President of the Office, who conducts a verification proceeding upon receiving such a notification. If the transaction does not raise objections in terms of public order, safety, or health, the President of the Office issues a no-objection decision. If the given application or investment requires a more thorough verification, an inspection procedure is initiated. Acquisition of a protected undertaking without notice or despite the objection of the Office is void.

By the end of 2020, the Office received 4 applications under the new rules. In two instances, the proceedings were not initiated because the reported transactions were not subject to the investment control regulation. Another case resulted in the issuance of a no-objection decision concerning the establishment of dominance over a Polish undertaking.⁴⁷ The fourth proceeding was continued in 2021.

The Office of Competition and Consumer Protection issues useful explanations on investment control

To assist undertakings in applying for approval of a transaction, the Office has published the "Procedural Clarifications on Filing Notices with the President of the Office and Conducting Proceedings Covered by the Act on Investment Control". The publication provides useful information on the transaction reporting procedure and introduces the rules for conducting proceedings. It is available online at <https://www.uokik.gov.pl/download.php?plik=24681>.

Examples of proceedings completed at stage 1

Focusing on the retail space lease and rental market

The President of the Office approved the acquisition of control over PHZ Baltona by the "Polish Airports" State Enterprise (PPL).⁴⁸ PPL manages or jointly controls 7 airports in Poland and its subsidiaries provide services such as ground handling and passenger and luggage security control. Baltona, on the other hand, is primarily engaged in renting and operating stores and restaurants at airports. There are vertical relationships between the companies, as PPL leases retail space at airports to Baltona. The proceedings have shown that the concentration of the two entities does not put competition at risk. The markets in which the entities operate, i.e. the commercial space lease and rental, are at least European in dimension. This is due to such things as airport store and restaurant operators competing globally and bidding to lease retail spaces in various countries. Also, airports are not limited to businesses from one state when signing

agreements with store tenants. This means that after the transaction, PPL will continue to compete for tenants with other airports both in Europe and worldwide. Baltona's market shares are also not large enough for the concentration to restrict competition among airport retail and restaurant tenants.

Concentrations with a Community dimension

In 2020, the President of the Office approved requests for review by a Polish antitrust authority or requested that the EC transfers such matters to UOKiK in the case of the following issues with a Community dimension:

- concentration involving the acquisition of control over Ruch by Polski Koncern Naftowy Orlen,
- concentration involving the establishment of a joint venture by Discovery Communications Europe Limited and Cyfrowy Polsat,
- concentration involving the acquisition of control over Tesco Polska by Salling Group.

In all cases, the EC agreed to refer the cases to the President of the Office for assessment.

Concentration in the dialysis and nephrology services market

The transaction consisted in the acquisition of control over Dravis Sp. z o.o. by DaVita Sp. z o.o. The parties involved in the concentration provide dialysis and nephrology services at Polish nephrology clinics. The President of the Office analysed their activity both in the Polish domestic dialysis services market (from the perspective of relations between the service providers and the payer, i.e. the National Health Fund – NFZ) and in the local dialysis services markets in individual voivodships (from the perspective of the relationship between the service providers and patients), as well as in the lo-

⁴² In a similar proceeding concerning failure to provide information, the President of the Office fined another consortium participant, Engie Energie. In this case, the fine amounted to PLN

172 million (decision DKK-217/2019).

⁴³ Decision DKK-141/2020.

⁴⁴ Decision DKK-158/2020.

⁴⁵ The Act of 24 July 2015 on control of certain investments (Polish Journal

of Laws of 2020, item 117).

⁴⁶ I.e. natural persons who are not citizens of an EU, EEA or OECD Member State, as well as entities that are not natural persons and whose registered

office is not located within the territory of those Member States.

⁴⁷ Decision DKK-179/2020 concerning the consent to the acquisition of the

"Polish ePayments" Electronic Payment Processing Centre by the H&F Corpora-

te Investors VIII Fund from the Cayman Islands.

⁴⁸ Decision DKK-59/2020.



1.1
Competition-restricting practices

1.2
Concentration control

1.3
State aid

1.4
Contractual advantage

1.5
Payment gridlocks

1.6
Court jurisdiction in competition protection cases

cal dialysis services market in the Poznań metropolitan area (in narrow geographic terms; from the perspective of the relationship between the service providers and patients). Moreover, the President of the Office assessed the activity of the undertakings in the local nephrological services market at nephrological outpatient clinics in the Warmińsko-Mazurskie Voivodeship area.

The President of the Office approved the transaction,⁴⁹ determining that it would not significantly impede competition in the markets concerned, in particular, through the establishment or strengthening of a dominant position.

Examples of proceedings completed at stage 2

Conditional approval for a transaction in the cable TV and ISP market

The transaction reported to the Office (in August 2018) involved Vectra taking over Multimedia Polska. Both undertakings operate in the cable TV and Internet Service Provider markets, among others. The market investigation has shown that approving the concentration would lead to a restriction in local market competition. As such, the President of the Office obliged Vectra to meet certain conditions to eliminate threats to fair market competition. These conditions concerned 21 localities and consisted of selling networks or allowing customers to switch operators at no cost.

Vectra will have to sell its networks, or ones owned by Multimedia Polska, in 8 cities – Gorzów Wielkopolski, Kwidzyn, Łowicz, Olsztyn, Ostróda, Pogórze, Pruszcz Gdański and Stargard. Additionally, it must establish new companies to which it will transfer property from each of the cities mentioned, including subscriber contracts, telecommunications infrastructure, employee contracts, accounting and technical documentation, and subscriber databases. These companies will then be sold to an independent investor, with the buyer not being allowed to belong to or be jointly controlled by any entity in the Vectra capital group. The buyer will also need to be approved by the President of the Office. Until sold, the new

companies will have to provide pay-TV and fixed-line broadband Internet access services at a level no worse than that previously provided by Vectra or Multimedia Polska. Additionally, until their sale, Vectra will not actively pursue marketing efforts to acquire new subscribers for these networks. A yet another condition is to allow subscribers in the 13 remaining localities to change their service providers freely. This will be made possible for consumers in Barcin, Inowrocław, Kruszwica, Lubicz Dolny, Łęczyca, Mogilno, Nakło nad Notecią, Piechcin, Słubice, Strzelno, Suwałki, Szubin and Świnoujście. Within 7 months of the decision becoming final, Vectra must inform customers that they can terminate their contracts for pay-TV and/or fixed broadband internet access free of charge during the subsequent 9 months. This will apply to agreements with Vectra and its subsidiaries, including Multimedia Polska. The decision – is final and legally binding⁵⁰ – Vectra, the entity notifying the Office about the concentration, has not appealed the decision to the Court of Competition and Consumer Protection.



Concentration in the soap market

Sarantis applied to UOKiK for permission to acquire a portion of the assets of two undertakings, i.e. PZ Cussons International and PZ Cussons Polska, which are related to the marketing and sales of popular Luksja cosmetic products. The Sarantis Group sells products belonging to 80 brands popular in the Polish market, including STR8, Kolastyna, Jan Niezbędny. In Poland, it

offers mainly bar soaps, shower gels, deodorants, perfumes, detergents, and household products. In the Polish market, PZ Cussons International and PZ Cussons Polska are known primarily for their Luksja, Carex, and Morning Fresh brands. To issue the decision, the President of the Office conducted a survey of the Polish bar soap market and verified the data presented by Sarantis. Additionally, the Office conducted a survey of the competitors and counterparties of the parties involved in the concentration. The proceeding showed that the transaction would not restrict competition, so the President of the Office approved it.

Concentration in the grocery store market

The President of the Office approved the acquisition of certain assets of Snowfinch, Zodiac, BTN, and Tesco by Kaufland Polska Markety. As a result of the concentration,

Kaufland acquired the rights to 4 retail spaces currently used by Tesco Polska, i.e. stores in Lublin, Ostrołęka, Wrocław, and Warsaw. The transaction affected several local HSD markets (hypermarkets, supermarkets and discount stores), and as such, was referred to stage 2 of the procedure. According to the notifying party, the estimated aggregate shares of the transaction participants in the respective markets ranged from about 20 per cent to more than 30 per cent. To verify this information, the President of the Office conducted a market survey. The antitrust proceedings have shown, among others, that the parties involved in the concentration face strong competition from other large retail chains, including Biedronka, Leclerc, Piotr i Paweł, Stokrotka, Carrefour, and Auchan. Therefore, the President of UOKiK determined that the transaction would not restrict competition to a significant degree.

Examples of decisions on concentration control issued by the President of UOKiK in 2020

Industry	Number of cases	Examples of decisions		
property (including industrial property rental, office space rental, development services and residential housing sales)	43	DKK-39/2020 – approval for the acquisition of control over European Logistics Investment B.V. with its registered office in Amsterdam by MIRELF VII S.à r.l. with its registered office in Luxembourg, with the control to be held jointly with Redefine Europe B.V. with its registered office in Amsterdam	DKK-49/2020 – approval for the acquisition of control over Grupo Aldesa SA with its registered office in Madrid by CRCC International Investment Group Limited with its registered office in Hong Kong	DKK-139/2020 – approval for the establishment of a joint venture by PG Dutch Holding I B.V. with its registered office in Amsterdam, KAP IN Sp. z o.o. with its registered office in Nowy Sącz and Focal Point Invest Sp. z o.o. One sp.k. with its registered office in Poznań
financial services (including banking services, investment fund activities, payments)	33	DKK-128/2020 – approval for the acquisition of control over the "Polish ePayments" Electronic Payment Processing Centre with its registered office in Tajęcín by Rementi Investments SA with its registered office in Warsaw	DKK-197/2020 – approval for the acquisition of EOS 1 Fundusz Inwestycyjny Zamknięty Niestandaryzowany Fundusz Sekurytyzacyjny with its registered office in Warsaw by BPS Towarzystwo Funduszy Inwestycyjnych SA with its registered office in Warsaw	DKK-107/2020 – approval for the establishment of a joint venture by R+V Service Holding GmbH with its registered office in Wiesbaden, Vereinigte Hagelversicherung VVaG, with its registered office in Gießen and Gartenbau-Versicherung VVaG, Wiesbaden
trade	32	DKK-113/2020 – approval for Eucash SA with its registered office in Komorniki to take over FHC-2 Sp. z o.o. with its registered office in Krosno and Madas Sp. z o.o. with its registered office in Krosno	DKK-122/2020 – approval for PKN Orlen SA with its registered office in Płock to purchase a part of the property of PPUH SAREL – Ryszard Sabik in the inheritance with its registered office in Jelcz-Laskowice	DKK-182/2020 – approval for Kaufland Polska Markety Sp. z o.o. sp. k. with its registered office in Wrocław to purchase a part of the property of Pearl Jewel Sp. z o.o. with its registered office in Warsaw

49 Decision DKK-34/2020.

50 Decision DKK-25/2020.

1.3 State aid

All undertakings should compete in the EU market on equal terms, with the state only interfering in the market processes in justified cases. In principle, **granting state aid**, i.e. selective support constituting an economic advantage for an undertaking, either individually or under an aid programme, **requires the approval of the European Commission**. This is necessary to ensure the effective functioning of the EU internal market.

Therefore, there exists **a general obligation to notify the EC of any plans to grant or modify state aid provided using state funds**. An exception in this regard is aid granted under block exemptions, i.e. based on specific provisions recognising certain categories of support as compatible with the internal market (e.g. aid for small and medium-sized undertakings). The notification requirement also does not apply to *de minimis aid*, i.e. small-scale support that⁵¹, does not violate market competition principles.

An undertaking can obtain **various forms of state aid**, including subsidies and grants, tax reliefs and exemptions, enterprise recapitalisation on more favourable terms than those offered in the market, as well as preferential loans or credits, sureties and credit guarantees.

Assessment and notification of aid projects

One of the main tasks of the President of the Office in the area of state aid is to **issue opinions on the drafts of aid programmes and cases in which individual support is to be issued** in terms of their compliance with EU law and the obligation to notify the EC. As such, the

Office performs an advisory function for Polish institutions granting state aid⁵². In 2020, **16 opinions were issued on state aid projects**, including 11 opinions on aid programmes and 5 opinions on individual aid.

Notifying the European Commission about aid projects⁵³

As part of the notification process, the President of the Office notifies the EC of each intention to grant state aid by a Polish administration body or another public entity. Until the European Commission has determined whether such support complies with Community law, the Member State must withhold it. In 2020, **a total of 52 projects to provide state aid were notified to the Commission** via the President of the Office, including 47 projects concerning aid programmes and 5 concerning individual aid. **The EC approved 38 aid projects.**

Prenotification

Prenotification is a procedure for state aid cases **conducted independently of the standard state aid control procedure**. Member States and the EC have the opportunity to informally and confidentially discuss the legal and economic aspects of aid projects. While prenotification is not a mandatory step in state aid control, it is nevertheless recommended as it facilitates and accelerates the process of reviewing measures notified to the EC, especially in more complex cases. **In 2020, the President of UOKiK used the prenotification procedure in the case of 21 projects notified to the Commission.**

⁵¹ Such aid must not exceed EUR 200,000 gross for a single beneficiary within 3 calendar years, and in the case of the road transport sector, EUR 100,000.

⁵² The Office's competencies are regulated by the Act of 30 April 2004 on proceedings in state aid cases (Polish Journal of Laws of 2020, item 708, 2377).

⁵³ The notification procedure is

detailed in Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248

24.9.2015, p. 9).

UOKiK notified

52

aid projects to the European Commission

Monitoring support granted to Polish undertakings

The tasks of the President of the Office also include monitoring the support granted to Polish undertakings, which involves collecting information on state aid based on **reports from institutions granting such aid**. All data is submitted to and collected in a dedicated system called SHRIMP (Aid Scheduling, Reporting, and Monitoring System). Based on this information, the Office prepares annual reports on state aid granted in Poland and submits them to the Polish Council of Ministers and the European Commission.

In 2020, the Office prepared reports and analyses concerning state aid, including:

for the Chancellery of the Prime Minister:

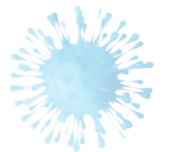
- A report on state aid granted to undertakings in Poland in 2019,
- Report on *de minimis* aid granted to undertakings in Poland in 2019.

for the European Commission:

- 2019 Polish state aid report – prepared and submitted via the SARI electronic reporting system;
- Report for 2018-2019 on state assistance provided for services of general economic interest (SGEI),
- Semi-annual analysis "Wyniki monitorowania pomocy publicznej udzielonej spółkom motoryzacyjnym

Participation in proceedings before the CJEU

In 2020, UOKiK participated in proceedings before the CJEU in cases where Poland was a **party** – the case concerning Polish retail sales tax, and **intervener** – the case of aid to Autostrada Wielkopolska SA.



COVID-19 – in state aid

At https://www.uokik.gov.pl/covid19_a_pomoc_publiczna.php UOKiK provided up-to-date information on notified aid programmes and European Commission decisions in Polish cases. Explanations and documents related to crisis assistance were also posted. This information served both the aid providers and the undertakings who experienced the negative consequences of the crisis and expected support. The number of bookmark views in 2020 was nearly 380,000, accounting for 1/4 of all visits to the "state aid" section of the UOKiK site. More information: 3.1 Information and educational activities.

prowadzącym działalność na terenie specjalnych stref ekonomicznych" ["Results of monitoring of state aid granted to automotive companies operating in special economic zones"],

- Report on State aid provided in connection with the COVID-19 crisis under aid schemes adopted on the basis of the Communication from the Commission – "Tymczasowe ramy środków pomocy państwa w celu wsparcia gospodarki w kontekście trwającej epidemii COVID-19 z dnia 19 marca 2020 r. i jego zmian" ["Temporary framework for State aid measures to support the economy in the context of the ongoing COVID-19 epidemic of 19 March 2020 and its changes"].



Change of the SUDOP application (System of Access to Data on State Aid)

In 2020, many crisis relief providers were required to prepare and send a state assistance report for the first time. In order to streamline the process, the Reporting Regulation,⁵⁴ has been amended to include codes for new laws and new destinations of aid, facilitating the reporting and monitoring of crisis aid. This was particularly important for aid subject to a quota limit.

To meet these changes, UOKiK has introduced **new functionalities in the SUDOP application** available at <https://sudop.uokik.gov.pl>. They make it easier for the institutions providing support and the undertakings applying for it to **search for crisis aid covered by the limit of EUR 800,000 per company**. Moreover, many entities (e.g. scientific institutes, banks, advisory and consulting companies, private and public institutions) applied to UOKiK for full access to the SUDOP application database in order to conduct research, create analyses, compilations and reports on state aid granted in Poland.

Further optimisation of the operation and expansion of the application are planned in the coming years. This is to ensure its proper functioning and availability, as well as to meet the expectations arising from the proposed legislative changes on data sharing.⁵⁵

Assessment and notification of aid projects

The President of UOKiK in 2020 primarily **assisted in the development of and provided opinions on assistance programmes to counter the effects of the COVID-19 pandemic**. These activities were aimed at ensuring that the proposed solutions reflected the EU's aid eligibility conditions and were approved by the European Commission.

In addition, **the Office conducted 38 pre-notification and notification proceedings** related to anti-crisis aid. The EC issued **30 decisions** on these cases, approving **44 aid measures**. The proceedings were conducted in an unprecedented manner, as some of them lasted only a few days. The previous formal communication has been replaced by electronic communication and consultation via teleconference.

Due to further restrictions introduced in autumn 2020, the President of UOKiK has notified changes and extensions to certain aid schemes, which were initially to remain in force until the end of 2020. This has been made possible by successive changes to EU regulations relating to the conditions of eligibility for pandemic crisis aid.

The aid schemes notified to the EC focused on the following issues:

- the financial shield for undertakings – i.e. the basic support programme for undertakings affected by the pandemic,
- aid for research and development in connection with the COVID-19 pandemic,
- investment aid for infrastructure for testing and preparing for mass production of products aimed at combating the COVID-19 pandemic,
- investment aid for the production of products to combat the COVID-19 pandemic,
- subsidies for interest on loans,
- loans subject to cancellation for micro-undertakings to cover current business costs,
- exemptions from property tax,

⁵⁴ Ordinance of the Council of Ministers of 7 August 2008 on reports on granted state aid, information on not

granting such aid and reports on arrears of undertakings in payments of benefits due to the public finance sec-

tor (Polish Journal of Laws of 2016, item 1871, as amended by Polish Journal of Laws of 2020, item 1023).

⁵⁵ Draft Open Data and Re-use of Public Sector Information Act (UC47).

- grants to cultural institutions,
- reimbursement of costs of adapting workstations to the needs of disabled employees and monthly subsidies to their salaries for employers in a difficult economic situation,
- grants or repayable aid under the 2014-2020 operational programmes,
- aid in the form of guarantees for loans,
- co-financing of part of the costs of employees' salaries and social security contributions for NGOs and public benefit organisations,
- aid for "LOT" SA Polish Airlines.

Financial shields for Polish undertakings

In 2020, work was carried out on the assistance programme Financial Shield for Companies and Employees and Financial Shield for Large Companies implemented by the Polish Development Fund within the framework of the Anti-Crisis Shield. **UOKiK has been involved in the development, notification and resolution of problems arising at the implementation stage of these programmes.**

The Polish Development Fund Financial Shield for Companies and Employees is a PLN 100 billion support programme targeted at micro, small, medium and large undertakings. The group of beneficiaries includes about 670 thousand Polish entities. Its aim is to protect the labour market and provide companies with liquidity during the period of severe economic disruption caused by the COVID-19 pandemic. The programme for micro, small and medium-sized undertakings (SMEs) consists of Financial Shield 1.0 and Financial Shield 2.0, under which they received financial subsidies. It includes two types of support depending on the status of the SME – aid in the form of grants for micro- and in the form of subsidies for non-covered fixed costs for small and medium-sized undertakings.

The Large Companies Programme consists of three components:

→ Polish Development Fund Liquidity Shield for Large Companies in the form of liquidity financing

The programme provides aid to large undertakings (but also to some small and medium-sized undertakings) in the form of a soft loan. It is primarily intended to finance day-to-day operations, although the use of these funds for investment is not excluded. The programme budget amounts to PLN 10 billion, while the maximum amount of aid for one undertaking is PLN 1 billion.

→ Polish Development Fund Financial Shield for Large Companies in the form of preferential financing

The programme provides aid to large undertakings (but also to some small and medium-sized undertakings) in the form of a soft loan subject to cancellation. The loan is intended to finance current operations, while the write-off is intended to compensate for the damage suffered by these undertakings as a result of the epidemic situation. The amount of the write-off cannot exceed 75 per cent of the loan principal and 75 per cent of the damage suffered by the undertaking. The programme's budget amounts to PLN 7.5 billion.

→ Polish Development Fund Financial Shield for Large Companies in the form of investment financing

The programme provides assistance to large undertakings (but also to some small and medium-sized ones) in the form of share capital increases and loans or bonds convertible into capital. The aim of these aid measures is to restore the aid recipient's stable financing structure, which has been shaken, in particular by the need to reduce or stop production or the provision of services and by the demand shocks resulting from COVID-19. The budget of the approved aid programme is PLN 7.5 billion, while the maximum amount of aid for one undertaking is PLN 1 billion.



Assistance to "LOT" SA Polish Airlines in connection with the COVID-19 epidemic

In December 2020, the European Commission issued a decision declaring that the draft individual state aid to Polskie Linie Lotnicze "LOT" SA is compatible with the internal market. The proceedings were initiated by the Polish authorities in October 2020 through the pre-notification of the project. The formal notification took place on 11 December 2020.

The legal basis for granting the aid was the Government's "Programme for Support of "LOT" SA Polish Airlines",⁵⁶ which involved the following aid instruments:

- aid in the form of recapitalisation granted by the Minister of State Assets in the amount of PLN 1.14 billion (while the amount of aid may not exceed the equivalent of EUR 250 million),
- aid in the form of a preferential loan granted by the Polish Development Fund SA in the amount of PLN 1.8 billion.

The European Commission concluded that the support to "LOT" Polish Airlines constitutes aid to remedy a serious disturbance in the economy of a Member State and fulfils the conditions laid down in sections 3.3 and 3.11 of the Commission Communication "Temporary framework for State aid measures to support the economy in the context of the ongoing COVID-19 epidemic".

Consultation of the draft EC Communication and its subsequent amendments

The Office has coordinated at the national level the process of assessing the draft and subsequent amendments to the **Commission Communication "Temporary frame-**

work for state aid measures to support the economy in the context of the ongoing COVID-19 epidemic"⁵⁷ setting out the conditions for the admissibility of COVID-19-related state assistance. It is the intention of the European Commission that this document should allow the Member States to provide support for maintaining the liquidity of businesses and protecting them against the short- and long-term negative effects of the economic crisis which has been triggered by the pandemic and the restrictions introduced by the individual Member States.

The first version of the Communication from the Commission of 19 March 2020 contained the conditions under which the EC may consider programmes providing, *inter alia*, limited amounts of aid in the form of direct grants, repayable advances or tax advantages to be compatible with the internal market. Subsequent amendments were made in April, May, June and October 2020 covering new aid measures in the Communication and modifying its scope and the rules for granting aid. The document is due to expire on 31 December 2021.⁵⁸

At the request of the EC, the Office prepared **a report on state aid granted in connection with the COVID-19 crisis under aid programmes** adopted on the basis of the Communication from the Commission. In addition, it outlined Poland's stance on assessing the application of the document. It was acknowledged that the rules provided for therein meet the liquidity and solvency needs of undertakings arising from the temporary suspension of their activities and the need to comply with the tightening measures taken by the Member States. Areas for modification were also identified as well as the need to extend the application of the "Temporary framework for state aid measures to support the economy in the context of the ongoing COVID-19 epidemic" until the end of 2021.

⁵⁶ The programme was adopted by a resolution of the Council of Ministers pursuant to Article 2a of the Act of 2 March 2020 on specific solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them (Polish Journal of Laws, item 1842, as amended).

⁵⁷ Communication from the Commission "Temporary framework for aid measures to support the economy in the context of the ongoing COVID-19 epidemic" (Official Journal of the EU C 91, 20 March 2020, as amended).

⁵⁸ In accordance with the Communication from the Commission – Fifth modification to the temporary framework for state aid measures to support the economy in the context of the ongoing COVID-19 epidemic and amendment to the Annex to the Commission Communication to the Member States on the application of Articles 107 and

108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance (2021/C 34/06) (Official Journal of the EU C 34 of 1 February 2021, p. 6).

In connection to the pandemic situation and the emergence of new EU legislation and the resulting new emergency aid measures, it has become necessary to **amend the Reporting Regulation**. UOKiK has drafted it, taking into account the new codes of law and purpose for crisis relief.⁵⁹

Interdepartmental cooperation

The President of UOKiK provides assistance to institutions responsible for the formulation and implementation of economic policy in Poland, including the preparation and implementation of aid measures. State aid is one of the basic tools through which the state can intervene in the market, although this must be done in accordance with EU regulations. Within the framework of cooperation, the Office supports the processes of designing and adopting aid measures and preparing their legal basis in national law, *inter alia*, by providing opinions and participating in the governmental legislative process. In addition, it promotes their effective implementation through ongoing consultation and issuance of interpretations.

In 2020, the Office cooperated with other ministries primarily in the preparation, consultation and assessment of draft aid programmes providing for conditions for granting state aid in relation to COVID-19 and the subsequent resolution of practical problems related to their implementation. Since March 2020, daily consultations have been held with the Polish Development Fund, the Ministry of Family and Social Policy, the Ministry of Economic Development, Labour and Technology, among others, in order to jointly draft correspondence to the European Commission. Proceedings before the Commission required efficient and coordinated action at a national level, especially in the case of sectoral programmes combining various instruments and prepared by several ministries and institutions.

⁵⁹ The document finally took the form of a Regulation of the Council of Ministers of 4 June 2020 amending the

regulation on reports on granted state aid, information on not granting such aid and reports on delays of underta-

The Office has also cooperated on the following matters:

- working out Poland's position in relation to the EC's proposal on horizontal and thematic basic conditions for the future financial perspective of European funds for 2021-2027 – cooperation with the Ministry of Investment and Economic Development (now the Ministry of Development Funds and Regional Policy),
- granting state aid within the framework of existing and planned support systems – e.g. the auction system of support for generation of electricity from RES, the system of support for small RES installations and support for generation of electricity in offshore wind farms – cooperation with the Ministry of Climate and Environment,
- development of prosumer renewable electricity sources on the territory of Poland – participation in the work of the Interministerial Team for Facilitation of Investments in Prosumer Renewable Electricity Source Installations,
- preparation of data in response to the Commission's questions on the aid project in favour of PKP LHS to build a transshipment terminal at the LHS Wola Baranowska station – cooperation with the Centre for EU Transport Projects,
- preparation for the implementation of a new system of providing state aid to entities indicated in the Act on subsidies designated for certain entities (e.g. Wieliczka Salt Mine or Bochnia Salt Mine) – cooperation with the Ministry of State Assets,
- reimbursement of prohibited state aid by Autostrada Wielkopolska SA – cooperation with the Ministry of Infrastructure, the Ministry of Finance, the General Prosecutor's Office of the Republic of Poland and the General Directorate for National Roads and Motorways.

kings in payments of benefits owed to the public finance sector (Polish Journal of Laws of 2020, item 1023).



1.1
Competition-restricting
practices

1.2
Concentration control

1.3
State aid

1.4
Contractual advantage

1.5
Payment gridlocks

1.6
Court jurisdiction in competition
protection cases



UOKiK's state aid activities in 2020

Notification proceedings before the European Commission	Number	Issuing opinions on state assistance projects and draft government documents	Number
Projects prenotified to the EC through UOKiK, including:	21	Opinions issued by UOKiK, including:	16
– aid programmes	20	– opinions on aid programmes	11
– individual aid	1	– opinions on individual aid	5
		– opinions on individual restructuring aid	0
Projects notified to the EC through UOKiK, including:	52	Received and reviewed requests for interpretation of state aid regulations	735
– aid programmes	47		
– individual aid (including for restructuring)	5	Analysed notifications of de minimis programmes	1 143
Projects accepted by the EC*	38	Analysed notifications of draft government documents in terms of whether given support is considered state aid	420
Withdrawn projects*	8		
Projects analysed by the EC under the so-called preliminary examination procedure*	63		
Projects under formal explanatory proceeding*	7		
Projects notified to the EC through UOKiK under block exemptions, including:	98		
– assistance programmes	43		
– individual aid	55		

* Statistics also include cases reported in previous years.

Examples of proceedings before the European Commission in connection with prenotified or notified aid

- Aid project for Treeden Group Sp. z o.o. to build a transhipment terminal at the LHS Wola Baranowska station,
- Aid project in favour of PKP LHS to build a transhipment terminal at the LHS Wola Baranowska station,
- Rescue and restructuring aid programme for small and medium-sized undertakings,
- Draft aid programme providing for support under the forced restructuring of small commercial banks and co-operative banks,
- Draft aid programme providing for support in the orderly liquidation of credit unions,
- Draft regional aid scheme for the shipbuilding sector,
- Motion to amend Art. 69 of the Real Estate Management Act with respect to the payment for the acquisition of land by the perpetual user,
- Draft modification of the state aid measure for Regional Broadband Networks in Poland,
- Individual aid project for SGL Carbon under the so-called Jesienne IPCEI on Batteries (important projects of common European interest).

Examples of proceedings before the European Commission concerning complaints lodged with the EC (implicit aid)

- Draft implicit state aid resulting from the introduction of a charge on alcoholic beverages intended for consumption outside the place of sale in unit packages with a nominal volume of the beverage not exceeding 300 ml,
- Project of implicit aid to Tarnowskie Wodociągi Sp. z o.o. in the field of collection and management of municipal sewage sludge.

Examples of projects reviewed in 2020

- Project of investment aid and operating aid for Szczecin-Goleniów Airport,
- Project of recapitalisation of the Industrial Development Agency SA by the State Treasury,
- Project concession and project support agreement for the implementation of investment concerning the construction and operation of an underground parking lot on the premises of Hala Ludowa in Wrocław.

Monitoring of state aid in Poland in 2020

- continued work on the new state aid monitoring system SHRIMP ver. 2 completed with the successful launch of the system in December 2020 for all users,
- administering SHRIMP and SUDOP applications for aid funds,
- granting access to SHRIMP applications, administering users,
- instructing and supporting users of the SHRIMP application in the submission of reports, particularly with regard to emergency assistance, new aid measures, and working in the new application,
- verification of reports sent through the SHRIMP application, including in response to reports sent by users of the SUDOP application,
- sending reports on state aid granted by the President of UOKiK, correcting reports,
- monitoring the performance of the SUDOP (System of Access to Data on State Aid) application and ordering changes to it in order to monitor state aid better – introducing a mechanism to search for crisis assistance,
- monitoring specific issues, e.g., aid intended for the rail sector in 2018-2019, aid under proceedings – corporate taxation in Poland applicable to ports.



1.4 Contractual advantage

UOKiK monitors the agricultural and food market for unfair trade practices in relations between undertakings in the agricultural and food product supply chain. It is characterised by large disparities in economic potential between suppliers and buyers and the resulting contractual advantage of one over the other. The task of the President of the Office is to ensure that it is not used in an unfair manner, i.e. in an action contrary to good practice and threatening or infringing an important interest of the other party.

The essential regulation on contractual advantage⁶⁰ gives 4 examples of violations, which include unreasonable termination or threatened termination of a contract and unreasonable extension of payment terms.⁶¹ The President of UOKiK is competent to conduct proceedings on practices unfairly using contractual advantage. They serve to protect the public interest, that is, the economic interest of potentially many undertakings operating in a given market. The authority identifies the problem, determines what the harmful practice is, and takes further action to correct the irregularity. To this end, it may order the cessation of the prohibited practice and impose a fine on the trade of up to 3 per cent of the turnover achieved by it in the year preceding the issuance of the decision. The proceeding may also end without imposing a monetary sanction. This is the case if the trader undertakes to stop the prohibited practice or to remedy its consequences.

The intervention of the President of the Office on the agricultural and food market is possible in each case of abuse of contractual advantage, regardless of the amount of turnover between undertakings. Anyone with knowledge of unfair trade practices may file a notice with the Office. The notifying party is guaranteed full anonymity, and his/her data and the content of the notification are not disclosed at any stage of the proceeding.⁶²

The Office's activities on the agricultural and food market also include inspections carried out by the Trade Inspection – more information: 2.2 Supervision over the Trade Inspection

A tool to improve the functioning of the agricultural and food market in the EU Member States is to be the implementation of Directive (EU) 2019/633 of the European Parliament and of the Council on unfair business-to-business commercial practices in the supply chain for agricultural and food products. The national legislation is to be implemented by 1 May 2021. In Poland, this goal will be served by the amendment to the Act on counteracting unfair use of contractual advantage in trade in agricultural and food products, which is being drafted by the Ministry of Agriculture and Rural Development. The Office is working with the Ministry of Agriculture and Rural Development during the development of the act.

⁶⁰ Act of 15 December 2016 on counteracting unfair use of contractual advantage in trade in agricultural and food products (Polish Journal of Laws

of 2020, item 1213), hereinafter referred to as the "Contractual Advantage Act".

⁶¹ Art. 7 sec. 3 of the Act contains an open catalogue of practices that

constitute an example of unfair use of contractual advantage.

⁶² Details on notifying the Office can be found at: <https://przewagakontrak->

[towa.uokik.gov.pl/pytania-i-odpowiedzi/zgloszenie-zawiadomienia/](https://przewagakontrak-towa.uokik.gov.pl/pytania-i-odpowiedzi/zgloszenie-zawiadomienia/).

The UOKiK's activities concerning contractual advantage in 2020

5

decisions on unfair use of contractual advantage

2

controls as part of contractual advantage proceedings

36

explanatory proceedings

54

notifications from undertakings

6

instituted proceedings regarding practices unfairly using contractual advantage

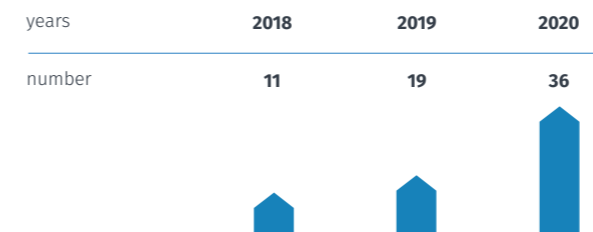
10

soft calls to undertakings⁶³

Decisions on unfair use of contractual advantage issued in 2018-2020



Proceedings initiated between 2018 and 2020



⁶³ Based on Art. 12 of the Contractual Advantage Act.

Overview of activities

In order to protect the interests of agricultural producers, the President of Office initiated 42 proceedings concerning contractual advantage – 36 explanatory proceedings and 6 proceedings on practices unfairly using contractual advantage. They addressed the practices of major retail chains and processors. Five decisions were issued to agricultural and food market operators.

Penalty for unfair retroactive discounts

In December 2020, the President of UOKiK completed the precedent-setting proceedings against Jeronimo Martins Polska SA (JMP), which were initiated last year. According to the information gathered by the Office and the audit, the owner of Poland's largest retail chain Biedronka obtained 2 types of trade discounts from its suppliers. The first was retrospective and did not raise concerns with the Office because it was a pre-determined percentage in the cooperation agreement and applied once a set turnover value was exceeded. What was questioned, however, were the discounts that JMP demanded from its suppliers at the end of the billing period, after the deliveries had already been made, without setting the amount in advance in the contract. These were the so-called rappel extra, i.e. amounts by which the undertaking arbitrarily reduced the remuneration of its contractors. Due to JMP's market power, suppliers agreed to unfavourable terms for fear that ending the cooperation could mean even greater financial losses. During the period under investigation, i.e. between 2018 and 2020, JMP earned more than PLN 600 million from the questioned practices. The unauthorised activities involved more than 200 entities, with nearly 80 per cent of these entities were fruit and vegetable suppliers. In extreme cases, the amount of the unfair discount exceeded 20 per cent of the entire turnover generated with the owner of Biedronka.

In the opinion of the President of UOKiK, JMP's practices constituted unfair use of contractual advantage.



1.1
Competition-restricting
practices

1.2
Concentration control

1.3
State aid

1.4
Contractual advantage

1.5
Payment gridlocks

1.6
Court jurisdiction in competition
protection cases

The proceeding ended with a ban on unfair retroactive discounts and a fine of over PLN 723 million.⁶⁴

In parallel with the Biedronka investigation, in 2020, the Office began **an analysis of the discount policies applied by other retail chains to agricultural and food suppliers**. To this end, the President of the Office has initiated explanatory proceedings to verify the practices of 19 companies operating the largest retail chains in Poland. The analysis of collected information constituted grounds for initiating proceedings against practices employed by Kaufland Polska Markety, Eurocash and SCA PR Polska (Intermarche). In 2021, 2 reports are planned to be issued containing the findings of the study of this market. These will include retrospective discounts and shelf, marketing and related fees.

Unjustified additional fees

The Office is also investigating **additional fees charged by retail chains to suppliers of agricultural and food products**. The President of UOKiK has initiated proceedings against Eurocash, the owner of Poland's largest wholesale chain and the organiser of numerous store chains, including ABC, Delikatesy Centrum, Lewiatan, Gama, Groszek and Euro Sklep. The objections were raised against clauses in contracts with suppliers of products to these stores. They are obliged to pay a number of additional fees for services which, according to the contract, should be provided to them by Eurocash. The company's contractors are not sure if they are being reliably performed and what the actual cost is. In addition, some of the paid activities would have been carried out by this undertaking anyway because of its economic interest. This is the case, among other things, with the supervision of orders by stores that are part of a given retail chain.

Penalty for delaying payments to fruit growers

Falling behind in payments to business partners is one of the manifestations of unfair use of contractual advantage.

In the opinion of the President of the Office, such actions were committed by Appol, one of the major producers of apple concentrate worldwide. It significantly delayed payments to Polish apple suppliers between 2017 and 2019. The largest delays occurred in 2017 and affected more than 70 per cent of all transactions. The trader committed in the contracts that it would pay within a maximum of 14 or 30 days, when in fact, it did so even after 90 days. The President of UOKiK imposed a fine of nearly PLN 1.7 million⁶⁵ on Appol. The undertaking appealed the decision to the Court of Competition and Consumer Protection.

Proceedings of UOKiK against companies applying the so-called contract hog finishing

As part of proceedings concerning unfair use of contractual advantage, UOKiK also addressed **irregularities in the meat industry**. The companies Agrifirm and Agri Plus, which are part of large capital companies, are the organisers of **the so-called contract hog finishing**. It is a system of animal husbandry that involves a farmer fattening pig on behalf of or through a meat company or feed manufacturer. This is done according to the strict guidelines of the fattening organiser, who supplies the farmer with animals and feed. Then, at a predetermined time, after the piglets have reached a certain weight and for a predetermined amount, the principal buys the porkers from the farmer. In the final settlement, it deducts payments for purchased piglets, feed and other inputs, or veterinary care and may also reduce pay for failure to achieve certain results, such as animal weight or feed consumption levels. The farmer's job is often only to provide the livestock buildings and care for the porkers. The President of UOKiK initiated appropriate proceedings against both undertakings because **the principles of settling the fattening process and the method of determining the final remuneration for the breeders raised concerns**. The Office's findings suggest that farmers may have been financially affected by the failure of a project when it occurred due to factors completely beyond their control. This placing of undue risk on growers may constitute an unfair use of contractual advantage by large agricultural and food market players.

Intervention on the sugar production market

In 2020, The President of UOKiK **continued its actions against sugar producers** and initiated proceeding against one of the largest players on this market – Pfeifer & Langen. There is a suspicion that it unfairly used its contractual advantage against farmers. The Office's reservations were raised by the clauses in the contracts according to which the growers could buy sugar beet seed only from this trader. Otherwise, it reserved the right to refuse to purchase the beets. These actions can deprive farmers of the opportunity to choose seeds that are appropriate for their soil type or local weather conditions. In parallel to the proceedings against Pfeifer & Langen, the President of UOKiK initiated explanatory proceeding to check whether other sugar producers do not apply similar practices towards growers.

Action COVID-100

From April to June 2020, the Office conducted a large-scale **"COVID 100 action"** in connection with the development of a coronavirus pandemic in Poland. The explanatory proceedings looked at whether major agricultural and food operators pay their suppliers on time. In addition, they checked whether the epidemic was an excuse for them to make unfavourable changes in their contracts with smaller contractors. The President of the Office requested explanations in this regard from nearly 100 undertakings – retail chains operating in Poland and the largest producers in the meat, dairy, fruit, vegetable, cereal and oil plant processing sectors. As a result of the actions taken, **most of them repaid over PLN 500 million of outstanding receivables to their suppliers**. Large companies have also refrained from introducing worse conditions for cooperation with food producers. On the other hand, the President of the Office initiated explanatory proceeding against retail chains that were most in arrears with the payment of invoices for the supply of products and did not settle them despite UOKiK's demands. These were: Auchan Polska, Eurocash, Makro Cash and Carry Polska. Proceeding was also initiated against SCA PR Polska, questioning, *inter alia*, the practice of unjustifiably extending payment periods to suppliers of agri-food products.

Unfair use of contractual advantage during COVID-19 **can be reported** to UOKiK via a special form available at: <https://ankieta.uokik.gov.pl/formularz-zgloszenie-przewaga/>.

What actions does the President of UOKiK take to counteract unfair use of contractual advantage more effectively?

- increase in the number of proceedings (explanatory and on unfair contractual advantage practices),
- taking numerous soft calls to traders to allow them to change an illicit practice and avoid prosecution,
- development of an Office's team dealing with contractual advantage – the Department of Contractual Advantage was established, which will support the Office's Branch in Bydgoszcz in the performance of tasks in this area.



⁶⁴ Decision RBG-13/2020.

⁶⁵ Decision RBG-11/2020.



1.5 Payment gridlocks

Payment gridlocks are one of the biggest problems of the Polish economy. More than 80 per cent of undertakings do not receive their receivables on time. These accumulated debts are passed on to further related entities, negatively affecting the entire business environment. **Overdue payments, as well as excessively long payment periods** for received goods or services, have a negative impact on the liquidity and development of undertakings, increase the costs of doing business and, in the most difficult situations, lead to bankruptcy or liquidation of the entities affected. The victims are, in particular, micro, small and medium-sized undertakings (SMEs), on which stronger market players impose unfavourable conditions in commercial transactions.

On 1 January 2020, the provisions of a law designed to counteract this phenomenon came into force.⁶⁶ Key solutions in the fight against payment gridlocks are contained in the amended Act on payment periods in commercial transactions, which functions under a new title as the **Act on counteracting excessive late payments in commercial transactions**⁶⁷. In principle, the amended provisions of the Act apply **to commercial transactions made from 1 January 2020**. However, excessive late payments of monetary benefits may also be determined in relation to payments arising from commercial transactions concluded before that date if they became due after 1 January 2020.

The President of the Office has acquired **new competencies in the area of counteracting payment gridlocks – the President conducts proceedings and imposes fines against the largest debtors on the market**.

Excessive delay in the fulfilment of monetary benefits occurs when, over a period of 3 consecutive months, the sum of the value of all monetary benefits unfulfilled or fulfilled after the deadline by a given entity amounts to at least PLN 5 million.⁶⁸ In such a case, the President of UOKiK imposes on it a fine calculated according to a special algorithm that takes into account, in particular, the size of the debt and the length of the payment delay. The final sanction is the sum of the individual penalties for each obligation not paid or paid late. The company may request the President of UOKiK to reconsider the case or file a complaint to the Voivodship Administrative Court in Warsaw.

Proceedings for excessive monetary delay are only initiated **ex officio** on the basis of evidence and information obtained by UOKiK. Their source can be, *inter alia*, own activities (e.g. other proceedings), information from the National Tax Administration and the Ministry of Economic Development, Labour and Technology, publicly available data (e.g. in registers) and **notices**.

A notice of suspected payment gridlocks can be submitted in person at the Office's headquarters, sent to UOKiK by post or electronically at: zatory@uokik.gov.pl. The President of UOKiK shall each time inform the notifying party on the manner of consideration of his/her letter together with the statement of reasons. The Office assures the anonymity of the complainant.

The President of UOKiK conducts proceedings primarily **against undertakings**, including foreign undertakings from EU and EFTA member states operating through branches established in the territory of the Republic of Poland. Its interventions do not cover public entities.

UOKiK's website on payment gridlocks

At www.zatoryplatnicze.uokik.gov.pl one can learn, among other things, about the provisions of the Act on Counteracting Excessive Late Payments in Commercial Transactions, the competencies of the President of UOKiK in the area of payment gridlocks and examples of calculating penalties for specific debt amounts. **More information: 3.1 Information and educational activities.**

Overview of activities

Thanks to the cooperation established with the Head of the National Fiscal Administration, UOKiK received 10 collective reports containing over **215 thousand pieces of detailed information** indicating possible payment gridlocks generated by over 33 thousand entities. In addition, the President of the Office, on his own initiative, made requests to the Head of the National Fiscal Administration to obtain data necessary to carry out an analysis of the likelihood of excessive delay in the fulfilment of monetary benefits by 170 potential debtors.

The Office also received **26 notices from undertakings**, 3 of which resulted in administrative proceedings being initiated against the undertakings named in the notice.

On the basis of the collected information, analyses were carried out at UOKiK on the likelihood of excessive delays in the payment of monetary benefits. These included: the identification of the areas where the risk of such delay is greatest, the estimated value of cash benefits unfulfilled and met late by the entity and the number of creditors who did not receive these benefits or received them late.

As a result of the analyses, in 2020, the President of the Office initiated **100 proceedings** against undertakings suspected of not paying their contractors on time. Po-

tential arrears resulting from over **3 million invoices**,⁶⁹ were investigated, with the estimated number of harmed creditors exceeding 50,000.

The UOKiK's activities covered undertakings from the following sectors of the economy:

- wholesale trade – wholesale of pharmaceutical and medical products, chemical products, household appliances and household items, automobile accessories, food, and live animals, among others,
- electromechanical industry – manufacturers of means of transport and parts and accessories for motor vehicles; domestic appliances; metal products: metal structures, pipes, ropes, wires; electrotechnical products: batteries, transformers and generators,
- transport – companies providing mainly road transport services, including related logistics,
- food industry – processing and preserving various types of meat; production of non-alcoholic beverages, as well as alcoholic beverages,
- chemical industry – manufacturers of industrial and household chemicals, construction products; plastic products; rubber products; detergents, cleansers and cleaners; and cosmetics and toiletries, among others,
- retail trade – sale of household goods and appliances, food products, cosmetics and toiletries, fuel,
- other types of industry – classified here are entities in the light industry, including the manufacture of footwear and clothing and the metallurgical, iron and glass industry,
- construction – activities related to road and highway construction and power unit construction,
- agriculture,
- services.

⁶⁶ Act of 19 July 2019 on amending certain laws to reduce excessive late payments (Polish Journal of Laws of

2019, item 1649).

⁶⁷ Act of 8 March 2013 on counteracting excessive late payments in com-

mmercial transactions (Polish Journal of Laws of 2021, item 424).

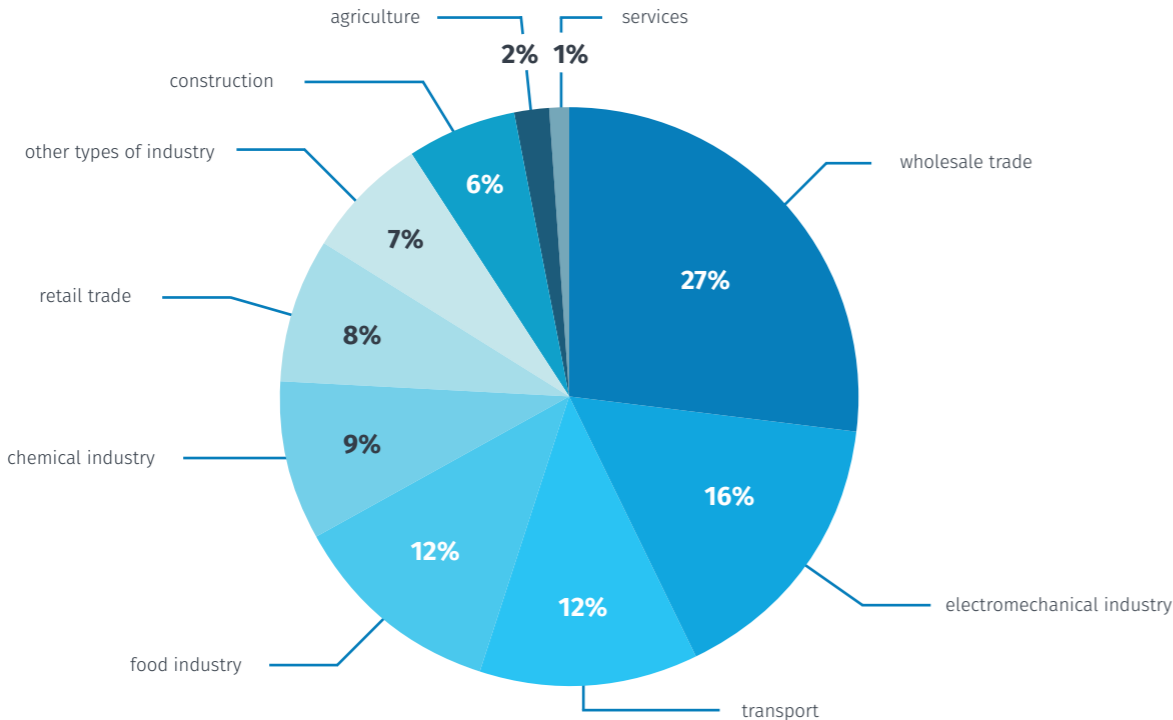
⁶⁸ In relation to proceedings initi-

ated by the President of UOKiK in 2020-2021. From 1 January 2022, the threshold will be PLN 2 million.

⁶⁹ Own calculations derived from the evidence gathered in all 100 proceedings.



Sectors of the economy where UOKiK has taken measures to reduce payment gridlocks



The Office's interventions concerned undertakings representing various links in the supply chain of goods and provision of services, mainly in **the household appliances, food, automotive, chemical and construction industries**.

In 2020, the President of Office also provided **50 explanations** to inquiries from businesses or other entities. They concerned the provisions of the Act on Counteracting Excessive Late Payments in Commercial Transactions, e.g. coverage of disputable liabilities by proceedings, reports submitted to the Minister of Development, Labour and Technology concerning the applicable payment deadlines.

In addition, the Office also investigated **excessive late payments** in its investigation of practices related to the unfair use of contractual advantage by nearly 100 major agricultural and food entities. More information: 1.4 Contract Advantage.

UOKiK's efforts to prevent payment gridlocks in 2020

100
proceedings concerning
excessive delay in the
fulfilment of monetary benefits

over **3** millions
invoices checked

26
notifications
from undertakings

50
clarifications to inquiries
concerning payment
gridlocks

In connection with the new competencies of the President of UOKiK in the area of counteracting payment gridlocks, the Office's structure saw organisational changes. **New departments** were created to carry out tasks in this area – Department for Combating Payment Gridlocks and Support Department for Combating Payment Gridlocks.

Cooperation with National Tax Administration

In 2020, the President of UOKiK established **cooperation with the Head of the National Tax Administration** under which he receives monthly information on the possibility of payment delays in commercial transactions. A mutual agreement was also negotiated to define the detailed scope of information to be reported⁷⁰. As a result, the Office obtained, among others, access to part of information from the **ICT System of the Clearing House (STIR)**, which contains data on operations on VAT taxpayers' bank accounts transmitted by banks, and from **JPK-VAT** files containing, among others, records of purchases and sales and allowing identification of areas where the risk of payment gridlocks exists. This information forms the basis for the preparation of the probability analysis that precedes the initiation of any excessive delay proceeding.

⁷⁰ It was concluded on 26 January 2021.

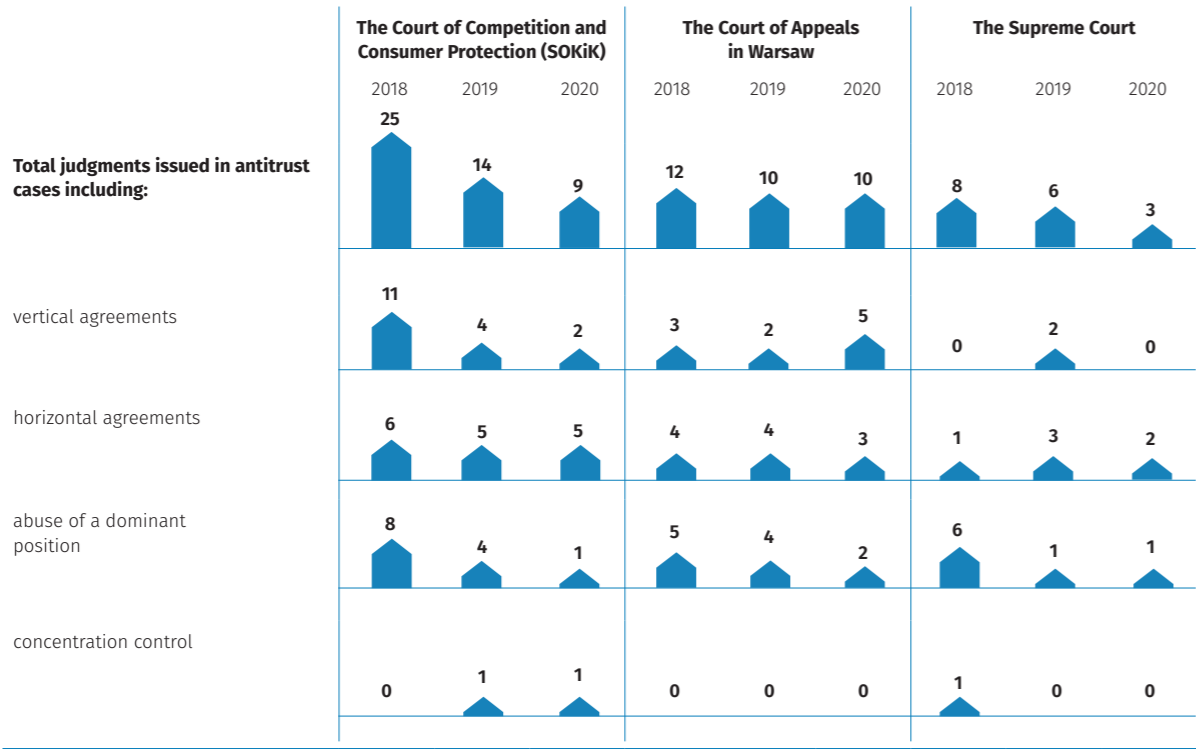


1.6

Court jurisdiction in competition protection cases

Undertakings may appeal the decision of the President of UOKiK and file a complaint against its decisions with the Court of Competition and Consumer Protection (SOKiK) in Warsaw. Its judgments may be appealed to the Court of Appeals in Warsaw. It is then possible to file a cassation complaint with the Supreme Court.

Court judgments in antitrust cases – 2018-2020⁷¹



⁷¹ A database of judgments of the Court of Competition and Consumer Protection, the Court of Appeals in Warsaw and the Supreme Court concerning decisions of the President of the Office can be found at: https://www.uokik.gov.pl/baza_wyrokow.php.

Overview of judgements in antitrust and concentration control cases

Court of Competition and Consumer Protection – judgment of 17 November 2020 in the case of Wasko⁷²

The ruling relates to a 2017 decision by the President of UOKiK on the conclusion of tender collusion by Wasko and Unicom in liquidation bankruptcy. During the antimonopoly proceedings, it was found that the companies agreed on the conditions of the bids submitted in 2 tenders. The first one was organised by the Polska Spółka Gazownictwa for the supply of computer hardware and software, the second one – by the Polish Police Headquarters for the supply of batteries for mobile wearable terminals. In its judgment, the Court of Competition and Consumer Protection confirmed that the exchange of strategic information between companies participating in tenders might be regarded as collusive bidding. The traders agreed on the details of whether or not to submit a bid and how to participate depending on the position of the competitors. According to the court, such arrangements may have influenced the tenderers' behaviour.

Court of Appeals in Warsaw – judgment of 2 July 2020 in the case of PKP Cargo SA⁷⁴

The Court of Appeal in Warsaw dismissed PKP Cargo SA's appeal against the ruling of the Competition and Consumer Protection Court⁷⁵ and upheld the 2015 decision of the President of UOKiK.⁷⁶ It was stated that PKP Cargo SA abused its dominant position on the domestic rail freight market by preventing conditions necessary

for the development of competition. The company's practice was to refuse to sign the so-called special agreements with its competitors and thus benefit from the resulting preferential pricing terms. The President of the Office imposed a financial penalty of over PLN 14 million on PKP Cargo SA.

The decision was upheld by the Court of Competition and Consumer Protection, which found no grounds to reduce the penalty imposed on the trader. One of the issues in the case was whether the President of UOKiK could issue a new decision after a court had overruled a previous decision.⁷⁷ In the opinion of the Competition and Consumer Protection Court, judgments of common courts end court proceedings, but this is not tantamount to the end of antitrust proceedings. Revocation of the authority's decision forces the authority to take appropriate action at the administrative level. The President of the Office may then continue the proceedings and issue a new decision finding the practice or discontinue the proceedings.

In addressing this issue, the Court of Appeals held that it was correct for the President of UOKiK to continue the proceedings on the basis of the original decision to initiate proceedings of 15 December 2006 and terminating it by decision. At the same time, the court pointed out that if the reason for revoking the decision is that there are no grounds for recognising the trader's conduct as an unlawful practice, the President of UOKiK should issue a decision discontinuing the proceedings. If, on the other hand, a violation of the rules of administrative proceedings is found, the authority should remedy the deficiencies and issue a decision in the case in accordance with the results of the analysis of the evidence.

⁷² File reference number XVII AmA 2/18.

⁷³ Decision DOK-2/2017.

⁷⁴ File number VII Aga 2334/18.

⁷⁵ File number XVII AmA 45/16.

⁷⁶ Decision DOK-5/2015.

⁷⁷ In view of the valid annulment of the previous (original) decision of the

President of UOKiK No. DOK 3/2009, the antitrust proceedings initiated on 15 December 2006 were not formally ended. This resulted in the issuance of

another decision (DOK-5/2015 of 31 December 2015) by the President of UOKiK ending these proceedings.

2.1
Practices violating
collective consumer
interests...

2.2
Supervision over the
Trade Inspection

2.3
Product safety and
market surveillance

2.4
Laboratories

2.5
Fuel quality control
system

2.6
Out-of-court dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men...

2.8
European Consumer
Centre

2.9
Court jurisdiction
in consumer
protection cases



Consumer protection

The President of UOKiK is the key consumer protection institution in Poland. The Office's activities are focused on preventing and eliminating threats and irregularities that result from unlawful practices of undertakings. The powers of the President of UOKiK cover the protection of collective consumer interests, prohibited clauses in model contracts, and market surveillance of products and services safety. The President of the Office also monitors the out-of-court dispute resolution system involving undertakings (alternative dispute resolution – ADR) and provides advice on cross-border issues within the European Consumer Centre (ECC). In addition, the Office works closely with the Trade Inspection (IH), consumer ombudsmen and NGOs. The President of UOKiK also shapes the law to ensure the highest possible level of consumer protection.



2.1 Practices violating collective consumer interests and prohibited clauses in model contracts

The President of UOKiK protects the public from **practices that violate the collective consumer interests**, i.e. from a situation where an unlawful action by a trader may potentially affect an unlimited number of people. Harmful conduct can take the form of unfair market practices (e.g. misleading advertising), lack of reliable and truthful information, or the so-called misselling.¹

The President of UOKiK also counteracts the use of **prohibited clauses in model contracts** (the so-called abusive clauses), which shape the rights and obligations of consumers in a manner contrary to good practice and grossly infringe their interests. Model contracts contain standardised clauses that are commonly used in dealing with consumers without the possibility of individual negotiation. Examples include regulations and fee lists used in contracts for the provision of banking services, telecommunications, or the supply of gas and electricity.²

In February 2020, UOKiK launched a 3-year project co-financed by EU funds called **Artificial Intelligence for Consumer Protection Empowerment**. The project aims to develop and implement a tool based on artificial intelligence to support the work of the Office and increase the efficiency of detecting violations of consumer rights. This applies in particular to **the analysis of model contracts for prohibited clauses**. As part of the project, UOKiK has established cooperation with the CLARIN-PL research consortium, which conducts research on electronic language resources and tools for working with large collections of texts in Polish. The first phase of the project focused on identifying needs and possible solutions for increasing the effectiveness of consumer infringement detection through the use of artificial intelligence. The next phase is scheduled for 2021 and concerns the organisation of a competition for IT and data science contractors. The competition will be held in cooperation with GovTech Poland.

¹ Misselling means proposing to consumers to purchase financial services that do not meet their needs as determined by taking into account information available to the trader regarding

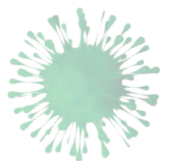
the characteristics of those consumers, or proposing to purchase those services in a manner inappropriate to their nature.

² Prior to 17 April 2016, the Competition and Consumer Protection Court decided on the prohibited nature of contractual clauses. Based on court rulings, UOKiK maintained a register of

abusive clauses on an ongoing basis. It now includes contractual clauses that apply only to cases in which lawsuits were filed before 17 April 2016.

UOKiK **monitors the behaviour of traders** on an ongoing basis and **analyses signals from the market**, which primarily include consumer complaints. The resulting data provide a basis for further action. In 2020, The Office received **13,321 signals** – twice as many as the previous year. The increase in complaints was related to consumer concerns directly related to the pandemic situation

caused by COVID-19. Therefore, a significant number of the signals were received electronically. In addition, under UOKiK's grant system, in 2020, **118,543 pieces of advice were provided on consumer issues reported via the consumer helpline and the e-advice system**.



COVID-19 – consumer feedback and price monitoring

In 2020, the Office received **more than 1,450 reports concerning the coronavirus pandemic**. Reports included travel services, transportation services (e.g. cancelled trips, flights), the performance of continuing contracts (e.g. due to the suspension of preschools, high education institutions of higher education, gyms) and events (cancelled sports or cultural events). Complaints also concerned financial services, including access to money (at the beginning of the pandemic), credit holidays, and various new services and investments (often fraudulent) that have entered the market. Consumers also reported problems with the quality of telecommunications services, particularly Internet access or VOD services. There has been an increase in complaints regarding online sales, as well as sales of interior furnishings and repair services. In addition, the number of reports regarding food sales has increased.

In case of violations of consumer rights, the President of UOKiK undertook the **measures concerning the market**. An example of such activities might be calls to tour operators in connection with extending the deadline for refunds of fees incurred by consumers in the event of withdrawal or termination of contracts. The case involved situations where the withdrawal or termination was unrelated to the COVID-19 pandemic, yet the organisers extended the refund deadline, citing favourable clauses that relate directly to situations caused by the coronavirus pandemic.³

In response to the concerns raised, the Office of Competition and Consumer Protection has created on its website a special section containing **advice on consumer rights in situations related to the pandemic** (e.g. cancelled flights or tours). Numerous pieces of advice were also provided through projects funded by the Office: the consumer helpline and online consumer assistance. Consumers were also assisted by the European Consumer Centre, operating within the structures of the Office of Competition and Consumer Protection. More information: 2.7 Cooperation with consumer ombudsmen and consumer organisations; 2.8 European Consumer Centre; 3.1 Information and educational activities.

Reports received by the Office also included significant price increases for certain products during the first period of the pandemic. Accordingly, the Office of Competition and Consumer Protection **monitored the market on an ongoing basis for prices** of selected food products and personal care products. The Office analysed, among other things, the data on the issue provided by the consumer helpline (over 2,700 reports). The monitoring included both online and stationary sales in cooperation with the Trade Inspection. Eventually, the market situation got back to normal. More information: 2.2 Supervision over the Trade Inspection.

³ The undertakings referred to Art. 15k of the Act of 2 March 2020 on Special

Solutions Related to Preventing, Countering, and Combating COVID-19 (Polish Journal of Laws, 374, as amended).

ish Journal of Laws, 374, as amended).



2.1 Practices violating collective consumer interests...

As part of market intervention, the President of UOKiK may initiate **administrative proceedings against an undertaking** and declare certain practices or contractual clauses prohibited. Concerning the decision issued, the authority may, among other things, order to cease the practice and impose **a financial penalty** of up to 10 per cent of the undertaking's turnover. Some of the settlements also include a form of **compensation for customers** to remedy a breach. The President of the Office may also accept an obligation from the undertaking to change the disputed practice. In addition, the decisions may contain specific information obligations for the undertaking to disseminate their contents. In 2020, the President of UOKiK instituted **49 proceedings** concerning practices infringing collective consumer interests and cases of recognising standard form contract terms as unfair. Proceedings against an undertaking are often preceded by **explanatory proceedings** that serve as a preliminary determination of whether a violation has occurred.

In the course of the proceedings, the Office may use additional tools to obtain evidence: **controls at the undertaking's premises** and controls conducted by a **mystery shopper**.⁴

In 2020, UOKiK used mystery shoppers in 3 proceedings involving off-premises traders. Decisions concerning infringement of collective consumer interests were issued against these entities, and it should be emphasised that the **information collected by mystery shoppers constituted an important part of the evidence**.

The President of the Office may, without initiating proceedings, **request the undertaking** to provide explanations or to change an unlawful practice. This type of soft action is primarily adopted in case of less harmful business behaviour. Compared to administrative

2.2 Supervision over the Trade Inspection

2.3 Product safety and market surveillance

2.4 Laboratories

proceedings, they eliminate infringements from the market faster. In 2020, the President of UOKiK applied **360 soft calls concerning consumer protection**.

In specific cases, the President of the Office may issue a consumer warning regarding the actions of a particular undertaking and their potential consequences. This solution is applied when the information gathered during the proceedings indicates that the given practices of an undertaking may expose a wide range of consumers to severe consequences, e.g. considerable financial losses. Warnings are published at www.uokik.gov.pl and may be announced free of charge on public broadcasting radio and television.

In 2020, the President of the Office issued one consumer warning. The case involved the Fundusz Hipoteczny Yanok (Yanok Mortgage Fund), which offers so-called investment notes.

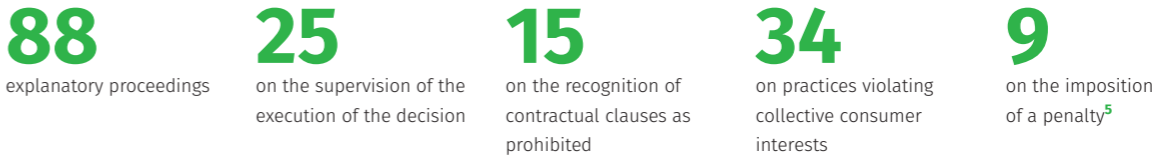
With the money paid by consumers, the undertaking provides loans to, among others, undertaking that are not creditworthy and are in arrears with their debts to financial institutions. This practice could expose consumers to significant financial losses. It should be noted that there is no legal concept of an "investment note". The term was invented by undertaking to describe another product that allows them to raise capital. The warning of the President of UOKiK concerns the fact that money obtained from the issue of promissory notes is used to finance the core business of undertakings making such offers. In 2020, The President of the Office informed the public about the high risks associated with investing in these types of products, including the possibility of losing money if the undertaking goes bankrupt.

The President of UOKiK also issues **significant views in consumer protection court cases**. With the expertise, the Office assists the common court in the cognisance of the case. In 2020, The President of the Office issued **561 such opinions**, which, as in previous years, mainly concerned the insurance and banking markets.

2.5 Fuel quality control system

2.6 Out-of-court dispute resolution system

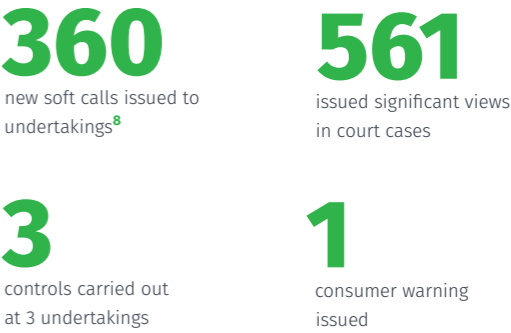
New proceedings concerning consumer protection in 2020



Decisions concerning consumer protection issued in 2020

Decisions concerning practices infringing collective consumer interests, including:	60
– decisions imposing a financial penalty on an undertaking (90 financial penalties amounting to PLN 315 million) ⁶	31
– commitment decision	12
Decisions concerning the recognition of contractual clauses as prohibited, including:	16
– decisions imposing a financial penalty on an undertaking (20 financial penalties amounting to PLN 129.3 million)	11
– commitment decision	2
Decisions imposing a penalty ⁷	9

Other measures taken in 2020



⁵ Proceedings for imposing a penalty for failure to execute or delay in execution of a decision, for failure to provide the President of UOKiK with the requested information or for providing false or misleading information, for lack of cooperation in the course of the supervision.
⁶ A sanction is imposed for practice, so more than one financial penalty may be imposed in a single decision.
⁷ Proceedings for imposing a penalty for failure to execute or delay in execution of a decision, for failure to provide the President of UOKiK with the requested information or for providing false or misleading information, for lack of cooperation in the course of the supervision.
⁸ Applies to measures pursuant to Art. 49a of the Act on Competition and Consumer Protection.

⁴ The duties of the so-called mystery shopper is regulated in Art. 105ia of the Act on Competition and Consumer Protection. This procedure involves the Office's employee acting as a consumer looking for a particular product or service and going directly to the undertaking being inspected. This allows for ongoing and rapid identification of violations.



2.1 Practices violating collective consumer interests...	2.2 Supervision over the Trade Inspection	2.3 Product safety and market surveillance	2.4 Laboratories	2.5 Fuel quality control system
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Decisions with the highest total amount of penalties imposed on an undertaking in 2020 for practices infringing collective consumer interests

Penalties in the total amount of: **PLN 315 million**

DOZIK-2/2020: PLN 120.6 million (4 penalties) Volkswagen Group Polska Sp. z o.o. with the registered office in Poznań – for misleading concerning the level of exhaust emission and directing guidelines resulting in rejection of complaints	DOZIK-3/2020: PLN 20.4 million (1 penalty) Polkomtel Sp. z o.o. with the registered office in Warsaw – for failure to return funds accumulated on pre-paid telephone cards
RBG-6/2020: PLN 115 million (2 penalties) Jeronimo Martins Polska SA with the registered office in Kostrzyn – for unfair practices of placing a different price on the shelf from the price at the till and for not providing information about the price of the product	PLN 59 million total other penalties

Decisions on cases with the highest total amount of penalties imposed on an undertaking in 2020 for declaring standard form contract unfair

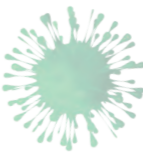
129,3
PLN million
in total penalties

DOZIK-16/2020: **PLN 40.7 million** – Powszechna Kasa Oszczędności Bank Polski SA, with the registered office in Warsaw, for abusive clauses to loan agreements granted in foreign currencies
DOZIK-14/2020: **PLN 26.6 million** – BNP Paribas Bank Polska SA, with the registered office in Warsaw, for abusive clauses to loan agreements granted in foreign currencies
DOZIK-12/2020: **PLN 23.6 million** – Santander Bank Polska SA with the registered office in Warsaw, for abusive clauses to loan agreements granted in foreign currencies
PLN 38.4 million – total other penalties



2.6 Out-of-court dispute resolution system	2.7 Cooperation with consumer ombudsmen...	2.8 European Consumer Centre	2.9 Court jurisdiction in consumer protection cases
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Overview of activities



COVID-19 – pandemic support for borrowers – new legal solutions

The restrictions resulting from the coronavirus outbreak have caused many people to lose their source of income or have their income significantly reduced. In such a situation, some Polish citizens may have had problems with repayment of the loans they have taken out, and more often, take the so-called payday loan. In 2020, UOKiK actively participated in the development of solutions adopted as part of the so-called anti-crisis shield that has supported consumers during this difficult time.

- "Statutory credit holidays" – allowed for no-cost suspension of loan repayments for up to 3 months – a solution designed for people who, after 13 March 2020, lost their job or another main source of income.
- Reduction in non-interest charge – a statutorily lower maximum value of non-interest costs for consumer loans was adopted, thus making it easier to repay debts.

More information: 3.2.1 National legislation.

Market monitoring – statutory credit holidays and commercial credit holidays

The Office monitored on an ongoing basis the actual implementation by lenders of the statutory credit holidays implemented as a consequence of the coronavirus pandemic. As a result, measures were taken in the case of 4 lenders, with 2 conforming to the expectations. The actions of the others required further clarification (for one case, proceedings were initiated).

Previously, banks have also introduced commercial credit holidays, which are non-statutory, fee-based arrangements. 26 entities were investigated in this case. Infringements were identified in the case of 14 banks in respect of which measures were taken. The objections of the President of UOKiK concerned, in particular, the lack of reliable and unambiguous information about the financial effects of postponing loan repayment – e.g. about the amount of instalments after the loan holiday or rules for calculating interest. In addition, information regarding the ability to waive a clause or amend a contract was improperly communicated. The President of the Office also questioned the clauses related to the deferment of loan repayment. These clauses implied that the consumer made a declaration to acknowledge the outstanding amount. Such declarations are not directly related to the purpose of signing the clause, i.e. postponement of loan repayment, whereas, in the future, they may cause difficulties in pursuing the borrower's rights in court. These problems are also discussed in a specially issued statement by the President of UOKiK. As a result of the intervention, the banks stopped the questioned practices.



The statement of the President of UOKiK on clauses concerning commercial credit holidays

In addition to intervening in the market, the President of the Office has published a detailed statement relating to the effects and circumstances of credit holidays clauses. The President stated that:

- the conclusion of the clause is irrelevant for the consumer's contractual claim,
- attempts to take advantage of the situation to unilaterally impose potentially unfavourable solutions on consumers may be contrary to good practice,
- abusive clauses "shall not be binding on the consumer",
- the credit balance recognition clauses used in granting credit holidays may be considered abusive,
- the use of the so-called credit holidays by a customer does not imply recognition by the lender of the indebtedness in the amount specified by the lender.

The full text of the statement of the President of UOKiK is at: www.finance.uokik.gov.pl.

Alternative investments – pyramid-type incentive schemes

Complaints indicate that consumers are being offered **alternative financial investments that falsely promise a fast, reliable, high and risk-free return**. These types of activities pose a risk, especially during a pandemic, as some people may seek out-of-the-box solutions due to economic hardship.

In 2020, the Office conducted a series of proceedings concerning alternative financial investments. Particular attention was paid to entities organising, operating, or promoting **pyramid-type incentive schemes**. In exchange for certain benefits, consumers are persuaded to buy various types of participation packages, statuses and bring new people into the system. In 2020, therefore, the President of the Office initiated proceedings against NTIM. Proceedings were also conducted against Luxinvest Sp. z o.o., Quantum Sp. z o.o. and Quantum International EN LLC.

In addition, the President of the Office issued 5 decisions regarding the operation of pyramid-type schemes: FutureNet, Hybrid Cyler, TeamCoin, Alternet (AdBlast) and a system related to Goldset projects. All of the settlements involved non-EU businesses.⁹ The President of the Office also imposed financial penalties on entities that failed to cooperate and provide information necessary to combat illegal operations.¹⁰

Pyramid-type incentive schemes versus pyramid schemes

Pyramid-type incentive schemes are a method of constructing a sales network in which the consumer, in return for the contribution provided, is promised material benefits that depend primarily on bringing additional people into the system rather than on the sale or purchase of a particular good, product or financial service. Such schemes constitute unfair market practices and **are subject to administrative proceedings by the President of UOKiK**.

In contrast, **pyramid schemes** refer to a business model in which an organisation without carrying out investment or production activities deceives investors and customers stating that it carries out such activities. It finances its obligations to them from the contributions or investments of subsequent people who joined the pyramid at a later time. Therefore, pyramid schemes **are classified as fraud and are the subject of law enforcement action**.

An extremely important element of the fight against pyramid schemes are actions against the **so-called shills**, i.e. people who promote risky alternative investments, especially influencers, e.g. YouTubers, bloggers. Shills lend credence to their actions by using their own examples of money they claim to have earned or by using images of famous people that have been used without their permission. In 2020, the President of the Office imposed a financial penalty of nearly PLN 450,000 to Damian Żukiewicz,¹¹ who solicited consumers to participate in three different schemes: FutureNet, Future AdPro and NetLeaders. He conducted these activities through his website and YouTube channel. As a result, many deceived consumers were able to make deposits and encourage their friends to do the same.

The penalty for Damian Żukiewicz is **the first decision of the President of UOKiK imposed on an undertaking not conducting formally registered business activity**.

In the case of proceedings concerning the infringement of collective consumer interests, an undertaking is considered not only entities registered in the Central Register of Business Activity and Information, but anyone (including bloggers, influencers) who in an organised and continuous manner actually conducts business activity and derives profits, e.g. from setting up, conducting or pyramid-type incentive schemes.

The interventions of the President of UOKiK also concern **managers** of entities running pyramid schemes. In 2020, the President of UOKiK accused the NTIM managers Rafał Krakowiak and Wiktor Zajęczkowski in this respect. Proceedings are also being conducted against the company for infringement of the collective consumer interests.

Market interventions were accompanied by **educational and information activities**. UOKiK has warned consumers about alternative investments and false advertisements for these types of products in numerous press releases, as well as through the "Check, Read, Ask" public awareness campaign. More information: 3.1 Information and educational activities.

Importantly, **UOKiK cooperated with investigative authorities on an ongoing basis**, informing them of possible criminal offences and conveying doubts as to the compliance of undertaking's activities with the applicable regulations.

Early repayment of consumer credit – refund

In 2016, the President of UOKiK issued **a statement on Art. 49 of the Consumer Credit Act**, which requires a financial institution to prorate all credit costs in the event of early repayment. The position of the President of the Office was confirmed by the Court of Justice of the European Union (CJEU) in September 2019. According to the



⁹ Decisions: RGD-4/2020 (FutureNet) – appeal filed, RGD-7/2020 (Hybrid Cyler project) – final decision, RGD-8/2020

(TeamCoin) – final decision, Decision RGD-10/2020 (Alternet LLC) – appeal filed, RWR-3/2020 (Goldset projects) –

appeal filed.

¹⁰ Decisions: RGD-9/2020, RGD-11/2020 and RGD-14/2020.

¹¹ Decision RGD-12/2020 – an appeal has been filed.



2.1
Practices violating
collective consumer
interests...

2.2
Supervision over the
Trade Inspection

2.3
Product safety and
market surveillance

2.4
Laboratories

2.5
Fuel quality control
system

2.6
Out-of-court dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men...

2.8
European Consumer
Centre

2.9
Court jurisdiction
in consumer
protection cases

Court, the proportionate part of the fees incurred by the consumer, including preparation fees or commissions, is refundable.

→ calculating the refund value inconsistently with the straight-line method postulated by the President of UOKiK.

Position of the President of UOKiK on the method of settling loan repayment costs

Referring to the CJEU judgment, in 2020, the President of UOKiK issued a supplemental position on early repayment of loans and consumer credit.

According to the President of the Office, lending institutions and banks should use the straight-line method in calculating loan refunds. This means that all costs should be divided by the number of calendar days the contract was to be in effect and the result multiplied by the number of days by which the loan term was reduced. The resulting value represents the amount of refund due to the consumer.

The position of the President of UOKiK ensures support for consumers when filing complaints about the failure of a financial institution to account for fees and commissions charged. The Office has also developed a special credit calculator that helps calculate the approximate amount to be repaid for early repayment of consumer credit on a straight-line basis.

In 2020, UOKiK inspected how financial institutions and banks implement rules for calculating the value of loan refunds when loans are repaid in part or in full before the contractual deadline. A part of the proceedings, as well as in the form of letters to undertakings, the President of the Office paid attention mainly to irregularities consisting in:

→ no reduction in the total cost of the credit by the cost of the period by which the term of the contract is reduced,

As a result of the measures taken by the President of UOKiK, in 2020, 14 banks undertook to proportionally refund fees for consumer credit or loan repaid earlier according to the straight-line method: Alior Bank, BNP Paribas, Credit Agricole Bank Polska, Getin Noble Bank, Idea Bank, ING Bank Śląski, mBank, Millennium Bank, Nest Bank, PKO BP, Pekao SA, Santander Bank Polska, Santander Consumer Bank, Plus Bank and Volkswagen Bank Polska. At the same time, the President of UOKiK initiated proceedings against Bank Handlowy and Bank Pocztowy. In both cases, the allegations relate to the failure to refund consumers a pro-rata amount of the fees charged when early loan repayment occurred prior to the judgement of CJEU of 2019.

In 2020, the President of UOKiK also issued another 8 decisions against financial institutions: Euroexpert Sp. z o.o., Euro Providus SA, Everest Finanse SA, Honesta Finanse Sp. z o.o., Mikrokasa SA, Profi Credit Polska SA, Speed Cash Polska Sp. z o.o., Takto Finanse Sp. z o.o.¹² Some of them had already abandoned unfair settlements of early repayment of the loan, and others were obliged to do so as a result of the authority's decision. Four of them have filed an appeal to the Court of Competition and Consumer Protection (SOKiK).

According to the estimates of the Office, consumers can recover approximately PLN 1.5 billion from banks and loan companies for early repayment of a consumer loan or credit.

Infringements in the non-bank lending market

In 2020, UOKiK was active in the non-bank lending market, not only in the area of loan repayment. The interventions of the President of the Office concerned, among others, the use of prohibited contractual clauses, misleading concerning the possibility to conclude a loan agreement and its form, the use of inadequate means of securing the loan or charging unjustified fees.

In 2020, the highest cumulative penalty imposed by the President of the Office in the non-bank lending sector was PLN 4.2 million. The sanction imposed on Profi Credit Polska SA concerned both the practices which the company abandoned several years earlier and the ongoing infringement. The company demanded that consumers

whose contracts it had terminated for failure to make timely repayments cover the costs associated with the payday loans for the period after the contracts were terminated. The President of UOKiK ordered the cessation of this activity. The company has filed an appeal to the Court of Competition and Consumer Protection.

Examples of decisions concerning non-bank lenders in 2020

Undertaking decision No.	Action questioned	Decision/penalty
Profi Credit Polska SA RKT-6/2020	- charging fees in excess of consumers' loans - disbursing more loans without obtaining consumers' consent or assessing their creditworthiness - failure to provide consumers with reliable information about the terms of termination - unjustified charging of fees for the period after termination of the contract - require consumers to pay the costs associated with the loans for compensation for the period after the termination of the contracts	PLN 4.2 million fine order to stop prohibited practices
Speed Cash Polska Sp. z o.o. RŁO-10/2020	- providing unreliable and false information about the total amount of the loan and the annual percentage rate of charge - exceeding the statutory limit on loan default fees - not refunding credit costs in proportion to the period by which the contract term has been shortened - use of inadequate loan collateral	PLN 2 million fine order to stop the activity with immediate enforceability
Speed Cash Polska Sp. z o.o. RŁO-8/2020	- application of prohibited contractual clauses in the case of loans granted with a transfer of ownership title to real estate (apartments, houses) as collateral, where the value of the collateral (house) was often disproportionate to the risk and value of the loan - the use of an advantage to gain an unfair advantage at the expense of consumers, including the company's grant of an inalienable right to sell the property even at a discounted cost	PLN 1 million fine prohibition of implementing unfair contractual terms
Mogo Sp. z o.o. RŁO-9/2020	- charging additional fees for loan defaults that were not agreed upon in the contract with the customers - exceeding the statutory limit on loan default fees	PLN 325 thousand fine the obligation to refund, by means of a claim, unlawfully charged fees
Xulock Sp. z o.o. sp. k. RWR-10/2020	- posting false information indicating the possibility of concluding a loan agreement via the undertaking's website and, at the same time, forwarding the contacts of those customers to credit intermediaries	PLN 30 thousand fine

12 Decisions: RGD-2/2020 (Euroexpert), RWR-5/2020 (Euro Providus), RWR-8 /2020 (Everest Finanse), RWR-7/2020 (Honesta Finanse), RWR-6/2020

(Mikrokasa), RWR-4/2020 (Profi Credit Polska), RKR-2/2020 (Takto Finanse), RŁO-10/2002 (Speed Cash



Prohibited clauses concerning
the determination of exchange rates

The decisions of the President of UOKiK focuses on **the issue of how banks set exchange rates** in the appendices to mortgage loan agreements referring to foreign currencies (the so-called spread clauses).¹³ Also, in 2020, activities have continued in this area.

The President of UOKiK questioned **the clauses that imprecisely and ambiguously defined the rules for calculating foreign exchange rates** on the basis of which banks were calculating loan instalments. As a result, banks were able to arbitrarily and freely change the method of determining the exchange rates that constituted the basis for setting the instalments paid by borrowers. This could lead to the banks receiving additional remuneration, which the consumer was in no way able to estimate, either at the time the agreement was concluded or at the time of repayment of the individual loan instalments. In 2020, the President of UOKiK issued 6 decisions in such cases, in which it declared the clauses of model forms of agreements as unfair and prohibited their use. Fines and disclosure obligations have been imposed on all banks so that customers will learn about the non-binding nature of the questioned clauses. Consumers can also invoke the decision when filing a complaint with the bank. All banks have filed an appeal to the Court of Competition and Consumer Protection. In 2021, the completion of the last of the proceedings in this respect against Raiffeisen Bank International AG is planned.

Summary of penalties for prohibited spread clauses
in 2020

Undertaking decision No.	Penalty
PKO BP SA DOZIK-16/2020	PLN 40.7 million
BNP Paribas SA DOZIK-14/2020	PLN 26.6 million
Santander Bank Polska SA DOZIK-12/2020	PLN 23.6 million
Pekao SA DOZIK-17/2020	PLN 21.1 million
Bank Millennium SA DOZIK-13/2020	PLN 10.5 million
BPH SA DOZIK-19/2020	PLN 478 thousand



¹³ In previous years, 2 decisions were issued in such cases: DOZIK-9/2018, DOZIK-15/2019.

Appeal by the President of UOKiK – the lower
limit for mortgage interest rates

The President of UOKiK noted the asymmetry in the distribution of interest rate risk in floating rate credit agreements. Mortgage interest rates are derived from the interest rate set before the Monetary Policy Council and bank margins. Low interest rates should translate into lower loan payments.

Market-related information and reports from consumers have shown that banks, when fixing interest rates on floating rate credits in credit agreements, only reduce them to a certain level, even though, taking into account the contractual margin and the reference rates, the interest rate resulting from market indices should be lower. At the same time, banks in credit agreements based on a floating interest rate do not set an upper limit.

In 2020, the President of UOKiK pointed out that **the lower interest rate limits introduced should be accompanied by symmetrically shaped upper limits**. Such an agreement would evenly distribute the risk of a floating rate credit between the creditor and the consumer.

In 2021, the Office continues to monitor how financial institutions set the interest rate floor in credit products. As early as 2020, as a result of the intervention, one bank declared a change in the setting of interest rate caps.

Excessive fees for certificates

Certificates concerning, among other things, repayment history are needed for consumers who assert their rights in court (e.g. cancellation of the contract). UOKiK received consumer complaints indicating excessive fees charged for certificates, especially in the case of mortgages denominated in Swiss francs. The fee amount may have been a financial barrier to borrowers and thus a disincentive to pursue a claim. In addition, consumers were made more difficult to obtain certificates by the long waiting period for issuing certificates.

Thanks to the intervention of the President of UOKiK, most banks have reduced fees for certificates or ceased to make them dependent on the length of the period for which the consumer applied. For example, one bank charged a fee of PLN 3,000 for preparing a statement for a 20-year repayment period. After the intervention of the President of UOKiK, the fee was finally reduced to PLN 50 regardless of the length of the period covered by the consumer's application. In another bank, the fee was reduced from 300 PLN to 50 PLN. In this case, the authority conducted both explanatory proceedings and addressed requests to banks to change the applied practice. In the case of Deutsche Bank Polska SA, the President of UOKiK imposed a fine. The company depended on the length of the period covered by the certificate to determine how the fee was calculated. In the case of long term loans or mortgage contracts, fees calculated in this way could generate a very heavy financial burden on consumers. Due to the consequences of such practices, the penalty imposed amounted to nearly PLN 5 million.¹⁴ The bank has filed an appeal to the Court of Competition and Consumer Protection.

¹⁴ DOZIK-9/2020.



Appeal of the President of UOKiK to banks

The administrative actions of the Office were accompanied by the appeal of the President of UOKiK addressed to 7 banks and the Polish Bank Association. In its position, the Office indicated, among other things, **the need for banks to set a limit on the fees that can be charged to a consumer** in a situation where the consumer applies for a single contract and the information requested is presented in several different documents. In addition, the appeal raises the issue of the timeliness of certifications.

GetBack corporate bonds

As of 2018, UOKiK investigated irregularities concerning the offering and sale of GetBack corporate bonds. The company issued corporate bonds en masse for over 2 years to raise funds for its operations. Those were offered through banks and brokerages but also through their own sales network¹⁵. Proceedings of the President of UOKiK revealed that **when selling GetBack bonds, financial institutions infringed consumer interests**. The main charges were:

- misselling – consumers were offered high-risk products that in no way matched their needs,
- misleading – risky investments were presented as safe and secure financial products.

In 2019, the President of UOKiK issued the first 2 decisions on GetBack's bonds, and in 2020, 5 more. In the course of its activities, UOKiK cooperated with the Polish Financial Supervision Authority (KNF) and the public prosecutor's office. **The decisions of UOKiK on the matter**

includes both penalties for financial institutions and compensation for aggrieved customers, the award of which shall be communicated by the undertakings. In the case of GetBack itself, the penalty was waived due to its financial situation. Additional burdens could further reduce creditors' ability to recover their money.

Once the decision of the President of UOKiK becomes final, it shall constitute a preliminary ruling for the courts and may significantly facilitate the pursuit of potential individual civil law claims by consumers. All undertakings involved have filed an appeal to the Court of Competition and Consumer Protection.

Unit-linked life insurance

UOKiK continued its actions against undertakings offering unit-linked life insurance. **These complex and risky financial products were offered to consumers in violation of their rights**.

In 2020, the President of UOKiK imposed a fine of PLN 11.5 million on Idea Bank SA. In comparison with the earlier decisions in this respect, the Idea Bank case was the only one that concerned only insurances where funds were invested in non-standardised closed-end securitisation fund. The company misinformed consumers about the risks associated with the investment, including the possibility of losing all or part of their money, delays in redemption or failure to make a profit. Bank employees assured consumers that this was a safe investment that could not result in a financial loss.

In 2020, the President of UOKiK also helped consumers by issuing significant views in court cases involving claims concerning unit-linked life insurance. Proceedings concerning potential violations of the law by law firms that offered legal assistance in pursuing claims for unit-linked life insurance were also conducted.

Summary of decisions in the GetBack case in 2020

Undertaking decision No.	Action questioned	Decision/penalty
Idea Bank SA RBG-1/2020	- misselling when offering GetBack corporate bonds	order to compensate consumers in the amount of PLN 10 thousand each
GetBack SA DOZIK-4/2020	- misleading consumers when offering GetBack corporate bonds	lack of possibility of imposing administrative penalties due to the arrangement with creditors
Idea Bank SA RŁO-5/2020	- misseling when offering investment certificates of Lartiq funds - misleading concerning the guarantee instruments and risks associated with investment certificates of Lartiq (formerly Trigon) investment funds	order of compensating consumers in the amount of PLN 38 thousand each
Latrig SA (formerly Trigon) RŁO-6/2020	- misleading consumers concerning the risk related to the offered investment certificates of Lartiq investment funds – the certificates were guaranteed by GetBack had significant financial difficulties	PLN 7.2 million fine
Getin Noble Bank SA RWR-9/2020	- misselling when offering GetBack corporate bonds - misleading consumers when offering GetBack corporate bonds	compensation order of up to PLN 20 thousand

Insurance claim law firm

UOKiK has received consumer complaints about legal aid providers. Reports included, e.g. lack of possibility to estimate a law firm's fee or reserving by a law firm the entirety of the profit obtained for the consumer. It is important to note that **law firms, as professional entities, should not take advantage of their position with consumers**.

In 2020, the President of UOKiK initiated 2 explanatory proceedings on suspicion of the use of prohibited contractual clauses and infringement of collective consumer interests. The first one included 15 law firms providing legal assistance in the field of mortgage loans subject to indexation or denomination to foreign currency, unit-linked life insurance and GetBack corporate bonds. Infringements may relate to, among other things, the mechanism for determining the remuneration of a law

firm, reserving by a law firm the entire profit obtained for the consumer, unjustified exclusion or limitation of the law firm's liability, and the scope of confidentiality. The second investigation involved 9 law firms providing legal advice to consumers who had entered into unit-linked life insurance contracts. The President of UOKiK investigates, among other things, the mechanism for determining the amount of remuneration.

Health insurance

UOKiK received reports that some **insurers were narrowing the medical definitions contained in the General Terms and Conditions of Insurance** or making the fulfilment of benefits conditional on the provision of certain certificates from the insured. **As a result, some clients faced denial of insurance benefits** for disadvantage (illness, disability).

¹⁵ The majority of the bond issuance was by private placement and therefore to a maximum of 149 investors. This allowed the company to avoid drafting a prospectus and information memorandum, which require approval by KNF and disclosure to the public.



2.1
Practices violating
collective consumer
interests...

2.2
Supervision over the
Trade Inspection

2.3
Product safety and
market surveillance

2.4
Laboratories

2.5
Fuel quality control
system

2.6
Out-of-court dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men...

2.8
European Consumer
Centre

2.9
Court jurisdiction
in consumer
protection cases

The first case described involved Powszechny Zakład Ubezpieczeń na Życie SA, which refused to reimburse the cost of treatment for chronic lymphocytic leukaemia, despite a policy covering specialist treatment. The insurer explained that, as defined in the general terms and conditions, chemotherapy includes only treatment by the parenteral route, and the patient was taking the drugs orally. It is important to remember that the treatment is decided by the doctor at each time, taking into account the welfare of the patient, so it is unacceptable to narrow the definition in this area. The President of UOKiK initiated proceedings and requested the company to change its practices voluntarily. As a result, PZU Życie undertook to amend the definition of chemotherapy in General Terms and Conditions of Insurance, as well as to allow claims to be pursued by those against whom it issued a decision of denial of insurance benefits after 1 January 2017.

The second intervention by the President of UOKiK concerned 6 insurance companies.¹⁶ It involved irregularities related to the denial of insurance benefits resulting from total permanent disability, incapacity for work and limited abilities of unaided existence insurance. An analysis of the General Terms and Conditions of Insurance used by insurers indicated that they lacked an independent definition of total and permanent disability. Instead, recognition of this event was contingent upon the consumer presenting the disability authority's determination of total incapacity. Meanwhile, in accordance with the law, it is the insurance company's duty to ascertain all the circumstances of an insured event, and it cannot shift that duty to the insured. In addition, the pension authority only adjudicates with respect to persons subject to compulsory social insurance. In contrast, there is a group of consumers (e.g. persons employed abroad), who do not have the possibility to appear before the adjudicator of the pension authority, which already prevents them from obtaining compensation benefits. As a result of the soft calls taken by the President of UOKiK, insurance companies undertook to correct the definitions used in this area.

Investment in rental properties

Investing in apartment hotels and condo hotels involves purchasing premises in a hotel building, in a residential building intended entirely for short-term rent. The owner of the purchased property may use it for a certain time of the year. In the remaining months, it is usually rented through a specialised company (so-called property manager). The purchase of this type of property or property rights related to it may be considered as an investment but cannot be performed on the market subject to Polish Financial Supervision Authority. In 2019, UOKiK, together with the Polish Financial Supervision Authority, warned against investing in apartment and condo hotels.

In 2018-2019, the Office conducted proceedings in the form of a market survey of properties for investment purposes. The results gave rise to prosecutions against 4 companies building such facilities in 2020. The charges were brought against CGA Invest (formerly Czarna Góra Apartments), Infinity Zieleniec Ski & Spa, Seaside Park and an undertaking from the Gent Holding group (Gent Holding, Gent Fund, Equal Real Estate). The first three companies are responsible for the construction of condo hotels – respectively: commissioned – Czarna Perła in Stronie Śląskie, in construction – Infinity Zieleniec Ski & Spa in Duszniki-Zdrój and commissioned – Seaside Park in Kołobrzeg. In the case of Gent Holding, it is a private residence hall in Krakow on al. Jana Pawła II.

For all undertakings, the President's base charges relate to how the rate of return is communicated. The Office's analysis shows that the rate of return is calculated on the lower amount, which is the net price of the premises – excluding 23 per cent VAT. In the case of Seaside Park, it is calculated on the net price excluding the cost of equipment (the purchase of which was obligatory). Gent Holding additionally requires the investor to pay the cost of renovating the premises once every five years, deducted from the investor's income. Advertising materials of Infinity Zieleniec Ski & Spa and CGA Invest show that potential profit is to be paid on a monthly

basis, while, according to the concluded agreements, it is to be paid on a quarterly basis.

Three companies were also charged with failing to provide or providing misleading information regarding investment financing. In the case of CGA Invest and Infinity Zieleniec Ski & Spa, the construction was carried out entirely with the buyers' money, of which they were not informed. Gent Holding, on the other hand, provided information that it constructs the premises largely with its own funds and bank loans. Meanwhile, the main source of funding was funds raised from issuing bonds, taking out loans, and accepting deposits for pre-sale of premises. In the case of Infinity Zieleniec Ski & Spa and CGA Invest, the allegations also concern the use of assurances that the investment is safe, while the investment is burdened with a higher level of risk, as the undertakings do not use any deposit protection measures, e.g. escrow accounts provided during the implementation of residential investments.

Car sales – „dieselgate”

The case of manipulation of exhaust emission measurement results by Volkswagen concerned the entire European Union market. Consumers were misled about the allegedly green nature of VW, Audi, Seat and Skoda cars, among others. For this purpose, the company used software that underestimated nitrogen oxide emissions under test conditions. During normal driving, it was higher and these values differed significantly from those declared to consumers in advertising materials and approval documents. In this way, the company acted to the detriment of European consumers for 8 years. Moreover, the corporation issued guidelines to dealers that suggested disregarding consumer complaints related to nitrogen oxide emissions despite the existence of the defect.

Actions in this matter were taken by consumer protection authorities in EU countries, including the Polish authority. In 2020, the President of the Office closed the proceedings and the penalty for Volkswagen Group Polska Sp. z o.o. amounted to over PLN 120 million.¹⁷ This was

the highest sanction imposed by the President of UOKiK for practices violating consumer rights. Considerations included the lengthy period of the unfair practice and the fact that due to dealer guidelines, many people may have given up on pursuing claims. The company did not make any settlement proposals during the proceedings. It has filed an appeal to the Court of Competition and Consumer Protection.

Information on product prices

Price is one of the main criteria considered by consumers, so it is important for traders to comply with information obligations in this regard. Misrepresenting the price of a product harms the interests of consumers materially.

UOKiK has received numerous complaints from consumers concerning the incorrect display of prices in Biedronka stores operated by Jeronimo Martins Polska SA. The reports involved situations where the prices of products at the checkout were found to be higher than those on the store shelves. Customers also complained about the lack of visible prices next to the merchandise. The President of UOKiK ordered inspections by the Trade Inspection (IH), which confirmed the scale of the problem. In the course of the proceedings, it was found that the unauthorised practices in the Biedronka chain had been conducted since at least 2016 so that customers could suffer severe losses. Consumers also reported situations where they legitimately requested to be sold at a more favourable price (on the shelf), and retailers refused to acknowledge these claims.

IH had drawn attention to irregularities in the Biedronka chain even before the proceedings were initiated by the President of UOKiK. At the same time, the owner has not introduced any systemic solutions to eliminate them. Taking into account the infringement period of several years and its scale, the President of UOKiK imposed a fine of PLN 115 million on Jeronimo Martins Polska SA.¹⁸ In addition, the trader will have to post information in Biedronka stores about consumers' rights when prices are differentiated at the checkout and on the shelf. The

¹⁶ Compensa Towarzystwo Ubezpieczeń na Życie SA Vienna Insurance Group, Sogecap SA Oddział w Polsce,

Sopockie Towarzystwo Ubezpieczeń na Życie ERGO Hestia SA, Towarzystwo Ubezpieczeń na Życie Cardiff Polska SA,

Powszechny Zakład Ubezpieczeń na Życie SA. In case of Powszechny Zakład Ubezpieczeń na Życie SA the allegations

were confirmed.

¹⁷ DOZIK-2/2020.

¹⁸ RBG-6/2020.



2.1
Practices violating
collective consumer
interests...

2.2
Supervision over the
Trade Inspection

2.3
Product safety and
market surveillance

2.4
Laboratories

2.5
Fuel quality control
system

2.6
Out-of-court dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men...

2.8
European Consumer
Centre

2.9
Court jurisdiction
in consumer
protection cases

company has filed an appeal to the Court of Competition and Consumer Protection.

Product labelling – country of origin

The country of origin of a product can influence consumers' purchasing decisions, so it is unacceptable to mislead in this regard. Some consumers consciously choose Polish products, among others, out of concern for the environment and sustainable economic development. It should be added that sometimes undertakings argue the higher price of a product with the cost of producing it in Poland.

In the first quarter of 2020, the President of UOKiK commissioned Trade Inspection to inspect fruit and vegetable labelling at retail chains for proper product labelling. In particular, the focus was on those grown in Poland. Inspections revealed numerous irregularities relating to the indication on labels on vegetables and fruits of a different country of origin than that indicated by the marking on the collective or individual packaging. On this basis, the President of UOKiK intervened with the companies with the largest number of irregularities. The President of the Office addressed formal requests to the following retail chains: Stokrotka, Delikatesy Centrum and Intermarché. He pointed out the need to implement or improve the standards of control of the labelling of products concerning the country of origin (including, in particular, vegetables and fruits) in the above-mentioned retail outlets, by intensifying the number of conducted controls, as well as by introducing unambiguous principles for the presentation of products and their correct labelling for the entire chain. Undertakings have pledged to take appropriate action. In the second quarter of 2020, reinspections performed by the Trade Inspection indicated a significant decrease in the number of irregularities at shops owned by the aforementioned retail chains. More information: 2.2 Supervision over the Trade Inspection.

At the same time, the President of UOKiK initiated proceedings against Jeronimo Martins Polska SA and Kaufland Polska Markety Sp. z o.o. concerning infringements of the collective consumer interests. These proceedings

are the result of subsequent Trade Inspection inspections of the Biedronka retail chain and Kaufland shops. The controls revealed that numerous problems concerning the labelling of the country of origin of fruit and vegetables are still present.

Cooperation with inspection authorities

Violations concerning the collective consumer interests may concern misrepresentation of the price or labelling of products. UOKiK works closely with Trade Inspection to eliminate such irregularities.

Due to an amendment to the law, effective 1 July 2020, Trade Inspection inspections do not apply to food products. However, the Office continues to monitor the market based, among others, on the results of inspections, which after changes are the responsibility of the Agricultural and Food Quality Inspection Authority.

More information: 2.2 Supervision over the Trade Inspection.

Sources of information on potential violations are not only consumer complaints or reports from other institutions. Media reports can also help identify problems concerning the market. This was the case of, among others, two undertakings in the clothing industry associated with the "La Mania" and "Veclaim" brands, respectively. They stated that all products offered by them were sewn in Poland, while some of the clothes came from outside the country. The President of UOKiK sent a formal request, as a result of which the questioned declared country of origin was removed. The companies also agreed to refund those customers who may have been misled. They have posted information on this matter on their websites and social media.

Online sales – trading platforms

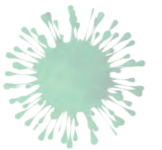
Poles are willing to buy online through online platforms with a very diverse range of products and sellers. Due to the specificity of online sales, consumers have a cooling off period during which they can cancel a purchase and obtain a full refund. This right should not be limited in any way.

This issue was the subject of the intervention of UOKiK against Groupon Sp. z o.o. The company offers discount

coupons (vouchers) for various products and services using an online platform. In case of online cancellation of purchase, the company used a default "I prefer to return Groupon funds so I can complete my purchase faster" box. If the consumer did not uncheck this option, the funds were directed to their account within the platform. Consequently, the refund could only be used for Groupon purchases and within a 12-month period. The company's actions limited consumers' rights, particularly to explicitly and knowingly decide on a form of return other than the original payment method. Following the statement of the President of UOKiK, the company offered compensation to consumers and improved the online withdrawal procedure. All users who were affected by the practice of the default form of return on the platform were given the opportunity to replace the voucher with the original payment method (bank transfer or return to the payment card). Thanks to the intervention of the President of UOKiK, the unlawful practice was quickly eliminated, and the company adjusted the return methods to the provisions of law.

In 2020, the President of UOKiK initiated proceedings in the case of recognising as prohibited the clauses of the model contract applied by Allegro.pl Sp. z o.o. The case concerns modification clauses included in the Allegro terms and conditions and in the "Allegro Smart!" service regulations, allowing unilateral changes to the terms and conditions of contracts. The wording used by the company has a carte blanche character and is too vague, and does not indicate the circumstances that make the changes possible. As a result, Allegro may modify the contracts on the basis of grounds that do not specify the reasons and principles for such modifications. Decisions made by the company in this respect are not subject to verification by the consumer, and the changes made may concern the main benefits, e.g. the price, and charge additional fees in the service. In the case of large trading platforms, this is important as, in addition to being able to purchase a given commodity, they also offer other services and benefits related to, for example, consumer protection or the ability to purchase additional services, such as delivery. If you terminate your contract with Allegro because you do not accept the changes, consumers may be at risk of losing their ability

to use the above mentioned, often prepaid, additional services. This issue is also the subject of investigation in the proceedings described.



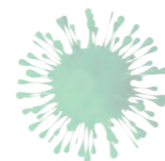
COVID-19 – refund for
cancelled cultural events

The issue of imposing a refund method on consumers was also the subject of the statement of the President of UOKiK addressed to the KupBilecik.pl website operator. The site allows one to purchase tickets for various types of cultural events. In the case of a cancellation due to a cancelled event, the only way to get a refund was to use the voucher for an event at another time. As a result of the intervention, the operator of the site backed down and conducted a refund action for the full amount of the tickets purchased. The entity also amended its bylaws in the direction advocated by the President of the Office.





COVID-19 – selling personal protective equipment online



During the pandemic, consumers were exposed to misleading offers of personal protective measures against the virus. The problems were mainly related to online sales. **The President of UOKiK made sure that non-conforming products (e.g. masks, disinfectants) were removed from online shops and e-commerce platforms on an ongoing basis.** The Office has cooperated with one of the largest online platforms on this issue. As a result, from March to August 2020, Allegro has removed approx. 140,000 offers of such products and blocked approx. 2,500 accounts.

UOKiK also conducted verification of online portals for the products protecting from coronavirus (e.g. masks, disinfectants) as part of the European Commission's Action: Sweep 2020 on consumer scams related to the COVID-19 pandemic.¹⁹ UOKiK has reported questionable listings on eBay, for example.

UOKiK's actions also concerned the elimination of personal protective equipment that did not meet specific requirements from the market. More information: 2.2 Supervision over the Trade Inspection.

Pre-paid phone cards – refunds

Consumers with pre-paid cell phones should be able to choose offers freely. Meanwhile, UOKiK received **complaints about mobile network operators who did not return unused funds in pre-paid accounts** in the absence of another recharge. In 2020, the President of the Office completed a series of proceedings into the matter. As a result, T-Mobile Polska SA, P4 Sp. z o.o. and Orange Polska SA have been obliged to introduce the mechanism of refunding funds remaining on pre-paid accounts.²⁰

Only Polkomtel Sp. z o. o. has not proposed changes to existing operations. As a result, the President of UOKiK imposed a fine of PLN 2.4 million on the company,²¹ and ordered it to cease the practice of infringing collective consumer interests. The company has filed an appeal to the Court of Competition and Consumer Protection.

Additional charges without consumer consent

When concluding telecommunication contracts or amending their terms, **operators often activate additional services without the consent of consumers, which entail**

fees that go beyond the monthly subscription. Examples include Internet service, anti-virus protection, a service to play music while you wait for a call, a car navigation service or additional TV channels. Consumers are either not asked at all if they agree to activate a particular service or deprived of the opportunity to refuse if they want to use a selected promotion. In some cases, consumers do not initially realise that a service has been activated for them and unknowingly pay for it for some time.

In 2020, the President of UOKiK terminated the proceedings against UPC Polska Sp. z o.o. in connection with the additional anti-virus software service. In most cases, the operator merely announced its inclusion and associated costs after a free trial period. Some consumers were not informed at all about the activation of this package and the fees. In no case were consumers asked for consent. For those who did not deactivate the service during the trial period, it was automatically renewed (except for consumers who concluded the contract via the website). Most consumers deactivated the service during the free trial period or in the first few months of service, but not all chose to file a complaint, which the company

most often accepted. In its decision,²² the President of UOKiK accepted the operator's obligation to change the questioned practices and to apply compensation to the harmed consumers, as well as to reconsider previously rejected complaints. The decision is final.

In 2020, in addition, UOKiK conducted 2 explanatory proceedings related to the billing of payments for services or digital content of third parties, the so-called direct billing services. The Office received complaints from subscribers who indicated that they **unknowingly activated paid subscription services (services)**, e.g. through a link on a website or in an advertisement in a mobile game. Subscribers only found out about the operator's surcharge on their telecommunications bill. Subscriber contracts lacked information about the terms and conditions of such services. At the same time, in connection with the irregularities noticed, the President of UOKiK submitted **pro-consumer comments to the draft Act on Electronic Communications**, which is to regulate this area for the first time. The comments sought, among other things, to develop solutions that would prevent the activation of services and other payments using direct billing without the consumer's express consent. More information: 3.2.1 National legislation.

Irregularities in remote contracts

There are risks involved in concluding remote contracts, which is why it is so important that the trader complies with the requirements to provide consumers with adequate information and confirmations in a timely manner. Consumers find it particularly problematic to enter into contracts using the telephone. In practice, **sometimes inaccuracies occur during telephone sales calls, so the trader is obliged to confirm the terms of the contract on a durable medium** (e.g. e-mail or postal mail). Only then the consumer has the opportunity to become fully acquainted with the trader's offer and is able to decide whether he wants to use it. In practice, it happens that consumers receive neither confirmations of the proposed terms and conditions nor confirmations of the conclusion of the remote agreement. Sometimes services are activated before the consumer confirms acceptance of

the offer. They are also not always informed of their right to withdraw from the contract.

As revealed in the proceedings conducted by the President of UOKiK, a number of irregularities of this type occurred in remote contracts concluded by UPC Polska. As a result of the intervention, the company pledged to change harmful practices: consumers will explicitly confirm the contract terms that were agreed upon during the phone call through a durable medium. UPC has also committed to award differential compensation to its customers. Examples of solutions in the decision include: temporary, free-of-charge upgrade of Internet access parameters, activation of specific mobile telephony service. In the case of former subscribers, the compensation took the form of a cash payment (several dozen PLN each). The decision against UPC is final.²³ It is a continuation of the Office's previous actions taken to investigate the correctness of the procedure of the remote contract. Further actions are also planned aimed at verification of compliance of arrangements from sales talks with actual contract terms.

Unauthorised change to the terms of a telecommunications contract

Telecommunications providers have the right to change the terms of a telecommunications contract, as long as it is based on clauses in the contract that are clear and understandable to consumers. **One of the violations are changes introduced by imprecise clauses or changes introduced despite the lack of such a possibility in the contract** (lack of the so-called modification clauses).

In 2020, the President of UOKiK issued a binding decision in this regard against UPC Polska Sp. z o.o.²⁴ Its customers with indefinite contracts were informed of both an increase in their Internet access subscription and an increase in their subscription for certain telecommunications packages. At the same time, the operator informed them that it had introduced clauses entitling it to raise subscription fees in the future and to shape the programming content of its television services freely. Information about the changes was provided to consumers

¹⁹ For details on the campaign, visit the EC website at <https://ec.europa.eu>.

²⁰ Decisions: DOZIK-7/2020, DOZIK-15/2020, DOZIK-18/2020.

²¹ DOZIK-3/2020.

²² DOZIK-20/2020.

²³ DOZIK-8/2020.

²⁴ RBG-9/2020.



2.1
Practices violating
collective consumer
interests...

2.2
Supervision over the
Trade Inspection

2.3
Product safety and
market surveillance

2.4
Laboratories

2.5
Fuel quality control
system

2.6
Out-of-court dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men...

2.8
European Consumer
Centre

2.9
Court jurisdiction
in consumer
protection cases

even though the contracts entered into did not have the appropriate modification clauses. As a result of the intervention of the President of UOKiK, UPC committed to change its practices and compensate both current and former subscribers. Compensation took the form of product (packages of UPC Polska services), as well as cash (invoice discounts, partial refunds or rebates). The operator also undertook to carry out appropriate information activities, in particular for the affected consumers. The decision is final.

Termination of a telecommunications contract
and return of equipment

There are noticeable **problems in the market regarding the return of equipment related to telecommunication services** (routers, decoders, etc.). Consumers are hindered or prevented from doing so prior to their termination date, where some do not have the ability to do so immediately after termination. On the other hand, consumers are charged high penalties by operators in case of even several days' delay in returning the decoder. The issue of disproportionate penalties also applies to equipment damage or failure to return.

As a result of the latter problem, in 2020, the President of UOKiK addressed a letter in this case to Supermedia Sp. z o.o. As a result of the intervention, the company undertook to inform consumers about the planned change in the content of the model contract and about the possibility of signing annexes to contracts currently in the market. The annexes provide for the amendment of the clauses challenged by the authority along with the possibility of compensation of financial losses for the affected consumers. The company also introduced a new fee and penalty schedule.

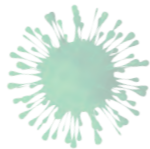
UOKiK was also investigating Orange Polska SA and Cyfrowy Polsat SA in this case, which will continue in 2021. Additionally, in 2020, the President of the Office

addressed a soft inquiry to ITI Neovision SA (now CANAL+ Poland SA) regarding difficulties related to the early return of the decoder by consumers.

COVID-19 – appeal by
the President of UOKiK

During the pandemic, consumers faced difficulties in terminating their telecommunications contracts and returning equipment. In April 2020, the President of UOKiK issued an appeal to businesses noting the **need to take into account the extraordinary circumstances surrounding the spread of the COVID-19 virus**. Companies should employ solutions to eliminate these difficulties. An example is the ability to terminate a contract using remote communication (e-mail, electronic customer service request, etc.). Some undertakings took into account the position of the President of the Office. In addition, an explanatory proceeding was initiated against one of the operators as a result of repeated complaints from consumers and monitoring of problems such as allowing subscribers to effectively submit declarations on contract termination, withdrawal from the contract, or resignation from the service.

It should be noted that in December 2020, amended provisions of the Telecommunications Law came into effect.²⁵ Under the added provision, if a trader allows a contract to be entered into in documentary form, it must also provide for such an option in the event of termination, withdrawal or cancellation. Documentary form is, for example, the conclusion of a contract using means of distance communication (e.g. e-mail). The consumer does not then have to provide a written signature.



When terminating telecommunications contracts, some consumers give notice through their designated persons (e.g. a family member). Sometimes **clients are required to present a power of attorney in writing with a notarised signature**. Thus, consumers who wish to have an action performed by their designated person are forced to incur the additional cost of drafting a power of attorney. Under current law, no special form of power of attorney is required in such cases. Therefore, in 2020, the President of UOKiK addressed a letter to Orange Polska SA, T-Mobile Polska SA, and Polkomtel Sp. z o.o. in which he pointed out the need to remove unlawful clauses. Proceedings have been initiated against operator P4.

Impersonating an existing operator

One of the prohibited practices used in the telecommunications market is impersonating an existing service provider. **Consumers are allegedly offered better terms of their existing contract – in reality, they are switching operators**. This is a scheme used by dishonest traders, especially against seniors, a vulnerable group of consumers most exposed to harmful market practices.

In 2020, the President of UOKiK sanctioned Telestrada with over PLN 8 million for such practices.²⁶ After prior telephone contact, representatives of this company concluded contracts at consumers' homes. Not only did they imply that they were representing the incumbent telecommunications provider, but they also failed to leave a copy of the contract that was due to the consumer. As a result, many consumers only found out they had switched providers when they received a bill to pay from an unfamiliar company. The lack of a copy of the contract made it difficult to pursue a claim. The company also targeted people over 65 years of age who were a large group of victims in this case. The amount of the penalty was also influenced by the fact that the company knew about the unlawful actions of its representatives. Telestrada has received both consumer complaints on this issue, as well as numerous interventions by consumer ombudsmen and the Office of Electronic Communications. The company has filed an appeal to the Court of Competition and Consumer Protection.

Similar practices were adopted by Telekomunikacja Stacjonarna Sp. z o.o. Similarly, seniors were lured by the supposedly better terms of their existing contract. Couriers delivering the documents often did not leave consumers copies of the documents, or the copies were incomplete. In the decision, the President of UOKiK also objected to charging an activation fee and a compensation fee in a situation where the company did not start to provide the ordered subscription service as a result of the consumer withdrawing or changing the order. This type of action is against the Telecommunications Act. Contrary to the regulations, fees were also charged to people who used the company's services only through an access number but did not change the operator in terms of subscription. The company was fined more than PLN 320 thousand.²⁷ The company has filed an appeal to the Court of Competition and Consumer Protection.

Impersonation of the existing operator was also used by New Telekom Sp. z o.o. and Novanet Sp. z o.o. In the case of New Telekom, the President of UOKiK imposed a fine of over PLN 365 thousand.²⁸ The company also did not inform about the right to withdraw from the contract and did not provide the appropriate model form in this regard. Consumers were also misled about the reduced subscription value, which was only valid for the first two billing periods and not, as they may have believed, for the entire duration of the contract. Such actions exposed consumers to financial consequences. An example of this is the return to the operator of the discounts granted on termination of the contract, which occurred when customers realised with whom they had actually signed the contract. In the case of Novanet, the fine was PLN 150 thousand.²⁹ The company implied that the offer and documents submitted to the consumers concern changing the terms of the agreement concluded with the previous operator. The second allegation was that consumers were charged an additional fee over and above the agreed upon fee. The undertakings have filed an appeal to the Court of Competition and Consumer Protection.

25 Provision added by the Act of 14 May 2020 on amending certain laws

in the area of protective measures in connection with the spread of SARS-

CoV-2 virus (Polish Journal of Laws of 2020, item 875).

26 RLU-4/2020.

27 RŁO-4/2020.

28 RKR-4/2020.

29 RŁO-7/2020.



2.1
Practices violating
collective consumer
interests...

2.2
Supervision over the
Trade Inspection

2.3
Product safety and
market surveillance

2.4
Laboratories

2.5
Fuel quality control
system

2.6
Out-of-court dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men...

2.8
European Consumer
Centre

2.9
Court jurisdiction
in consumer
protection cases

Vulnerable consumer protection

The age of consumers and their health status can have a significant impact on their ability to perceive and critically evaluate promotional materials or sales offers. For this reason, seniors are classified as a group of what is known as vulnerable consumers who are particularly susceptible to various types of manipulation.

The President of UOKiK conducts numerous interventions against undertakings that use unfair practices against seniors.

These activities specifically involve off-premises sales, both at home and at trade shows.

Unfair sales practices at trade shows

The President of UOKiK consistently combats unfair practices at trade shows. By inviting people to the shows, companies tempt consumers, primarily the senior, with things like free medical examinations and expensive gifts. Sometimes the true purpose of these meetings is hidden. Their participants are also misled into believing that they have been offered a unique opportunity. As a result, they walk out of the meeting with equipment that they do not find useful purchased at greatly inflated prices. In addition, show organisers often make it difficult to cancel a contract, and when they do – they provide a refund with significant delays.

In 2020, the President of UOKiK issued decisions in such cases. In the case of the three fined undertakings, evidence was obtained through, among others, the use of mystery shoppers.

The highest fine for fraudulent trade shows in 2020 was PLN 3.5 million for Comfort Med+ Sp. z o.o. The company held trade shows on a large, nationwide scale. The company invited consumers to the screenings by telephone, concealing the true purpose of the meetings. However, it provided information about the promotion of a healthy lifestyle or a new chain of electronics and household appliances shops, where you can get an attractive gift. Consumers were also misled at the shows. Company representatives gained participants' trust by telling them, among other things, that they owned post-accident rehabilitation facilities and rehabilitation equipment shops that did not actually exist. The company also

made it difficult for consumers to withdraw the contract. In phone conversations, its representatives claimed that it was not possible, e.g. because of a gift from a "sponsor" or the purchase of equipment to improve health. As

Examples of violations of the law during trade shows

- **Hiding the real purpose of the trade show** – under the guise of, e.g. preventive screenings, debates about health, undertakings hide the real purpose of the meeting, which is a commercial activity
- **Providing false information about the undertaking's activity** – information about alleged sponsors or owned rehabilitation facilities is supposed to make the undertaking credible
- **Suggesting a false price advantage** – sales during the show are presented as a unique price opportunity, occasional discounts – when in fact it is a standard offer
- **Misleading concerning gifts** – companies promise attractive gifts for participation in a meeting – in reality, the gifts turn out to be more modest than promised or are part of purchased sets or require additional payment
- **Restricting the right of withdrawal from contract** – informing that the contract for a special offer cannot be withdrawn, deducting amounts in case of withdrawal
- **Delayed refunds** – failure to comply with the statutory 14-day period for refunds in the event of withdrawal
- **Limiting the right to complain** – shortening the 2-year warranty period guaranteed by law

an expression of "goodwill", they offered to conclude an annexe – to cancel some purchases or gifts and reduce the amount to be paid. Consumers who cancelled the contract and sent back their purchases were charged for

the alleged reduction in value. In most cases, Comfort Med+ requested compensation of 40 per cent of the price. The company has filed an appeal to the Court of Competition and Consumer Protection.

Sales at trade shows – highest penalties in 2020

Undertaking decision No.	Action questioned	Decision/penalty
Comfort Med+ Sp. z o.o. RPZ-4/2020	- not disclosing the commercial purpose of shows - providing false information to lend credibility to the company - limiting the right of withdrawal	PLN 3.5 million fine order to stop the activity with immediate enforceability
Kiddy Island Polska Sp. z o.o. sp.k. RPZ-7/2020	- not disclosing the commercial purpose of shows - providing false information to lend credibility to the company	PLN 1.7 million fine order to stop the activity with immediate enforceability
Swiss-Med. Sp. z o.o. sp. k. RPZ-6/2020	- not disclosing the commercial purpose of shows - misleading consumers as to the special price of product sets offered	PLN 1.7 million fine order to stop the activity with immediate enforceability

Consumer protection – financial penalty on managers

The President of UOKiK may impose a fine of up to 50 times the average salary on a manager of a company if they hinder the inspection.

In 2020, this right was used for the first time in the context of proceedings concerning the protection of collective consumer interests. The case involved Rademenes Pro Sp. z o.o. conducting sales at trade shows. The president of the company, despite repeated requests from the authority, did not provide the requested information or documents, including sample contracts concluded with consumers. As a result, the President of UOKiK imposed a fine of PLN 50 thousand on the company.³⁰ The penalty imposed on the company was PLN 628.2 thousand.³¹



30 RPZ-8/2020.

31 RPZ-9/2020.



2.1
Practices violating
collective consumer
interests...

2.2
**Supervision over the
Trade Inspection**

2.3
Product safety and
market surveillance

2.4
Laboratories

2.5
Fuel quality control
system

2.6
Out-of-court dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men...

2.8
European Consumer
Centre

2.9
Court jurisdiction
in consumer
protection cases

2.2 Supervision over the Trade Inspection

The Trade Inspection (IH) is a specialised inspection authority for the protection of consumer interests and rights. IH tasks are carried out by the President of UOKiK and provincial inspectors of IH. Within the framework of his supervision, the President of UOKiK sets directions for inspection activities and monitors their execution by provincial inspectorates of the Trade Inspection. The competence of the President of the Office also includes conducting appeal proceedings against decisions issued by provincial IH inspectors.

Priority areas for IH activities are included in annual control plans. They are determined primarily based on the irregularities detected in previous years, their significance, and the prevalence of the product category. In 2020, inspection plans included adjustments for restrictions on the operation of entities during the COVID-19 pandemic. The inspectors also conducted unscheduled controls, resulting, among others, from current reports from consumers, undertakings or national authorities.

In 2020, the controls covered the following areas: agri-food products, non-food products covered by national or EU harmonised legislation, services, non-food products covered by EU harmonised legislation and non-food products covered by general product safety legislation (non-harmonised) and fuel. The controls also verified the legality and reliability of the undertakings' activities.

Changes in the competencies of the Trade In- spection

→ **Controls of the commercial quality of agri-
food products beyond the competence of IH**

On 1 July 2020, Agricultural and Food Quality Inspection (IJHARS) took over the previous competencies of IH in the area of food products.³² Until then, IH controlled agri-food products in shops, wholesalers and bars and restaurants, while IJHARS controlled them at earlier stages, e.g. at the producer's or at the border. The change will allow for better control of food products throughout the supply chain by consolidating competencies into a single institution under the Ministry of Agriculture and Rural Development.

Taking over the authority was accompanied by organisational changes. Employees of provincial IH offices, who had previously specialised in food control, have been transferred to IJHARS. Additionally, the Office handed over 5 food laboratories to IJHARS.

→ **New rules for publication of IH control re-
sults**

The new regulation specifies the legal basis for the President of UOKiK and provincial IH inspectors to disclose information on the results of the controls and clarifies the scope of data that may be subject to disclosure.

Trade Inspection controls³³

2 808

controls concerning agricultural
and food products

3 588

controls concerning non-food
items and services

476

controls concerning general product safety

1 336

controls concerning market surveillance

3 608

other controls – including legality and reliability
of business operations

237

decisions of the President of UOKiK concerning
appeals against decisions of provincial
inspectors of Trade Inspection³⁴

Examples of food and non-food control areas in 2020

Control area

Food products offered in bulk (non-packaged)

Commercial quality of meat and raw meat products and processed meat

Commercial quality of fresh fruit and vegetables (including products labelled as made in Poland)

Compliance with regulations on information about prices and pre-Christmas promotions in retail chains

Textile products (including suits and shirts with wool or natural fibres)

Correctness of reporting information on prices of goods and services by traders

Correctness of labelling and marketing of cosmetics

Compliance of trades with the requirements for waste electrical and electronic equipment

For more details visit www.uokik.gov.pl.

In the first half of 2020, IH activities focused on **detecting irregularities in information on the country of origin of products**, mainly fruits and vegetables. In particular, articles declared as Polish were checked. Complaints on this issue were received from both consumers and agricultural producer organisations. Inspectors checked the labelling of a total of 3,527 batches of fruits and vegetables in 395 stores, primarily in large chains. 10.2 per cent of the batches were questioned due to misrepresentation of the country of origin or failure to indicate it at all. As a result of the irregularities detected, the President of UOKiK intervened to protect the collective consumer interests (more information: 2.1 Practices violating collective consumer interests and prohibited clauses in model contracts).

Overview of controls

Controls of agri-food products

In 2020, the scheduled controls covered **8 thematic areas**, including foodstuffs offered in bulk (unpackaged), as well as prepared meals sold in packages. A total of 2,808 scheduled and unscheduled controls were conducted.

³² Act of 23 January 2020 on amend-
ing the Act on commercial quality of
agri-food products and certain other
acts (Polish Journal of Laws of 2020,
item 285).

³³ The list includes: activities includ-
ed in UOKiK control plans, own controls
of Trade Inspection and intervention
controls.

³⁴ This includes appeals of decisions
on designated control categories and
fuel quality.



2.1
Practices violating
collective consumer
interests...

2.2
**Supervision over the
Trade Inspection**

2.3
Product safety and
market surveillance

2.4
Laboratories

2.5
Fuel quality control
system

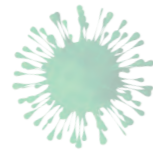
2.6
Out-of-court dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men...

2.8
European Consumer
Centre

2.9
Court jurisdiction
in consumer
protection cases

COVID-19 – price monitoring



Following signals of price increases for certain commodities, UOKiK conducted periodic price monitoring in cooperation with IH. The activities included both in-store and online sales. **The Inspection conducted price readings in more than 150 stationary stores** in 81 locations across Poland. Product prices from 31 groups were surveyed. Among the food items, prices were checked for cereals, eggs, dairy products, meat, fish, vegetables and fruits, as well as coffee and tea. Prices were also monitored for non-food items, including soap, disposable gloves, toilet paper, paper towels, tissues and hand disinfectants.

The activities were used to determine whether there is justification for a regulation on maximum prices for goods or services that are essential to protect human health or safety, as well as the cost of living for households.³⁵ The results of the six-month monitoring showed that there was no need for state intervention.

31

product groups were subject
to price monitoring

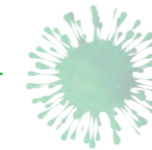
In the second half of 2020, IH activities concerned mainly controls over the legality and reliability of operation of commercial establishments (stores) and catering outlets. A total of 311 entities were checked, paying particular attention to the correctness of displaying price information, as well as the reliability of consumer service. Customer service violations included higher prices on the shelf than at the cash register, differences in food ingredients compared to the menu, and portions that were too small compared to those sold. The inspectors found various types of irregularities in 68.3 per cent of the inspected food service establishments and 63.3 per cent of the controlled stores.

Controls of non-food products and services

The scheduled controls of non-food products and services carried out in the year 2020 covered **11 control topics**. The most common controls concerned the correct reporting of prices of goods and services. A total of **3,588 scheduled and unscheduled controls** were performed.

Numerous controls included textile products. In 2020, suits and shirts with declared natural fibre composition, among other things, were controlled, which served as a continuation of the activities started in Q4 2019. The controls revealed many irregularities. More than 60 per cent of the laboratory-tested suits and shirts had the wrong textile composition listed. In all the cases challenged, the information about the content of natural fibres, e.g. wool or cotton, was false. Unfair labelling misled consumers and exposed them to material losses, as natural fibre products are more expensive than artificial ones. As a result of the irregularities detected, the manufacturers had to change incorrect textile composition labels to correct ones. The results of the control gave the President of UOKiK grounds to initiate proceedings against the manufacturers for infringement of collective consumer interests.³⁶

COVID-19 – personal protective equipment



During the pandemic, many products described as "antibacterial" cosmetic or disinfectant products were on sale. The use of such a term in labelling may mislead consumers as to the purpose and function of the product. As part of the ongoing cooperation with the Chief Sanitary Inspector, a joint strategy was established between the two authorities on such products.

Specifically, IH checked whether products claimed as "disinfectants" were actually registered as biocidal products. The controls conducted showed that some products with "antibacterial" descriptions were actually cosmetics. Thus, they did not have disinfectant properties but served other purposes (care, cleaning, etc.). Activities in this area will continue in 2021.

Controls for general product safety

IH also inspects non-food products for general safety requirements, checking that they do not endanger the lives and health of consumers. In 2020, actions taken as part of the scheduled controls were related to **7 control topics**, including carbon monoxide detectors, sports scooters, bicycles, and baby and children's items.

A total of **476 planned and in-house controls** were conducted on 1,135 product batches, of which the safety of 30.13 per cent of the products was questioned.

Controls related to EU harmonised requirements – market surveillance system

Trade Inspection activities also serve to enforce safety requirements under the market surveillance system that operates in all EU Member States. The inspections involve products that are subject to mandatory safety regulations. In 2020, planned inspections covered **6 inspection topics**, including solid fuel boilers, toy safety, and consumer personal protective equipment (helmets and buoyancy aids).

A total of **1,336 planned and in-house controls** were performed, in which 2,543 products were inspected, questioning 51.6 per cent of them. As in 2019, the highest number of reservations concerned for toys, which is related to the intensity of control activities in this area. They were questioned on the basis of mechanical inconsistencies (e.g. presence of small parts, underestimation of the thickness of the packaging film) as well as meeting chemical properties (e.g. presence of hazardous substances – phthalates). A total of 638 products were subjected to laboratory testing.³⁸ Negative results concerned 237 products (37.1 per cent).

638

laboratory tested products

³⁵ The possibility of issuing such a regulation is provided for by the Act on Specific Solutions Related to the Pre-

vention, Counteraction and Combating of COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them

(Polish Journal of Laws of 2020, item 374).

³⁶ Proceedings initiated in 2021.

³⁷ They include the so-called New Approach Directives that apply to toys, electrical appliances, personal protective equipment, machinery, pyrotechnic

articles, and others.

³⁸ This figure includes both testing conducted in UOKiK laboratories and in accredited commercial laboratories

commissioned by UOKiK. In the case of commercial testing, compliance with applicable requirements was checked for, among others: electrical equipment,

solid fuel boilers, personal protective equipment.



2.1
Practices violating
collective consumer
interests...

2.2
Supervision over the
Trade Inspection

2.3
**Product safety and
market surveillance**

2.4
Laboratories

2.5
Fuel quality control
system

2.6
Out-of-court dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men...

2.8
European Consumer
Centre

2.9
Court jurisdiction
in consumer
protection cases

2.3 Product safety and market surveillance

All products placed on the EU market must meet certain safety requirements. Traders bear direct responsibility in this respect, while their actions are verified by appointed market supervision authorities, including the President of the Office of Competition and Consumer Protection.

The President of the Office exercises **general safety supervision of consumer products**.³⁹ He conducts proceedings to eliminate threats to human health and life, including recalls of dangerous products. The President of UOKiK **monitors the functioning of the market surveillance system in Poland**⁴⁰ in terms of compliance of products with the requirements of EU harmonised legislation. He conducts proceedings in this regard for products for which CE marking is mandatory.⁴¹

The activities of the Office are closely related to the competencies of the Trade Inspection, supervised by the President of UOKiK. IH inspectors conduct inspections in the field of general product safety and the UOKiK EU market surveillance system (more information 2.2 Supervision over the Trade Inspection). The results of the inspections are used in the course of proceedings conducted by UOKiK.

General product safety activities

UOKiK analyses the results of IH controls and incoming signals, in particular consumer complaints and notifications from the supervisory authorities of other EU

Member States under EU's RAPEX. The information obtained is used to conduct the administrative operations of the Office.

In 2020, the President of UOKiK initiated **133 cases** in the area of general product safety, including 82 explanatory actions and 51 administrative proceedings. These activities most often involved furniture, baby carriages, and sports scooters.

Effectiveness of UOKiK actions on the example of barbecue grills

3

warnings

72 725

products in which hazards have
been eliminated

71 651

651 products recalled from the
market

When a product is unsafe, the President of UOKiK may impose, by way of a decision, certain obligations on the manufacturer or distributor, such as withdrawing the product from the market or warning consumers of the danger. A trader who has placed such an article on the market faces a fine of up to EUR 100 thousand. In practice, many entities still take voluntary action to remedy

³⁹ Supervision is exercised in accordance with the Act of 12 December 2003 on general product safety (Polish Journal of Laws of 2021 item 222).

⁴⁰ Supervision is exercised in accordance with the Act of 30 August 2002 on

the conformity assessment system (Polish Journal of Laws of 2019, item 155 and of 2020, item 1339) and the Act of 13 April 2016 on conformity assessment and market surveillance systems (Polish Journal of Laws of 2019, item 544 and

of 2020, item 1086).

⁴¹ The CE mark is the manufacturer's declaration that the product placed on the market complies with the harmonised requirements set out in the acts of EU harmonised legislation. CE

marking applies only to certain categories of products – including electrical appliances (including electronics and household appliances).

non-compliance during the course of the proceeding. As a result, most administrative proceedings of UOKiK are discontinued. In 2020, 22 decisions imposing a fine were issued, and in 40 cases, the cases were discontinued, with the financial sanction waived.

Information on hazardous products

→ Voluntary notifications from undertakings

If a product poses a hazard, the trader is required to recall, repair, replace or refund the purchase price to consumers. It should also inform UOKiK of both the irregularities discovered and the corrective actions taken. The Office publishes incoming submissions on the website and monitors the implementation of corrective actions. In 2020, 319 voluntary notifications were received, of which nearly 90 per cent involved motor vehicles.

→ Register of hazardous products

Products deemed by the President of UOKiK not to meet safety requirements are entered in the register of hazardous products. In 2020, one product was entered.

→ RAPEX system

The Rapid Alert system for Non-Food Consumer Products System (RAPEX) is designed to ensure the rapid exchange of information between the EU Member States and the European Commission on the risks posed by products. UOKiK operates a contact point for this system, and therefore the Office provides information on dangerous products on the Polish market, on actions taken, and on voluntary notifications from undertakings. It receives analogous information from the other Member States. The system is administered by the EC.

In 2020, Poland found itself among the leaders in the monitoring of dangerous non-food products, submitting 148 notifications to the RAPEX system, which concerned nearly 3.5 million items of dangerous products, which made it fourth among the countries participating in the system (after Germany – 430 notifications, Great Britain

– 309 notifications and Hungary – 169 notifications). Furthermore, in 2020, the Office entered 402 responses into RAPEX in response to notifications from other states. In 2020, in terms of activity, Poland ranked second among countries participating in the RAPEX system (behind Lithuania), with a total of 550 notifications and reactions to the system.

Notifications to the RAPEX system:

- UOKiK – **148** concerning nearly 3.5 million unsafe products
- Total EU Member States – **2 232**, including 141 related to products manufactured or imported by Polish undertakings

Most frequently notified products to RAPEX – UE:

- Toys: **601**
- Vehicles: **482**
- Electrical and lighting equipment: **344**

Most frequently notified products to the RAPEX system – notifications from Poland:

- Toys: **73**
- Electrical and lighting equipment: **28**
- Personal protective equipment: **24**

Action on compliance with EU requirements

The President of UOKiK monitors the functioning of the national market surveillance system, which is formed by authorities controlling non-food products.⁴² It cooperates with these institutions, gives its opinion on their periodic control plans and provides them with information on non-compliant products. The system includes more than 20 product groups.

⁴² Representatives of the institutions involved in the national market

surveillance system participate in the meetings of the Steering Committee for

the Market Supervision which is a permanent advisory and opinion-making

body to the President of UOKiK.



2.1
Practices violating
collective consumer
interests...

2.2
Supervision over the
Trade Inspection

2.3
**Product safety and
market surveillance**

2.4
Laboratories

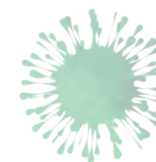
2.5
Fuel quality control
system

2.6
Out-of-court dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men...

2.8
European Consumer
Centre

2.9
Court jurisdiction
in consumer
protection cases



Authorities forming the market surveillance system in Poland:

- President of the Office of Competition and Consumer Protection
- Provincial Inspectors of the Trade Inspection
- State Labour Inspectorate Authorities
- President of the Office of Electronic Communications
- Environmental Protection Inspection Authorities
- President of the Railway Transport Office
- Building supervisory authorities
- President of the State Mining Authority
- Directors of maritime offices
- Provincial road transport inspectors
- Weights and measures administration authorities

Market surveillance authorities conduct inspections at the request of the President of UOKiK or *ex officio*. If the product does not meet the requirements, the supervisory authority initiates administrative proceedings. An undertaking may voluntarily remedy the nonconformity or recall the product. If it fails to cooperate, the competent authority may, in a decision, order the rectification of non-compliance, recall the product from the market or from purchasers, and order the notification of irregularities to consumers. A financial penalty may also be imposed. In 2020, the majority of proceedings conducted before the President of UOKiK in connection with controls carried out by Trading Inspection inspectors ended in discontinuation as a result of voluntary corrective actions on the part of undertakings.

In 2020, the President of UOKiK initiated **316 cases** of product compliance, including 96 explanatory actions and 220 administrative proceedings. These activities mostly involved toys and electrical equipment.

Effectiveness of the President of UOKiK's actions on the example of individual protection measures

1
warning

70 398
products recalled
from the market

23
product types where non-compliance was corrected

One of UOKiK's priorities in 2020 was to **eliminate from the market solid fuel boilers that did not meet the requirements regarding the emission of harmful substances into the atmosphere**. Exceeding the permitted levels of emissions of dust, nitrogen oxides or carbon monoxide has a negative impact on air quality and human health. The Office, along with the Trading Inspection, has been working extensively in this area. In 2020, a total of 658 boiler models were controlled, of which 48 were laboratory tested. It has been found that 284 models had formal inconsistencies (e.g. labelling and documentation irregularities), whereas 12 of them did not meet the applicable levels of hazardous substances emission. In addition, UOKiK and the Trade Inspection employees checked 37,954 auctions of boilers sold on popular platforms (e.g. Allegro.pl, OLX.pl, sprzedajemy.pl, lento.pl, gumtree.pl, gratka.pl). As a result, 7,223 auctions were questioned in which sellers offered non-compliant boilers. UOKiK informed platform owners of the applicable regulations and requested them to remove such offers or correct them. In most cases, appropriate changes were made. In March 2020, the President of UOKiK signed an agreement with the Allegro.pl platform to prevent trade in solid fuel boilers that do not meet the requirements specified by the regulations. This resulted in the removal of nearly 300 listings.



controlled boiler models

COVID-19 – personal protective equipment monitoring

In 2020, the Trade Inspection cooperated closely with the National Tax Administration to **prevent the import of defective protection products into Poland**. 318 opinions were issued to customs authorities, resulting in over 25 million masks, overalls, and gloves being questioned and seized at the border. At the same time, the Trade Inspection conducted 68 controls, covering the check of 76 types of products related to combating COVID-19, questioning 56 of them.

Thanks to a joint intervention of UOKiK, the Ministry of Development, Labour and Technology and the Polish Centre for Accreditation, **certificates that could suggest meeting the requirements for personal protective equipment** (mainly masks) were also withdrawn from the market. The case concerned ICR Polska Sp. z o.o.,

which was not authorised to certify PPE under European harmonised regulations. The company also changed the template of certificates attesting to voluntary certification (the number of the notified body and the CE mark were removed).

In 2020, EU Member States entered **158 notifications into RAPEX concerning the detection of dangerous products related to COVID-19 protection**, of which UOKiK entered 24 notifications on masks and coveralls. The irregularities demonstrated in laboratory tests included inadequate protection against particles and microorganisms. The challenged products did not provide sufficient protection to users, increasing the risk of infection. Formal irregularities were also found, e.g. lack of the CE mark.

Information collected by UOKiK on non-compliant products:

→ Register of non-conforming or hazardous products

The President of UOKiK maintains a register of non-compliant or hazardous products. The register contains information from national market surveillance authorities on products for which decisions imposing certain obligations have been issued.⁴³ In 2020, 42 products were entered, while 21 were removed due to the fulfilment of statutory requirements.

→ ICSMS

The Information and Communication System for Market Surveillance (ICSMS) makes it possible to collect information on products that do not meet the requirements set out in EU harmonised legislation and to share this information between the market surveillance authorities of EU Member States. UOKiK is responsible for the

Polish ICSMS contact point. In 2020, the Office entered 19 notifications into the system.

UOKiK develops **inter-institutional documents** as part of its monitoring of the market surveillance system. In 2020, they included:

- report on market surveillance activities undertaken on pyrotechnic products for 2019,
- report on the operation of the inspection system for products subject to New Approach Directives for 2019,
- National Market Surveillance Programme for 2020 – a document developed annually on the basis of data from other national market surveillance authorities (10 institutions) and submitted to the EC and the other EU Member States.

⁴³ Art. 84(2). and (4) of the Act of 13 April 2016 on conformity assessment

and market surveillance systems or Art. 41c(3-5) of the Act of 30 August 2002

on the conformity assessment system.

2.1
Practices violating
collective consumer
interests...

2.2
Supervision over the
Trade Inspection

2.3
Product safety and
market surveillance

2.4
Laboratories

2.5
Fuel quality control
system

2.6
Out-of-court dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men...

2.8
European Consumer
Centre

2.9
Court jurisdiction
in consumer
protection cases

Reform of the national market surveillance system

In 2020, UOKiK was involved in the work of the Interministerial Team for the Reform of Conformity Assessment and Market Surveillance Systems. The need for change is due to the expansion of the scope of the EU market surveillance system under new Regulation 2019/1020/EU. The Team is chaired by the Minister of Development, Labour and Technology, with the President of UOKiK acting as his deputy. In addition, UOKiK is chairing a group on market surveillance, sanctions and supervisory proceedings, which operates within the Team. The task of the group is to review and agree on a new division of competencies between authorities, including the integration of new authorities into the national market surveillance system, as well as to select the concept of a legislative solution for the application of Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products. During the group's meetings in 2020, the following main issues were discussed: the location of the Single Liaison Office (the group recommended that it be placed within UOKiK's structures) and the principles, powers, and control procedure set out in Regulation (EU) 2019/1020.

UOKiK activities in numbers – 2020

118

**market complaints handled
(consumers, undertakings, other authorities)**

212

inquiries answered

319

**notifications received from undertakings about
hazardous products (most about cars)**

2.4 Laboratories

Laboratory testing is used to **eliminate products that do not meet requirements or pose a risk to consumers from the market.**

The year 2020 saw **organisational changes** to UOKiK's laboratory system. In the first half of the year, there were 8 laboratories in the structure of the Office, while starting from 1 July 2020, 5 units specialising in food product testing have been incorporated into the Agricultural and Food Quality Inspection (IJHARS). The changes were related to the IJHARS taking over Trade Inspection's previous food inspection competencies.⁴⁴ **Three laboratories** performing tests on liquid fuels, toys, textile products, and other non-food items **remained within UOKiK's structures.**

Each of the UOKiK laboratories is accredited by the Polish Centre for Accreditation (PCA), confirming the laboratory's compliance with PN-EN ISO/IEC 17025. This standard includes requirements for, among other things, technical competence in measurements. In 2020, the laboratories of the Office participated in 40 programmes of proficiency testing and interlaboratory comparisons, confirming their competence. The laboratories are constantly developing testing methods according to the needs of UOKiK and provincial Trade Inspection inspectors.

In 2020, the scopes of laboratory accreditation were expanded to include additional 45 methods. 14 specialised pieces of equipment for the non-food laboratories were acquired, allowing for expanded analytical capabilities and equipment upgrades.⁴⁵

In 2020, **UOKiK laboratories examined a total of 1,977 samples, in which 23,931 parameters were determined.** For food products (511 samples), the highest proportion of non-compliant samples was found in food service products, alcoholic beverages, confectionery, honey, and meat and meat preparations. For non-food products

(1,466 samples), the largest number of non-compliant samples was found in the following categories: sports scooters, swings, cradles/cots, textiles, and toys. The number of samples tested was significantly lower than in 2019. This was due to both the reduction of some Trade Inspection inspections due to COVID-19 and the transfer of food laboratories to the IJHARS.

UOKiK laboratory activities in numbers – 2020

Number of samples tested and parameters determined in 2016-2020:

	samples	parameters
2016	4 367	37 991
2017	4 659	41 143
2018	4 330	47 828
2019	3 990	51 337
2020	1 977*	23 931

* Includes 1,464 (approx. 76 per cent) samples in accordance with the declaration or law

**Number of samples tested along with the percentage
of non-compliant samples – examples – 2020**

Swings 21 samples tested 76% of non-compliant samples	Toys 410 samples tested 32% of non-compliant samples
Textiles 257 samples tested 49% of non-compliant samples	Petrol 284 samples tested 2% of non-compliant samples

In addition to the tests related to inspections carried out by the Trade Inspection, UOKiK laboratories participated in an educational series called **"UOKiK Tests"**, in which selected products were tested for comparative purposes.

In 2020, the Office tested popular coloured fabric washing powders, dishwasher tablets, dishwashing liquids, and disposable baby nappies. During the project, the laboratories conducted a total of **646 tests**, with 11,600 parameters being determined. More information: 3.1 Information and educational activities.

Market surveillance activities of the President of UOKiK in 2020	general product safety	compliance with EU require- ments (New Approach Directives)
Explanatory actions taken	82	96
New proceedings	51	220
Decisions*, including:	70	303
- the decision to take no action on the case due to remedial actions taken by the undertaking and elimination of the risk	58	218
- those imposing obligations	4	18
- those imposing financial penalties	22	50
- the applications for reconsideration	8	17

* Examples of decision types are provided; therefore, the data do not add up to the total number of decisions issued. Under the Act on General Product Safety, it is possible to issue various rulings, often combining different categories – e.g. decisions discontinuing the proceedings and imposing a penalty or discontinuance alone, decisions imposing obligations with or without a financial penalty, decisions imposing a penalty only.

⁴⁴ Amendments under the Act of 23 January 2020 on amending the Act on commercial quality of agri-food

products and certain other acts.

⁴⁵ Total capital expenditures in 2020 amounted to PLN 872,067.54 gross (high-

er by approximately PLN 182 thousand compared to the capital expenditures in 2019).



2.1
Practices violating
collective consumer
interests...

2.2
Supervision over the
Trade Inspection

2.3
Product safety and
market surveillance

2.4
Laboratories

2.5
**Fuel quality control
system**

2.6
Out-of-court dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men...

2.8
European Consumer
Centre

2.9
Court jurisdiction
in consumer
protection cases

2.5 Fuel quality control system

The President of UOKiK manages a fuel quality monitoring and control system,⁴⁶ designed to eliminate fuels failing to meet quality requirements from the market. These requirements are applied to **limit negative impacts on the environment and human health, as well as to protect consumer interests**.

The President of the Office develops fuel inspection plans and monitors their execution, with the Trade Inspection being responsible for the implementation of relevant inspections. The Trade Inspection inspects both liquid fuels and solid fuels for domestic use or for combustion facilities with a rated thermal input of less than 1 MW.

The inspections include an analysis of the samples taken to ensure that they meet the specified quality parameters for a given type of fuel. Testing in this area is conducted by accredited laboratories, including one owned by UOKiK.⁴⁷

The quality of liquid fuels is controlled in two ways. The first type of inspection is carried out as part of the **European surveillance system** and covers **randomly selected fuel stations**. The other type of inspection includes **stations selected on purpose** based on negative results of previous inspections, as well as consumer complaints and information from law enforcement. In 2020, the Office received 475 such notifications.

The results of inspections form the basis for the preparation of annual collective reports on fuel quality in Poland, which are presented by the President of UOKiK

to the Council of Ministers and the European Commission. The results are also presented at www.uokik.gov.pl in the form of a map showing the quality of fuel at the stations and wholesalers visited.

Trade Inspection inspections are also used in administrative proceedings conducted by both provincial Trade Inspection inspectors, the President of UOKiK, and the President of the Energy Regulatory Office (URE) – in accordance with their respective competencies. Trading in poor quality fuel is a crime, so the results of inspections are passed to law enforcement agencies in justified cases. Penalties include a fine of up to PLN 1 million or imprisonment from 3 months to 5 years.

In 2020, the Trade Inspection controlled the quality of all types of fuel available on the Polish market:

- petrol (unleaded RON 95 and RON 98),
- diesel fuel,
- liquefied petroleum gas (LPG),
- light fuel oil,
- solid fuels.

No biofuel samples were taken for laboratory testing because they were not offered by any of the stations selected for the audit.

Overview of activities

Quality control of liquid fuels

The Trade Inspection inspects the entire fuel distribution chain, from fuel manufacturers through fuel warehouses and wholesalers to fuel stations. In 2020,

the Trade Inspection controlled a total of **1,392 petrol stations and 24 petrol wholesalers, manufacturers and storage facilities**. The quality requirements were not met by 1.88 per cent of the 1,491 laboratory-tested samples.⁴⁸ Irregularities were much more common in diesel fuel than petrol.

Within the European surveillance system – the control of random stations – 1.38 per cent of the 1,017 samples taken did not meet the quality requirements, corresponding to the number of stations checked. Other **non-random controls were carried out in respect of 375 selected petrol stations**, with 3.12 per cent of the tested samples raising objections. In the case of wholesalers, manufacturers and storage facilities, all the tested fuels met quality requirements.

Liquid fuels tests from 2013-2020 show that objections affect diesel samples much more often than petrol samples.

Quality control of LPG

In 2020, the Trade Inspection controlled a total of **352 stations offering LPG and 4 wholesalers**. A total of 0.84 per cent of the 356 laboratory-tested samples did not meet the quality requirements. Similarly to liquid fuels, gas quality is checked at random at filling stations and among selected traders (including wholesalers).

In a random survey of LPG quality at petrol stations, irregularities concerned 0.32 per cent of the samples tested, while 5.71 per cent of the samples at petrol stations were questioned during other audits. For wholesalers, all LPG samples met the quality requirements.

Inspection of light fuel oil for sulphur content

In 2020, 3 samples were tested as part of light oil quality control. As in 2013–2019, all samples inspected met the quality requirements for sulphur content for this type of product.

Quality control of solid fuels and certificates issued in this respect

In 2020, the Trade Inspection tested **a total of 517 solid fuel samples** drawn and selected on the basis of information received from consumers and other entities, with quality reservations concerning 7.4 per cent of them.

The samples taken were also examined for compliance with the declarations made by traders in the mandatory solid fuel quality certificates. Laboratory tests showed that 19.1 per cent of the samples differed from the requirements stated in the declarations.

Traders should issue quality certificates and provide a copy to consumers each time they purchase solid fuel. In 2020, the Trade Inspection checked 869 entities in this regard, and there were 50 cases in which traders failed to issue or provide copies of quality certificates to consumers.

Decisions of the President of UOKiK

In the case of fuels that do not meet quality requirements, the President of UOKiK issues a decision requiring the controlled trader to reimburse the costs of laboratory tests. In 2020, 100 administrative decisions were issued in this regard, plus 18 as a result of the reconsideration.

UOKiK also conducts appeal proceedings against decisions issued by provincial Trade Inspection inspectors imposing fines on trades for failing to issue quality certificates for solid fuels and for failing to display information on bio-component content in liquid fuels offered at petrol stations. In total, the President of UOKiK issued 78 decisions on such appeals.

⁴⁶ Act of 25 August 2006 on the fuel quality monitoring and control system (Polish Journal of Laws of 2021 item 133).

⁴⁷ Fuel tests are carried out by the Bydgoszcz laboratory, which is part of the UOKiK Laboratory Department, as

well as by a commercial laboratory selected through a tender procedure.

⁴⁸ The evaluation of liquid fuel samples was conducted in relation to the

quality requirements specified in the Regulation of the Minister of Economy

of 9 October 2015 on quality requirements for liquid fuels (Polish Journal

of Laws of 2015, item 680 and of 2020, item 727 as amended).

2.1
Practices violating
collective consumer
interests...

2.2
Supervision over the
Trade Inspection

2.3
Product safety and
market surveillance

2.4
Laboratories

2.5
Fuel quality control
system

Decisions of the Trade Inspection

In 2020, the Trade Inspection issued 10 decisions to withdraw fuels that did not meet quality requirements from circulation and provided information to the ERO on 20 fuel stations and wholesalers where inspectors found violations of the conditions of licences granted for trading liquid fuels and of provisions of the Energy Law. The Trade Inspection also sent 55 notices to the public prosecutor's office on the suspicion that a crime had been committed.

Fuels – random controls by IH in 2020

	random controls	% of questionable samples
Liquid fuels – petrol and diesel fuel	1 017 stations	1,38
LPG	317 stations	0,32
Solid fuels	415 wholesalers	5,8

Control effects

100

decisions of the President of UOKiK obliging companies to cover the costs of laboratory tests

20

information submitted to ERO concerning fuel stations and wholesalers which violated conditions of concessions granted for trading liquid fuels and of provisions of the Energy Law

55

notifications to the prosecutor's office about suspected crimes (liquid and solid fuels)

10

Trade Inspection decisions to withdraw substandard fuels from the market

2.6 Out-of-court dispute resolution system

In the case of a rejection of a complaint, it is possible to use the system of out-of-court resolution of consumer disputes (also called the amicable system or ADR system from Alternative Dispute Resolution).⁴⁹ The system is made up of entities acting amicably between the consumer and the undertaking on issues falling within their competence. Matters for which no sector-specific entity has been established are dealt with by the Trade Inspection, which acts as a horizontal institution.

The President of UOKiK supervises the system of out-of-court dispute resolution in Poland. In this respect, he evaluates applications for entry in the register of ADR entities. In addition, he monitors the implementation of statutory obligations by authorised entities, inter alia, on the basis of annual reports. These reports shall be submitted by the end of April of the following year.

Register of authorised entities

The register of ADR entities is available at www.uokik.gov.pl and www.polubowne.uokik.gov.pl. It contains data on institutions authorised to conduct ADR proceedings, such as the types and categories of consumer disputes dealt with by a given entity or the amount of the fee charged. The data contained in the register and any changes thereto shall be notified to the European

⁴⁹ On 10 January 2017, the Act of 23 September 2016 on out-of-court reso-

lution of consumer disputes (Polish Journal of Laws of 2016, item 1823) im-

plementing EU regulations into Polish legal order, hereinafter referred to as

the ADR Act.



2.6
Out-of-court dispute
resolution system

2.7
Cooperation with
consumer ombuds-
men...

2.8
European Consumer
Centre

2.9
Court jurisdiction
in consumer
protection cases

Commission, which shall publish the list of entities notified to it by the Member States on the ODR platform (ODR – Online Dispute Resolution).

In 2020, one non-public institution was added to the register – Ultima Ratio First Electronic Arbitration Court at the Association of Notaries of the Republic of Poland. In total, there were 11 eligible entities in the register: 7 created at or within the structure of public bodies and 4 non-public ones created by undertakings in the sector.

ADR/ODR Contact Point

There is an ADR/ODR Contact Point operating at the office of the President of UOKiK, which provides information on amicable proceedings and geoblocking and also assists in filling in applications. In 2020, a total of 1,081 pieces of advice were provided, including 690 by electronic means, 223 by telephone and 168 via the ODR platform. Due to the pandemic, individual consultations at the Office were not available. In 2020, most cases were related to consumer sales (clothing) and transport, telecommunications and energy services. Numerous questions also concerned the ADR system itself and the operation of the ODR platform.

ODR platform

The ODR platform is an interactive website set up at the initiative of the EC for consumers and undertakings wishing to resolve disputes amicably. It is possible to file a complaint about goods or services purchased online both domestically and in all EU countries, Liechtenstein and Norway using an electronic form. All institutions available on the platform have been verified and registered by national authorities. The website is available in all EU languages and can be found at: www.ec.europa.eu/consumers/odr/.

ADR entities present in the register in 2020

Public sector entities

financial and insurance services	Financial Ombudsman, Arbitration Court at the Financial Supervision Commission
telecommunications and postal services	President of the Office of Electronic Communications
energy services	Coordinator for negotiations to the President of the Energy Regulatory Office
rail transport services	Rail Passenger Ombudsman to the President of the Railway Transport Office
air transport services	Ombudsman to the President of the Civil Aviation Authority

Non-public sector entities

services offered by banks	Bank Arbiter at the Polish Bank Association
solving disputes concerning the sale of goods and services, if the dispute concerns an entity that is a member of the Chamber	Chamber of Electronic Economy
sale of food products	Centre for Amicable Resolution of Food Disputes at the Polish Federation of Food Industry
contractual services with companies that are participants in the financial market, insurance companies, mobile phone operators, cable TV operators, media providers and traders in receivables from contracts in the financial market, insurance, mobile phone, cable TV and media supply	Ultima Ratio

Horizontal entity

sales of goods and services in matters not covered by other specialised entities, e.g. tourism, property development, education, renovation and construction	Trade Inspection
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2.1
Practices violating
collective consumer
interests...

2.2
Supervision over the
Trade Inspection

2.3
Product safety and
market surveillance

2.4
Laboratories

2.5
Fuel quality control
system

2.6
Out-of-court dispute
resolution system

2.7
**Cooperation with
consumer ombuds-
men...**

2.8
European Consumer
Centre

2.9
Court jurisdiction
in consumer
protection cases

2.7

Cooperation with consumer ombudsmen and consumer organisations

Cooperation with consumer ombudsmen

Cooperation with municipal and county consumer ombudsme is an important element of UOKiK's efforts to protect consumer interests effectively. This takes the form of meetings, ongoing email and phone contacts, and training.

The COVID-19 pandemic prevented direct meetings between UOKiK representatives and consumer ombudsmen and limited training on offer. Therefore, beginning in November 2020, the Office held monthly **topical webinars** that will continue to be held next year. The meetings address both legal issues and UOKiK practice in the field. Webinars also provide an opportunity to clarify concerns that arise in the work of ombudsmen.

The Office also develops a special **newsletter** containing information useful in the work of ombudsmen. In 2020, 9 such publications were prepared. The study contains information about, among other things, the activities of the Office, court rulings in consumer cases, as well as good practices and examples of ombudsmen's actions in various regions of Poland. Through the newsletter, the Office also forwards inquiries to ombudsmen, which provide valuable information about market failures.

UOKiK produces an annual report on the activities of consumer ombudsmen. The publication presents, among

other things, summary information on the functioning of this institution, including problems reported by consumers. An important part of the publication is the ombudsmen's conclusions about the consumer protection system.

The National Council of Consumer Ombudsmen operates under the supervision of the President of UOKiK and acts as an advisory body, e.g. by commenting on the activities of the Office or participating in discussions on amending regulations. Ongoing information sharing with the council enables the Office to implement government consumer policy more effectively.

Cooperation with consumer organisations

UOKiK cooperates with consumer organisations, *inter alia*, in educational and information campaigns, consumer counselling, as well as in the exchange of information on market violations and in the provision of opinions on legal acts.

Every year, the Office organises competitions for consumer organisations to carry out tasks aimed at promoting consumer rights and providing legal assistance.⁵⁰ Permanent projects include **nationwide face-to-face counselling, e-advice, and a consumer helpline**. In 2020, **PLN 2.3 million were allocated for the implementation of grant tasks**.

⁵⁰ The provision of grants by the UOKiK is made in accordance with the provisions of the Act of 24 April 2003 on public benefit activities and volunteering (Journal of Laws of 2020, item 1057).



Summary of grants awarded in 2020

Total amount of grants awarded: **PLN 2.328 million⁵¹**

Consumer Helpline in 2020–2021 – 2020
organisation: Fundacja Konsumentów
Grant amount:
PLN 1.3 million
effects: 88,473 pieces of consumer advice/information provided

Promoting and protecting consumer rights in 2019–2020 – 2020
organisation: Stowarzyszenie Aquila, Fundacja Krajowy Instytut Gospodarki Senioralnej
grant amount:
PLN 653.7 thousand*
effects: 1,494 pieces of advice given through 10 regional consumer and field advice centres, as well as 471 educational campaigns**

*Refers to the settlement for the period of 1 January – 30 September 2020

**For activities conducted for the period of 1 January – 31 July 2020

Consumer e-Advice Centre in 2020–2021 – 2020
organisation: consortium of Stowarzyszenie Aquila, Stowarzyszenie Euro-Concret, Stowarzyszenie dla Powiatu
grant amount:
PLN 250 thousand
effects: 30,070 pieces of advice given to consumers, 2,699 non-consumer responses, 5,735 general advice responses

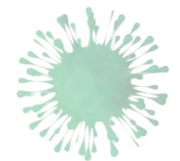
Cyber-safe consumer – proactive education
organisation: Fundacja ProPublika
grant amount:
PLN 331 thousand
effects: development of an interactive educational tool – the www.konsument.edu.pl portal, i.e. a simulator of dangers faced by consumers on the Internet, together with lesson scenarios for teachers and students of secondary schools

Financial education in cyberspace
organisation: Stowarzyszenie Stop Bankowemu Bezprawiu
grant amount:
PLN 65 thousand
effects: a subpage of the project www.cyberbezpieczni.bankowe-bezprawie.pl was created, containing articles and multimedia materials on cybersecurity, presentations for youth, thematic webinars as well as video blogs were also prepared

Gluten-free diet in coeliac disease – safe shopping in stationary and online shops
organisation: Stowarzyszenie Przyjaciół Bezglutenowej Mamy
grant amount:
PLN 20 thousand
effects: 30 products declared gluten-free were tested for gluten, podcasts with experts on safe gluten-free shopping in stationary and online shops were prepared and published

For more information on educational projects funded by UOKiK under grants: 3.1 Information and educational activities.

⁵¹ The amount is rounded and calculated on the basis of the amount of grants provided for in all agreements concluded with organisations for the implementation of tasks commissioned in 2020.



2.8

European Consumer Centre

The European Consumer Centre in Poland (ECC Poland) is part of the European Consumer Centres Network (ECC-Net),⁵² which comprises 30 centres in the 27 EU Member States plus Norway, Iceland and the United Kingdom. At the same time, ECC Polska is located within the organisational structures of UOKiK.

ECC Poland provides free advice to consumers on their rights in the EU single market and helps to solve individual cross-border problems out of court. In addition, the Centre conducts activities promoting European consumer rights and cooperates with undertakings businesses' and consumers' organisations. Under ECC-Net, the Centre provides information to UOKiK on infringements of collective consumer interests (5 notifications were submitted in 2020).

Every year the number of cases reported to ECC Poland increases. In 2020, a total of **7,602 cases were received, an increase of 29 per cent compared to the previous year.** In particular, the number of complaints increased, with 5,969 being received. However, there were fewer enquiries – 1,633.

The significant increase in complaints (up 56 per cent compared to 2019) was undoubtedly related to the coronavirus pandemic and the restrictions put in place. At its peak, the ECC received up to 60 per cent more calls compared to the same period last year. 2020 was an exceptional year for the entire ECC-Net in this respect.

Undertakings from Ireland, Germany and the UK faced the highest number of complaints. In the case of purchases from Polish undertakings, complaints most often came from Lithuania, Germany and the Czech Republic.

Most cases involved online sales. There were also numerous advisories on air travel during the pandemic (flight cancellations, delays in refunds due), travel services, and clothing and footwear.

ECC Poland undertakes numerous activities to promote consumer rights in the EU.

Example activities in 2020:

→ **Information campaign on the 15th anniversary of ECC-Net**

As part of the anniversary, the centres took part in a joint "12 topics campaign", ECC Poland developed a geo-blocking theme and participated in the promotion of each of the 12 themes. The campaign was implemented through social media, the website and media partnerships.

→ **Campaign to promote free ECC counselling**

The campaign "Shopping and Travelling in the EU? Free consumer assistance" was implemented through information banners placed on popular internet portals, which redirected to www.konsument.gov.pl.

COVID-19

Examples of consumer assistance

→ Travel agency

In March 2020, a group of 15 people wanted to terminate their contract with a German travel agency following the WHO's declaration of a coronavirus pandemic, the Chief Sanitary Inspector's recommendation to avoid travel to France, and the numerous COVID-19 outbreaks occurring in the Auvergne-Rhône-Alpes region where the consumers' week-long stay was to take place. The travel agency agreed to refund only 20 per cent of the total amount, holding that consumers had no right to withdraw from their trip at no cost, even by invoking force majeure. This was because they themselves had incurred the costs of booking with their partner in France. Thanks to the intervention and cooperation of ECC Poland and ECC Germany, all the would-be participants of the trip received over PLN 10 thousand back, which was 99 per cent of the amount they had paid.

→ Cancelled flights

In December 2019, a consumer from Poland booked return tickets to Crete for his family of four via an airline's app. Unfortunately, due to the pandemic, the flights were cancelled, of which the consumer was informed by email in mid-May 2020. The consumer applied for a refund and was informed that the application had been accepted for processing. As the return did not occur until

the end of November 2020, the consumer contacted ECC Poland. The case was referred to ECC in Ireland, which intervened. As a result, the consumer received a refund.

→ F1 race tickets

The ECC has received several reports that an Austrian company has deducted 25 per cent of the purchase price of tickets for the Formula 1 race in Budapest. These deductions were motivated by the need to cover business costs. Meanwhile, the race took place without the public and, by law, consumers were entitled to a full refund. The cases were referred to the Austrian ECC in accordance with its jurisdiction. As a result of the intervention, the trader refunded the amount due to the consumers.

Information campaign "Coronavirus and the EU consumer"

Due to numerous consumer complaints, ECC Poland prepared and updated information (in the form of questions and answers) on consumer rights in times of pandemic. The addressed problems included passenger rights, cancellation of purchased accommodation or cancelled sports and cultural events.

7602

cases reported to ECC Poland

⁵² The ECC-Net is co-financed by the European Commission.



2.9 Court jurisdiction in consumer protection cases

Jurisdiction in collective consumer interests cases

Undertakings may appeal against the decision of the President of UOKiK to the Court of Competition and Consumer Protection (SOKiK). If the court does not agree with the decision, it may overrule or modify it, e.g. by reducing the penalty amount. The second instance is the Court of Appeals in Warsaw. In some cases, it is also possible to file a cassation complaint to the Supreme Court.

SOKiK – judgment of 7 January 2020 in Bank Millenium case⁵³

SOKiK dismissed Bank Millennium SA's appeal against the 2017 decision of the President of UOKiK (DOIK-12/2017). Among other things, the company used clauses that had been entered in the register of prohibited clauses several years earlier, which was claimed in customer complaints. The bank informed back that the entry in the register is only relevant for future contracts and does not apply to those already concluded. However, declaring a provision

as prohibited means that it is not binding. The information provided by the bank was therefore misleading for consumers, for which the President of UOKiK imposed a fine of PLN 20 million. The ruling of SOKiK upheld the sanction.

Court of Appeals – judgment of 21 September 2021 in Multimedia case⁵⁴

The judgment concerned the 2015 decision of the President of UOKiK (DDK-30/2015) against Multimedia Polska SA. Under the cable TV contracts, the trader only guaranteed the number of TV programmes for a given package without specifying their content. Moreover, a change in the type of television programmes (within the same number of programmes) did not constitute an amendment to the contract, which consequently did not allow consumers to terminate the subscriber contract "free of charge". The President of the Office recognised the undertaking's activity as prohibited market practices, and this position was shared by SOKiK. The case went to the Court of Appeals, which confirmed the decision of the authority while slightly reducing the amount of the penalty due to the lack of evidence of the intentional nature of the infringement. The Court of Appeals upheld in full the remaining decisions of the President of UOKiK, inter alia with regard to the compensation granted to consumers.

Court of Appeals – judgment of 18 December 2020 in Aflofarm case⁵⁶

The described case concerned a PLN 26 million fine imposed on Alfofarm Sp. z o.o. for misleading advertising

of dietary supplements (DOZiK-5/2017). As a result of the appeal, SOKiK ruled that in the situation in question, the provisions of the Act on Food and Nutrition Safety exclude the possibility of imposing penalties in this respect by the President of UOKiK. The Sanitary Inspection was identified as the competent authority. The Court of Appeals overturned the judgement of SOKiK and sent the case back for further examination. The verdict of the Court of Appeals confirms the position of the President of UOKiK, according to which different authorities may conduct proceedings under separate regulations against the same undertaking. This is also the case if the infringement arises from the same event. At the same time, it has been identified as a key issue whether, in this particular situation, the prohibition of double punishment (for the same infringement) is violated.

Court of Appeals – judgment of 7 October 2020 in Everest Finanse case⁵⁷

The Court of Appeals judgment referred to the 2015 decision of the President of UOKiK (DDK-26/2015) on consumer credit agreements, in particular violations in terms of charged fees and providing information on costs. The judgment of the Court of Appeals confirmed the previous line of case law that the cost of servicing a home loan is an additional service fee and should therefore be included in the information form. The courts also shared the position of the President of UOKiK that the total amount of the credit does not include the credited costs. Therefore, it was unlawful

for Everest Finanse to present information about the total amount of the loan, including the credited loan costs.

Case law on general product safety and product conformity cases with EU requirements

Undertakings may file a complaint to the Voivodeship Administrative Court (VAC) against the decision of the President of UOKiK on general product safety and compliance of products with EU requirements (New Approach directives). However, a judgment of the VAC may be appealed in cassation to the Supreme Administrative Court (SAC).

Case law on appeals against decisions of voivodeship inspectors of the Trade Inspection and decisions imposing the obligation to pay laboratory fees

The President of UOKiK examines appeals against the decisions of voivodeship inspectors of the Trade Inspection in matters of conducted inspections. In addition, he carries out proceedings, issues decisions and rulings on imposing an obligation on the undertaking to cover the costs of fuel quality tests.

Decisions of the President of UOKiK may be appealed to the VAC, and cassation appeals against decisions of the VAC are examined by the SAC.

Court judgments in cases of violation of collective consumer interests – 2018-2020⁵⁵

	The Court of Competition and Consumer Protection (SOKiK)			The Court of Appeals in Warsaw			The Supreme Court		
	2018	2019	2020	2018	2019	2020	2018	2019	2020
Judgments in cases of violation of collective consumer interests	28	30	21	28	10	18	1	11	1

⁵³ File reference number XVII Ama 14/18.

⁵⁴ File reference VII Aga 146/19.

⁵⁵ A database of judgments of the Court of Competition and Consumer Protection, the Court of Appeals in War-

saw and the Supreme Court concerning decisions of the President of UOKiK can be found at: https://www.uokik.gov.pl/baza_wyrokow.php.

⁵⁶ File reference number VII AGA 244/20.

⁵⁷ File reference VII AGA 2271/18.

Submitted complaints and delivered judgements – 2020

	general product safety	compliance with EU requirements
Complaints against the decisions of the President of UOKiK submitted by companies to the VAC	3	10
Complaints against the decisions of the President of UOKiK dismissed by the VAC	0	9
Complaints against the decisions of the President of UOKiK upheld by the VAC	1	2
Cassation appeals against decisions of the VAC submitted to the SAC	2	4

Submitted complaints and delivered judgements in 2020 – including fuel quality

58

complaints against decisions of the President UOKiK submitted by undertakings to the VAC

5

complaints against decisions of the President of UOKiK upheld by the VAC

25

complaints against decisions of the President of UOKiK dismissed by the VAC

6

cassation appeals against decisions of the VAC submitted to the SAC



CHAPTER 3

An important area of competence of the President of UOKiK is shaping the legal system that effectively protects consumer interests and supports the development of competition, as well as informing and educating market participants on the applicable regulations. The Office also carries out social research and market analysis and is involved in international cooperation, in particular in initiatives carried out by EU institutions and the EU Member States.



3.1 Information and educational activities

The Office's information and educational activities focus on conducting social campaigns, cooperation with the media, as well as the implementation of various educational and competition projects. In addition, the Office develops and provides publications and supports educational initiatives of other entities related to competition and consumer protection.

Thematic websites are also maintained as part of these activities. In 2020, **the Office prepared and launched the website www.zatoryplatnicze.uokik.gov.pl** in connection with the new competencies of the President of UOKiK in this area.¹ The portal is a compendium of knowledge concerning regulations limiting payment gridlocks, bringing closer the interpretation of regulations aimed at counteracting excessive delays in commercial transactions.

Information and educational projects of UOKiK

The public awareness campaign "Check, read, ask!"

On 15 July 2020, UOKiK has launched a social campaign under the slogan "Check, read, ask!". The actions were conducted following consumer complaints regarding unfair market practices and fraud, also in the context of COVID-19. The aim of the campaign was to warn consumers of the risks associated with:

→ **alternative financial investments that falsely promise fast, reliable and high risk-free returns,**

→ **products or services that falsely promise health care or treatment.**

UOKiK prepared two 30-second messages to be broadcast on television, radio, the Internet and in public spaces. On a no-cost basis, public and commercial media, state and local government institutions, public enterprises and private companies have joined the campaign in large numbers. As a result, the commercials could be seen on 54 TV channels, which aired them a total of 1,289 times.² The messages could also be heard on 27 radio stations – a total of 744 broadcasts.³ In addition, 35 public entities supported the promotion.⁴ Institutions informed about the action and published commercials on websites and social media. The messages were also displayed in public spaces on LCD screens in several Polish cities.⁵

The campaign was supported by over

80

TV and radio stations

35

public institutions

¹ On 1 January 2020, the provisions of the Act of 19 July 2019 on amending certain acts to reduce excessive late payments (Polish Journal of Laws of 2019, item 1649) came into force.

² Data based on available emission plans. TV stations that took part in the campaign: TVP 1, TVP 2, TVP INFO and 16 regional, TVN, TVN7, TVN Style, TVN Turbo, TVN Fabula, HGTV, TTV, TVN24 and

TVN24 BIS, POLSAT and POLSAT NEWS, TV TRWAM, Comedy Central Polska, Nick Jr, Nickelodeon, MTV Polska, Paramount Channel, Paramount Play, TV PULS, Puls2, Canal+, teleTOON+, MiniMini+, Ale kino+,

Canal+ Sport, nSport, DOMO+, Canal+ Family, Canal+ Sport2, Kuchnia+, PLAN-ETE+, Kino POLSKA, Stopklatka, Zoom TV and Kino Polska Muzyka.

³ Data based on available emission

plans. Radio stations that took part in the campaign: PR Pr 1, PR Pr 2, PR Pr 3, PR Pr 4, Radio Nadzieja, Radio Maryja, Polskie Radio 24, PR Radio Opole, Radio Olsztyn, Radio Poznań, Radio ZET, Antyradio, Chillizet, Meloradio, Radio Pomorza i Kujaw, Radio Lublin SA, Polskie Radio Białystok, Polskie Radio Koszalin, Radio 90.FM, Radio Kielce, Radio Katowice, Radio Kraków, Radio EMAUS, Radio Warszawa 106,2 FM, Muzo FM, Akademickie Radio Kampus Warszawa, RMF FM.

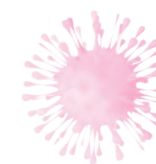
⁴ The Chancellery of the Prime Minister, the Ministry of Development Funds and Regional Policy, the Ministry of Agriculture and Rural Development, the Ministry of Economic Development, Labour and Technology, the Ministry of Foreign Affairs Republic of Poland, the Ministry of Development Funds and Regional Policy, the Ministry of National Education, the Ministry of Justice, the Polish Financial Supervision Authority, the Energy Regulatory Office, the Financial Ombudsman

Office, the Personal Data Protection Office, PKP SA, the Social Insurance Institution, the Agricultural Social Insurance Fund, the General Police Headquarters of Poland, Poczta Polska (Polish Post), districts: Dzierżoniowski, Grodziski, Kaliski, Limanowski, Opoczyński, Piaseczyński, Pułtuski, Świdnicki, Zgorzelecki and Żniński, city halls of: Bytom, Toruń and Szczecin, provincial inspectorates of Trade Inspection in: Gdańsk, Lublin, Olsztyn, Opole, Poznań.

⁵ LCD screens belonging to: Miejskie Zakłady Autobusowe w Warszawie, Metro Warszawskie, Miejskie Zakłady Komunikacyjne w Zielonej Górze, MPK Częstochowa, MZK Gorzów Wlkp., Zarząd Transportu Miejskiego w Gdańsku, ZTM w Rzeszowie, Miejski Zakład Komunikacji w Toruniu and Miejskie Przedsiębiorstwo Komunikacyjne we Wrocławiu.

WEBSITES

Portal	Unique page views in 2020	Portal description
uokik.gov.pl	5 020 373	A source of news on the activities of the President of UOKiK and information on, <i>inter alia</i> : consumer alerts, decisions and important views on the matter. A Bulletin of Public Information (BIP) is maintained on the Office's website. In 2020, UOKiK received 565 requests for public information and provided 564 pieces of information .
finanse.uokik.gov.pl	17 000	A compendium of knowledge about the situation on the Swiss franc mortgage market, insurance with an insurance capital fund, corporate bonds, alternative investments and consumer loans.
konkurencja.uokik.gov.pl	71 641	The website informs about the most important activities of the President concerning competition-restricting practices, including the leniency programme and whistleblower programme.
polubowne.uokik.gov.pl	77 560	The website presents the principles of the system of out-of-court resolution of disputes and provides practical tips for consumers.
prawakonsumenta.uokik.gov.pl	1 608 732	A compendium of consumer rights, including the right to information, complaint and withdrawal from a contract.
przewagakontraktowa.uokik.gov.pl	8 406	Source of information on the activities of the President of UOKiK concerning counteracting unfair use of contractual advantage in trade of agricultural and food products.
zatoryplatnicze.uokik.gov.pl	5 160	Office's latest portal, launched on 6 July 2020, devoted to regulations limiting payment gridlocks, in particular the provisions of the Act on Counteracting Excessive Late Payments in Commercial Transactions.



UOKiK also operates System of Access to Data on State Aid: <https://sudop.uokik.gov.pl>. The portal is designed to provide access to information on approved aid measures, the beneficiaries of these measures, as well as to search for information on aid received by a given beneficiary. Since its launch, the number of requests for public information on state aid granted has fallen significantly. The portal is used by both beneficiaries and providers of aid, as well as advisory and consulting companies, research institutes and journalists. In the context of crisis aid, this search engine has been expanded to include criteria to search for aid covered by the limit set in the Commission Communication "Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak". More information: 1.3 State aid.

Consumer testing – #UOKiKtests

The right to accurate information is one of the basic consumer rights. Consumers have the right to know what is the quality of products in order to make informed purchases. Accordingly, as part of its educational activities in 2020, the Office has initiated the "UOKiK Tests" project. It is a series of comparative tests aimed at simplifying consumer choice, providing information on product quality and supporting informed purchasing decisions. Thanks to independent tests carried out in the laboratories of UOKiK, with the support of the Trade Inspection, consumers receive assistance in choosing everyday products. A total of 3 consumer test reports were published in October, November and December.⁶ They covered the following product categories: colour washing powders, dishwasher tablets and washing-up liquids.

As part of the promotion of the project, UOKiK has prepared an animated spot "UOKiK tests". The research reports are available at www.uokik.gov.pl.

UOKiK's activities on the occasion of Children's Day

In celebration of Children's Day, on 1 June 2020, UOKiK released a short video aimed at drawing parents' at-

Products tested and compared – #UOKiKtests⁷

Colour washing powders

10 brands of powders in 290 comparative tests

Dishwasher tablets

10 brands of tablets in 60 comparative tests

Washing-up liquids

10 brands of liquids in 66 comparative tests

attention to the issue of toy safety. The material portrays how the laboratories of UOKiK test the products for the youngest consumers and also promotes the conscious selection of safe toys by parents. The video also includes advice on CE marking, among other things, as well as familiarising oneself with possible warnings.

Actions for the benefit of senior citizens

In 2020, the Office once again took part in the Senior Citizens' Day campaign organised by the Social Insurance Institution and the Polish Association of Senior Citizens, Pensioners and Invalids. Due to the pandemic situation, the campaign could not be held in the traditional formula of meetings with seniors, therefore the partners of the initiative – UOKiK, the National Health Fund, the National Fund for Rehabilitation of Disabled Persons, the Monetary Policy Council, the Commissioner for Human Rights – jointly prepared advice published in the "ZUS dla Seniora" (Social Insurance for Seniors) magazine. Part of the print run was accompanied by promotional material from UOKiK reminding consumers of their 14-day right to withdraw from an agreement when shopping at commercial demonstrations.

COVID-19 – market monitoring and e-mail contact to undertakings

→ Information package for consumers and undertakings

In view of the signalled problems concerning the pandemic situation, UOKiK has prepared a special package of information for consumers and undertakings, posted at www.uokik.gov.pl.

The consumer section contains advice and answers to frequently asked questions on topics such as: "Travel services", "Hotels", "Transport", "Sales", "Financial services", "Services", "Consumer protection". The tab also includes information on free legal aid for consumers, including through ECC Poland.

On the other hand, through the section undertakings gained access to, *inter alia*, up-to-date information on state aid offered to undertakings affected by COVID-19. It is now also possible to report unfair use of contractual advantage during a pandemic, as well as to obtain an informal opinion from UOKiK on whether planned temporary actions by undertakings due to COVID-19 are in line with competition law.

→ Information for credit recipients

UOKiK reported on special solutions for credit recipients in connection with the coronavirus pandemic, the so-called credit holidays and a temporarily lower maximum level of non-interest costs for consumer loans.

→ COVID-19 and state aid

On its website, the Office provided up-to-date information on EU and national legal acts related to COVID-19, on notified aid schemes and on European Commission decisions in Polish affairs. Explanations and documents related to crisis assistance were also posted. This information served both the aid providers and the undertakings that experienced the negative consequences of the crisis and expected support.

#UOKiKtests

⁶ In 2020, 4 product categories were tested by laboratories, with reports on 3

product types being published in 2020. For more information on the research

carried out by the Office's laboratories see: 2.4 Laboratories.

⁷ The data only refers to studies within reports published in 2020.



Credit calculator

In 2020, the Office developed a special **credit calculator** which helps consumers calculate the indicative amount to be repaid for early repayment of consumer credit on a straight-line basis. In addition, UOKiK has developed a ready-to-use **application form** for a refund of the amount due for early repayment of credit. These utilities have been made available at www.finance.uokik.gov.pl.

Black Friday, Cyber Monday – don't be fooled

In connection with the pre-Christmas sales season, in November 2020, UOKiK has prepared a special information campaign "Black Friday, Cyber Monday – don't be fooled". The aim of the actions was to draw consumers' attention to possible unfair practices of traders, as well as to remind them of their rights during sales and online shopping. As part of the campaign, the Office has, among other things, prepared **a series of thematic, animated commercials**.

Conscious ordering party – competition law in public tenders

In 2020, UOKiK concluded the "Conscious Ordering Party – Competition Law in Public Tenders" project, realised from 1 June 2017 to 30 June 2020, with funds from the European Social Fund under the Operational Programme Knowledge Education Development 2014–2020 (PO WER).⁸

The aim of the project was to **increase the level of knowledge of competition law in public procurement**, in particular among government and local government employees who are involved in conducting tender procedures. In the framework of the project, UOKiK organised, in 2017, 32 free, one-day trainings for the above audience across Poland, during which it trained 1,362 people.

In addition, the Office had prepared a free online training course on the e-learning platform www.sz-

koleniazmowy.uokik.gov.pl, also addressed to persons from outside the administration sector. The platform was available from 1 June 2017 to 30 June 2020. During this period, 4,285 users have registered on it.

Consumer advice and warnings under the ongoing announcements of UOKiK

Consumers fall victim to various types of fraud and dishonest practices on the part of traders, including on the Internet, at commercial demonstrations and during telephone calls. UOKiK reports such threats through ongoing press releases, a Twitter profile and also through the media. **In addition to warnings, the materials also contain advice and information about one's rights, as well as opportunities for consumer assistance.** In 2020, UOKiK raised, among others, the issues of:

- "instant" loans,
- alternative investments – e.g. pyramid scheme or pyramid-type incentive schemes, investments in the so-called interest-bearing investment bills,
- passenger rights during a pandemic,
- online shopping in the context of dropshipping,
- commercial demonstrations – in particular, unfair practices towards senior citizens.

In addition, UOKiK regularly posted and promoted **graphic inspection reports from the Trade Inspection**. Discussed topics included toys, solid fuel boilers, the quality and labelling of clothing, paints and varnishes, and the labelling of detergents. The materials present the results of the controls and provide guidance and advice to consumers.

⁸ The value of the project was PLN 679,689.00, including the EU contribution of PLN 572,841.89.

Educational projects supported by grants to consumer organisations

UOKiK also supports consumer education through **a grant scheme**. In November 2020, the Office settled the competition for the implementation of the public task entitled "Promotion and protection of consumer rights – educational activities". In judging the submissions, UOKiK focused on educational value and an innovative approach. The following three projects were selected:

- **"Cyber-safe consumer – active education"** (ProPublika Foundation) – as part of the project, an interactive educational tool for secondary school students was created to disseminate knowledge about consumer rights on the Internet. It is a website www.konsument.edu.pl simulating a social networking site where, alongside the usual posts, 10 dangerous offers have been placed. They conceal dangerous situations, such as online shopping scams, alternative investments, pyramid-type incentive schemes, BLIK code subreption or identity theft. The website also contains **lesson scenarios** for teachers, educators and consumer ombudsmen. The tool has been promoted through multiple channels – e-mail messages sent to schools, contact with the Librus educational platform, newspaper editors and news portals. Additionally, information campaigns were carried out in social media (Facebook, Instagram) and magazine inserts.

www.konsument.edu.pl portal

It is a modern educational tool – **a social networking simulator where the user is exposed to 10 types of threats, including those related to shopping and investments**. The appearance of the website, its content, mechanisms and interactions are identical to those found online. This makes the users behave naturally – for example, they watch a commercial, read a post, select goods, decide on the method of delivery and form of payment, fill out a form, or hold a conversation with a chatbot.

This provides a realistic yet safe demonstration of how cybercrooks act. The users learn the consequences of reckless decisions, which – taken on impulse or out of the desire for quick and high profits – can mean measurable financial losses. They also learn how to act in similar situations and what to pay attention to. They also are advised on what to do if they fall for fraud.

- **"Financial education in cyberspace"** (Association Stop Banking Lawlessness) – is also a response to the need to educate the public on how to protect their rights during online activities and purchases. The project was targeted at three groups of consumers: youth, working people and seniors. There were **6 webinars** with lawyers, and **6 video blogs** were created, as well as articles and multimedia presentations on online consumer protection topics. A dedicated subpage has also been created: <https://cyberbezpieczni.bankowebezprawie.pl/>. Various forms of project promotion were carried out using social media as well as in local and national media.

- **"Gluten-free diet in coeliac disease – safe shopping in stationary and online shops"** (Gluten-free Mum's Friends Association) – **33 products labelled as gluten-free were checked for gluten content** as part of the project. The tests were carried out in an accredited laboratory. Their results were presented on the blog <https://bezglutenowamama.pl>. **Five podcasts featuring experts** on safe gluten-free shopping in stationary and online shops were also recorded. They have been made available on Spotify and YouTube, among other platforms. The project also included material posted on the Association's blog, Facebook and Instagram.

Events and competitions

Competition of the President of UOKiK for the best MA and PhD thesis

In 2020, the 11th edition of the competition for the best Master's thesis in the field of competition protection and the 9th edition devoted to consumer protection were concluded. The competition is held annually and aims to draw the public's attention to consumer protection and competition protection issues. The competition jury consists of practitioners, academics and UOKiK experts. The competition is open to people who have a degree in law or another field of study – economics, administration or management. In 2020, the jury **awarded a total of 5 works and honoured one**.



3.1 Information and educational activities

3.2 Legislative work

3.2.1 National legislation

3.2.2 International legislation

3.2.3 Preliminary ruling matters

3.3 Social research and market analysis

3.4 International cooperation

At the same time, there was a competition for the best doctoral theses, the adjudication of which takes place every 3 years (the final of the current edition will take place in 2022).

The partner of both competitions is the Competition Law Association, and the patron is the Polish Economic Society.

World Consumer Rights Day

World Consumer Rights Day is celebrated on 15 March. At this time each year, UOKiK intensively addresses the issue of consumer rights and their protection. Due to the epidemic situation, the Office decided not to organise an offline event. In **a special press release**, the President of UOKiK appealed for solidarity and responsibility among market participants during the difficult time of the COVID-19 pandemic. He also reminded consumers of their right to free legal aid and safe products. As part of the celebrations, UOKiK organised **a radio standby service for consumers**.

World Competition Day

Between 7 and 11 December 2020, UOKiK organised a **Competition Week** to mark World Competition Day. The event was conducted online, in particular on Twitter. As part of it, the Office organised a contest for subscribers, as well as a daily reminder of the most important antimonopoly decisions in the Office's history and the rights and obligations of undertakings. In addition, the President of UOKiK met online with the President of the German antitrust authority, the Bundeskartellamt. The discussion covered: the digital economy, the leniency and Whistleblower programmes, and new tools for detecting anti-competitive agreements. The recording was made available on the Office's website.

Second edition of the Świętokrzyskie Province Consumer Knowledge Contest

The Office supports activities raising the level of consumer knowledge among children and young people. The

second edition of the Świętokrzyskie Province Consumer Knowledge Contest, organised by the Świętokrzyskie Voivodeship Inspector of Trade Inspection, ended in August. The President of UOKiK took honorary patronage of the competition. A total of **77 students from 17 secondary schools** took part in this edition, and three of them were awarded prizes.

Patronages of the President of UOKiK

In 2020, the President of UOKiK took patronage of **14 events**.⁹ These were mainly pro-consumer initiatives, such as the 7th International Consumer Science Conference – organised by the Association of Consumer Ombudsmen, the Consumer Congress – organised by the Consumer Federation, or competitions on knowledge of consumer rights for children and young people, organised among others by consumer ombudsmen.

In addition, the President of UOKiK was the patron of, among others, the Global Entrepreneurship Week 2020, organised in Małopolska Province by the Cracow University of Economics. This is an international project conducted since 2008. Institutions and companies organise free training, workshops, debates or promotional campaigns on entrepreneurship. This year's edition took place from 16 to 20 November in 170 countries around the world.

Publishing activity

A permanent element of the Office's educational and informational activities is the development, publication and free distribution of publications. All titles are available for download in electronic or paper format on the Office's website.

In 2020, UOKiK published a book entitled **"Antitrust proceedings in the jurisprudence of the European Court of Human Rights"** as part of the "UOKiK Library" series. The author of the publication is Marta Powolny – the winner of the competition of the President of UOKiK for the best master's thesis on competition protection in 2019.

⁹ Thirty-two applications were received in this regard.

In addition, the Office has developed and published on its website extensive **"Procedural clarifications on the submission of notifications to the President of UOKiK and the conduct of proceedings falling within the scope of the Investment Control Act"**. The investment control law is part of the government's Anti-Crisis Shield 4.0. The adoption of these provisions resulted from the situation related to the COVID-19 pandemic and the risk of Polish companies important for public order, security or health being taken over by entities from outside the EU, EEA and OECD. This solution is modelled on legislation adopted in Germany and existing in other countries.

The clarifications provide details on the new regulations and the conduct of proceedings by the President of UOKiK.

Cooperation with the media

An important aspect of the Office's information activity is ongoing contact with the media and publishing press releases on its website, which present, among others, the decisions of the President of UOKiK, positions and the results of inspections of the Trade Inspection.

In 2020, The Office issued **nearly 10 per cent more press releases** than in 2019. As in previous years, most of the information was related to consumer protection issues (around 66 per cent). The activity of UOKiK on Twitter also increased, **with the number of posts more than 30 per cent higher** compared to 2019.

The media were also keen to report on the Office's activities, e.g. through press articles, publications on the Internet, including social media. In particular, radio and television content has increased – over 69 per cent more than in 2019. UOKiK has repeatedly appeared in the top ten trends on Twitter. The President of UOKiK regularly participated in television and radio programmes as well as gave press interviews.

Contacts with the media serve not only to inform the public about the Office's activities but also to promote projects and educational activities on a non-commercial basis.

UOKiK for the media

179

press releases
issued

4

press conferences
(including two as
a co-organiser)

889

tweets (nearly 3.5 million
impressions)

Media coverage of UOKiK

10 131

newspaper articles

13 248

online publications

7 696

radio and television
materials

89 225

mentions of UOKiK on
Twitter, Facebook, among
others





3.2 Legislative work

The President of UOKiK prepares legal acts on competition and consumer protection and participates in legislative work initiated by other institutions. In 2020, the Office analysed a total of **nearly 1,000 draft government documents** (including more than 250 draft Acts and more than 580 draft Regulations) for provisions that could affect competition and consumers.

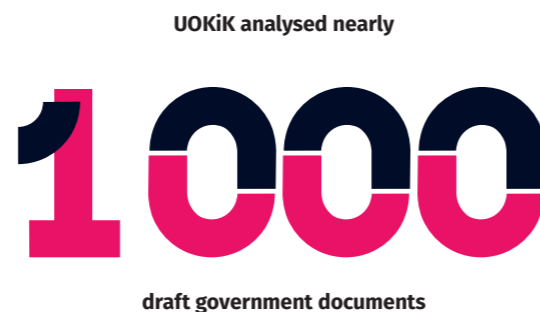
In 2020, the activity of the President of UOKiK in the area of legislation focused on creating legal solutions providing support for consumers and undertakings in connection with the crisis caused by the SARS-CoV-2 coronavirus pandemic (COVID-19).

3.2.1 National legislation

Legislative activities concerning the area of competence of the President of UOKiK (examples)

Draft Act amending the Act on Competition and Consumer Protection – transposition of Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (the CPC Regulation)

Consumer protection is an ever-increasing challenge in today's world due to changes in the economy. The development of modern technologies and the associated progressive digitisation of the economy, in addition to



its benefits, also brings risks for consumers. The growing scale and diversity of the challenges posed by, in particular, the dynamic development of the digital market and the need to protect consumer interests in new areas have required increased supervisory and regulatory activity within the EU. Accordingly, in 2017, the EC issued a regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws.¹⁰ **The CPC Regulation gives the consumer protection authorities in each EU Member State additional powers and strengthened investigative and enforcement instruments.**

In 2020, The President of UOKiK continued to work on draft amendments to the Act on Competition and Consumer Protection in relation to the implementation of the CPC Regulation. Among the key solutions was **the possibility for the authority to take action against websites and applications that infringe consumer rights** in order to eliminate the risk of serious consumer detriment. The proposed regulations state that the President of UOKiK will be able to order, among other things:

- the removal of content or the restriction of access to an online interface (website or application) or ordering the placement of a clear warning to consumers accessing the online interface,
- the removal or deactivation of the Internet interface or restricting access to it,
- in relevant cases, ordering domain registries and domain registrants to remove the full domain name (FQDN) and allow the competent authority to register it – resulting in the website being removed and its domain name being registered with the President of UOKiK in order to remove it from the market.

The draft Act also introduces **changes concerning controls** conducted as part of consumer protection proceedings. Inspectors will be able to **purchase goods or services** in the course of undercover operations, rather than merely taking steps to make a purchase, as has been the case to date. Importantly, they will be able to **conceal their identity** by using documents that make it impossible to establish their identification details. This solution will make it possible to obtain the necessary evidence.

The draft also includes other changes, including retaining a list of consumer organisations authorised to report warnings by UOKiK and allowing for searches of a trader's premises also in consumer matters. The legislative process is scheduled to be completed in 2021.

It should be noted that the CPC Regulation has already been partially implemented by the provisions of the Act of 19 June 2020 on interest subsidies for bank loans granted to undertakings affected by COVID-19.¹¹ They foresee the possibility of joint action and the exchange of information on cross-border consumer rights infringements within the internal market, within the CPC module of IMI (the EU Internal Market Information System).

Draft Act amending the Act on Competition and Consumer Protection and certain other acts – implementation of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (the ECN+ Directive)

The project is related to the implementation of the 2018 EU Directive to **empower competition authorities to enforce the law more effectively and ensure the proper functioning of the internal market**¹² – the ECN+ Directive. Some of the principles set out by the Directive regarding the operation of antitrust authorities have already been introduced into Polish law, but some areas require adjustment and clarification. In 2020, the work on the implementation of the provisions of the Directive continued.

With regard to **the leniency programme**, the key change is the exclusion of criminal liability for natural persons acting on behalf of an undertaking who has benefited from this programme. This regulation applies only to collusive tendering, which is also subject to criminal sanction. The change is intended to increase the benefits of participating in the leniency programme. Currently, engaging in collusive tendering is an offence punishable by imprisonment for all entities, which may discourage participants from disclosing an illicit agreement within the programme.

The changes also concern **controls and searches**, including detailed rules on cooperation with the police. The amendment will also include provisions on fines imposed on traders for failing to cooperate in the gathering of evidence. There is currently a fine of up to the equivalent of EUR 50 million for such action. After the law has been amended, the penalty shall be up to 3 per cent of the turnover in the year preceding the decision.

¹⁰ Regulation 2017/2394 of the European Parliament and of the Council of 12

December 2017 on cooperation between national authorities responsible for

the enforcement of consumer protection laws and repealing Regulation No

2006/2004/EC.

¹¹ Act of 19 June 2020 on interest subsidies for bank loans granted to undertakings affected by COVID-19 and on simplified proceedings for approval of

an arrangement in connection with the occurrence of COVID-19 (Polish Journal of Laws of 2020, item 1086 and 1423).

¹² Directive 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States

to be more effective enforcers and to ensure the proper functioning of the internal market (Official Journal of the EU of 14 January 2019, L 11/26).



The Directive also introduces **periodic fines**. According to the draft act, these are to amount to up to 5 per cent of the undertaking's daily turnover in the year preceding their imposition. The draft act assumes that these sanctions will be imposed, *inter alia*, for each day of delay in implementing the decisions of the President of the Office or court judgments related to them.

The draft also includes an extension of the obligation to **provide UOKiK with information or documents** to other natural persons, legal persons and organisational units to which specific provisions grant legal personality. Currently, only undertakings or their associations are obliged to do so. The draft foresees that individuals will have the right to refuse to provide information and documents if doing so would risk criminal liability (freedom from self-incrimination).

The implementation of the ECN+ Directive will also allow for **more effective international cooperation**. The changes in the act assume, among others, the strengthening of cooperation in investigation activities and will allow for enforcement of fines imposed by the President of UOKiK on undertakings in other EU countries.

The proposed amendments also serve to **increase the level of undertaking protection during the proceedings**. This includes, *inter alia*, the need to substantiate the allegations at the commencement of the relevant proceedings, as well as the protection of written communication between the undertaking subject to the search and the independent lawyer representing them.

In addition to the implementation of the ECN+ Directive, the amendment introduces changes resulting from the Constitutional Court judgment of 16 January 2019.¹³ They refer to the possibility of appealing the court's consent to a search and to its procedure by the individual being searched and the President of UOKiK. The legislative process is scheduled to be completed in 2021.

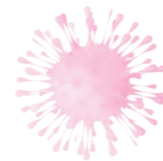
COVID-19 – support for consumers and undertakings

Draft Act of 2 March 2020 on specific solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them¹⁴

In the wake of the coronavirus pandemic, the government has introduced a number of measures under the so-called anti-crisis shield to protect the state and citizens from the negative social and economic effects caused by COVID-19. Within the framework of the Act, the **President of UOKiK has developed regulations providing support for persons repaying or taking out consumer loans, including so-called fast loans, during these challenging times**.

The prepared solutions temporarily impose a lower maximum level of non-interest costs for consumer credit, which is crucial for reducing the overall cost of this type of credit. For loans shorter than 30 days, non-interest costs will not be allowed to be more than 5 per cent. However, for loans lasting 30 days or more, the level of costs will be allowed to range from 15 per cent plus 6 per cent for each year of the loan. This will ensure that, for example, for a loan of one year, the costs cannot be higher than 21 per cent. In addition, regardless of the length of the loan, the level of non-interest costs shall not exceed 45 per cent. The adopted solutions also define affiliated entities – which is supposed to prevent the circumvention of the statutory limits on non-interest credit costs through alternate granting of loans by affiliated entities and accumulation of the above mentioned non-interest credit costs.

At the initiative of the President of UOKiK, the Act also foresees the possibility to establish, by means of regulation of the minister competent for the economy, issued in agreement with the minister competent for health



matters and the minister competent for agriculture and rural development, maximum prices or maximum wholesale and retail margins, applied in the sale of goods or services in the case of basic products of key importance for health protection or functioning of households. If such a solution is implemented, control activities are entrusted to, among others, the Trade Inspection.

Draft Act of 19 June 2020 on interest subsidies for bank loans granted to businesses affected by COVID-19 and on simplified proceedings for the approval of an arrangement in connection with the occurrence of COVID-19 – so-called shield 4.0¹⁵

Shield 4.0 is another package of government solutions to protect the Polish economy and citizens in the wake of the coronavirus pandemic. **In cooperation with the President of UOKiK, the draft law includes provisions to increase the protection of credit recipients and Polish companies against hostile takeovers**. The legislation came into force on 24 July 2020, amending the Act on Competition and Consumer Protection and the Act on Control of Certain Investments.¹⁶

The prepared solutions provide support to credit recipients who find themselves in a difficult situation due to the pandemic. **So-called credit holidays entitle consumers to suspend loan repayments for up to 3 months without being charged interest or other fees**. The provisions shall apply to persons who, after 13 March 2020, have lost their job or other main sources of income and shall apply in respect of credit agreements entered into before 13 March 2020 if the end date of the credit period specified in those agreements is more than 6 months after 13 March 2020. According to the adopted solution, the suspension of the loan repayment shall be automatic as soon as the request is delivered to the creditor. The consumer themselves decide whether they suspend repayment for one, two or three months. During this period, the creditor may only charge for the insurance policy premiums linked to the credit agreement. The

term of the loan, as well as all deadlines stipulated in the loan agreement, will be extended accordingly by the suspension period. In case a credit recipient has several loans of the same type from a given lender (e.g. two loans indexed to CHF), they will only be able to benefit from a credit holiday for one of them.

On the initiative of the President of UOKiK, solutions were also adopted for the **protection of Polish undertakings whose activity is important for public order, security or health**. The President of the Office may object to an investment covered by the provisions of the Act that results in the acquisition, achievement of significant participation or acquisition of dominance over a covered entity by entities based or having citizenship (for individuals) outside an OECD member country.

The regulation covers crucial entities, such as:

- those carrying out business activities relating to electricity, gas, fuels, telecommunications, food processing, manufacture of medicines, chemicals and fertilisers, explosives, weapons and ammunition and technology products for military or police use,
- those developing software used in services essential to society, such as energy, fuel, water and cash supplies, card payments, hospitals, prescription drug sales, transport and food supplies,
- public companies.

In addition, the law introduces the basis for the exchange, via the contact point, of information on foreign investment between the EU Member States and the European Commission.

The new control rules are to apply for 2 years from the entry into force of the law.

¹³ Ref. P 19/17, Polish Journal of Laws, item 128.

¹⁴ Polish Journal of Laws of 2020, item 374.

¹⁵ Polish Journal of Laws of 2020, item 1086.

¹⁶ Act of 24 July 2015 on control of certain investments (Polish Journal of

Laws of 2020, item 2145).



3.1
Information and
educational activities

3.2
Legislative work

3.2.1
National legislation

3.2.2
International legislation

3.2.3
Preliminary ruling
matters

3.3
Social research
and market analysis

3.4
International
cooperation

Draft Act on the Protection of Rights of the Buyer of Housing Units or Single-Family Homes and on the Developer Guarantee Fund

In 2020, the President of UOKiK continued his work on the draft of the new "developer's law".¹⁷ The existing system for protecting the funds paid by the purchaser of a flat does not provide an adequate level of security. The risk relates in particular to the issue of open and closed residential escrow accounts, which are not secured by insurance or bank guarantees. Withdrawal of the accumulated funds from the open and closed residential escrow accounts takes place prior to the transfer of ownership of the property to the purchaser. If a developer goes bankrupt, consumers are at risk of losing both their money and their property.

The draft act primarily provides for **the creation of a Developer Guarantee Fund**, which will strengthen the protection of consumers buying a new flat in the event of the collapse of a development company. The fund will be financed by contributions paid by developers. The amount is to be determined by the type of escrow account and will be further specified in the regulation, allowing for a more flexible response to changing market conditions. The consumer will be able to refuse to accept the premises in case of significant defects in the residential premises. The rules also clarify the procedure for acceptance, including the consequences of the undertaking's failure to remedy the defect within the deadline set by the consumer.

The draft also details the rules for payments by the purchaser into the Residential Trust Account (RTA), the rules for the bank's control powers and for making withdrawals from the RTA to the developer. The rights and obligations of the parties to the development agreement in the event of the bankruptcy of the bank operating the RTA are also defined. The proposed amendments impose

a number of obligations on the developer, including providing the buyer with an information prospectus regarding the offer and having the consent of the mortgage creditor for the so-called unencumbered separation of the premises and transfer of its ownership to the buyer, if such encumbrance exists.

The new draft law aims **to create a comprehensive system to guarantee the security of the buyer's funds** regardless of the type of RTA. It was approved by the Standing Committee of the Council of Ministers with changes resulting from self-amendments and recommended to the Council of Ministers at the end of 2020.

Draft Ordinance amending the Ordinance of the Council of Ministers of 30 June 2014, on the establishment of the regional aid map for 2014-2020¹⁸

The need to amend the Ordinance of the Council of Ministers of 30 June 2014 on the establishment of the map of regional aid for 2014-2020 was related to the end of its validity period on 31 December 2020 and **the prolongation by the EC of the conditions for granting regional aid**, set out in the "Guidelines on national regional aid for 2014-2020",¹⁹ until the end of 2021. These guidelines set out the rules for establishing national regional aid maps for each Member State, identifying the regions eligible for regional aid and the maximum aid intensities. In the case of Poland, the national regional aid map for 2014-2020 was included in this regulation. However, due to, among other things, the situation caused by the COVID-19 outbreak, the European Commission has extended the Guidelines for 2014-2020 until the end of 2021. To further facilitate the granting of regional aid to undertakings in 2021, it was, therefore, necessary to extend the validity of the Regulation.

¹⁷ Act of 16 September 2011, on the Protection of Rights of the Buyer of Housing Units or Single-Family Homes

(Polish Journal of Laws of 2011, No 232 item 1377 and of 2019, item 1805, of 2020, item 471).

¹⁸ Polish Journal of Laws of 2014, 27 July 2013.

¹⁹ Official Journal of the EU C 209, of

COVID-19 – state aid

Draft Regulation of the Council of Ministers of 27 July 2020 amending the Regulation on the scope of information presented by the entity applying for aid other than *de minimis* aid or *de minimis* aid in agriculture or fisheries

The amendment of the regulation²⁰ prepared by the President of UOKiK was aimed at **simplifying the scope of information presented by entities applying for state aid** granted on the basis of the Act on specific solutions related to preventing, counteracting and combating COVID-19.²¹ The changes have made it easier for the undertakings to submit applications and have improved the functioning of the authorities granting aid while at the same time ensuring full compliance of the national regulations with EU law. The regulation entered into force on 5 August 2020.

Draft regulation of the Council of Ministers of 4 June 2020 amending the regulation on reports on granted state aid, information on not granting such aid and reports on delays of undertakings in payments of benefits owed to the public finance sector

Due to the situation created by COVID-19, in particular the emergence of new EU legislation and a large number of emergency aid programmes, it was necessary to amend the so-called reporting regulation. The President of UOKiK has prepared a draft amending the existing rules on reporting state aid. The regulation²² entered into force on 11 June 2020. It introduced new law codes and new destinations for emergency aid, in line with the EC Communication on the temporary framework for state aid measures to support the economy in the context of the ongoing COVID-19²³ epidemic and its revisions.



²⁰ Regulation of the Council of Ministers of 27 July 2020 amending the Regulation on the scope of information presented by an entity applying for aid other than *de minimis* aid or *de minimis* aid in agriculture or fisheries (Polish Journal of Law of 2020 item 1338).

²¹ Act of 2 March 2020 on specific so-

lutions related to preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them, as well as other legal acts providing for the provision of support to undertakings in order to counteract COVID-19 (Polish Journal of Laws of 2020, item 374).

²² Regulation of the Council of Ministers of 4 June 2020 amending the regulation on reports on granted state aid, information on not granting such aid and reports on delays of undertakings in payments of benefits owed to the public finance sector (Polish Journal of Laws of 2020, item 1023).

²³ EC announcement of 19 March 2020 – Temporary framework for state aid measures to support the economy in the context of the coronavirus COVID-19 outbreak (2020/C 91 I/01).



UOKiK's participation in legislative activities carried out on the initiative of other institutions (examples)

In 2020, as part of the government legislative process, the President of the Office actively participated in the process of preparing draft legislation. The most significant activities in this area include giving opinions on the drafts of the following legislation:

Draft Act on handling complaints and disputes of customers of financial market entities and on the Financial Education Fund

UOKiK gave its opinion on the draft law on the handling of complaints and disputes of customers of financial market entities and on the Financial Education Fund. The project was run on the initiative of the Ministry of Finance (now the Ministry of Development Funds and Regional Policy).

The draft foresees that **the President of UOKiK will take over the tasks performed so far by the Financial Ombudsman**. The amendments are intended to provide comprehensive protection for customers of financial market operators. Currently, the President of UOKiK has competencies in the area of collective consumer interests. The new draft legislation will also make it possible to intervene in the case of individual consumer problems. In this way, the authority will have a wide range of options to support consumers in the key area of financial security and make wider use of existing powers. The consolidation of competencies will allow the creation of a single, strong public institution, effectively enforcing the obligations of financial entities towards consumers.

Draft Act on Electronic Communications

In 2020, UOKiK actively participated in the work on the draft Electronic Communications Law (ECL), supporting solutions beneficial to consumers. The project, conducted on the initiative of the Minister of Digitalisation,

aims to **implement into Polish law the 2018 EU Directive establishing the "European Electronic Communications Code"**.²⁴ In addition to the solutions implementing the Directive, the draft of ECL includes other issues important for consumers, so far covered by the Telecommunications Act. Among other things, the President of UOKiK sought to ensure that important information was provided to consumers on a durable medium, thus preventing any possible change by the trader. This applies both to pre-contractual information about the offer and to the question of recording consumers' consent to additional payments being added to their telephone bill. This safeguard will increase consumer protection in the event of a possible dispute with a telecoms operator. The postulated pro-consumer changes are reflected in the draft ECL. Work will continue in 2021.

Draft Act amending the Energy Law and certain other acts

The project initiated by the Minister of Climate (now Minister of Climate and Environment) implements the 2019 EU Directive on common rules for the internal market in electricity.²⁵ In consumer matters, the amendment assumes that a sale agreement or a comprehensive agreement with a household consumer of gaseous fuels or electricity cannot be concluded outside the business premises. The draft also includes clarification of the provisions on updating and supplying a household consumer of fuel or energy with a copy of the "Set of Rights of a Consumer of Electricity or Gaseous Fuels". In addition, it provides for **the possibility of the President of ERO (Energy Regulatory Office) to revoke a licence of an energy company in the event that the President of UOKiK issues a final decision against the energy company recognising the practice as infringing collective consumer interests**. There is also provision for the Negotiation Coordinator to the ERO President to be able to authorise a member of his team to conduct cases as an authorised entity for out-of-court dispute resolution. The President of UOKiK supported the pro-consumer solutions contained in the draft, in particular the in-

troduction of the possibility of withdrawing a licence from an energy company in the event of a decision by the President of UOKiK on practices violating collective consumer interests.

Draft Act amending the Excise Duty Act and certain other acts – an amendment to the Act on a fuel quality monitoring and control system

UOKiK participated in legislative work on the amendment of the Excise Duty Act, which was conducted by the Ministry of Finance (currently – Ministry of Development Funds and Regional Policy). The amendment introduces changes, *inter alia*, to the Act on the monitoring and control system of fuel quality. It is expected that **the tasks and powers of the President of UOKiK and the Trade Inspection will be extended in the scope of diesel oil control**. The proposed regulation aims to tighten the tax system in this area. The draft assumes that Trade Inspection (IH) will control diesel oils in an extended scope, i.e. apart from controlling the existing quality requirements, it will determine whether substances used for marking and colouring oils intended for purposes other than diesel are present in diesel oils or whether they contain substances causing them to be classified under a different CN code. Extended laboratory tests will be aimed at revealing substances that affect the classification of diesel fuel or its intended use and thus will allow the National Tax Administration to check the correctness of payment of due taxes (excise duty).

When working on the project, UOKiK focused on adapting the proposed changes to the already existing solutions for fuel quality control. From the point of view of the Manager of the system for monitoring and controlling fuel quality – the President of UOKiK – it was also important to create development opportunities for UOKiK's laboratory in Bydgoszcz, which will also examine diesel oil samples to an extended range. At the end of 2020, the draft was submitted to the Sejm.

UOKiK's participation in legislative work/ opinions on draft legislation – examples from 2020

- draft normative acts on housing prepared by the Ministry of Investment and Economic Development as part of the implementation of the National Housing Programme
- a draft act implementing Directive (EU) 2019/633 of the European Parliament and of the Council on unfair commercial practices in relations between undertakings in the supply chain for agricultural and food products and Polish legislation on contractual advantage (UTP Directive)
- a draft act amending the Civil Code
- a draft act on liability for infringement of the provisions of the regulation on the mutual recognition of goods lawfully marketed in another member state and designation of the authority operating the product contact point
- a draft act on the promotion of electricity generation in offshore wind farms
- a draft act amending the act on renewable energy sources and certain other acts
- a draft law amending the law on energy efficiency
- a draft act amending the act on electromobility and alternative fuels and certain other acts

²⁴ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications

Code (Official Journal of the EU of 17 December 2018, L 321/36).

²⁵ Directive (EU) 2019/944 of the European Parliament and of the Council

of 5 June 2019 on common rules for the internal market in electricity and amending Directive 2012/27/EU (Official Journal of the EU of 14 June 2019,

L 158/125).



3.2.2 International legislation

The President of UOKiK participates in the development of international legal solutions valid in the European Union. **Representatives of the Office prepare positions of the Government of the Republic of Poland on draft EU regulations and take part in the activities of working groups of the EU Council** where details of draft legal acts are negotiated. The President of the Office shall ensure that competition rules and consumer interests are adequately protected.

Examples of UOKiK's activities in the field of international legislation

Digital Services Act

From July to September 2020, UOKiK actively participated in the EC's public consultation on the Digital Services Act, which aimed at **protecting consumers in the digital market and ensuring fair competition in the online platform environment**. The consultation included the following areas of work: the revision of the e-commerce directive, a new regulation aimed at ensuring a level playing field in European digital markets – specifically targeting large online platforms that act as so-called market watchdogs, and a new competition tool.

As part of the work on the regulation of online platforms, the President of the Office was one of the co-authors of the postulates prepared in the context of the EU "Digital Services Act". He actively participated in the preparation of the submission to the opinion of the Government of the Republic of Poland under the consultations led by the Ministry of Development (now the Ministry of Economic Development, Labour and Technology). In the opinion of the President of UOKiK, the currently existing provisions of competition law (in particular Article 102 TFEU) do not always meet the challenges of the development of digital markets. Competition law, by its *ex post* nature, is often unable to prevent adverse practices by dominant online platforms effectively. In particular, antitrust proceedings are lengthy, and the harm caused

to consumers as well as to society is often irreversible. Therefore, the President of UOKiK expressed the opinion that, in order to secure competition in the digital sector, the EU institutions should undertake both competition policy actions and complementary regulatory initiatives. The President of UOKiK also advocated the need for a precise legal definition of platforms acting as market watchdogs.

While initially the work on the above issues was carried out jointly, eventually the issues of regulation of large platforms were covered by a separate Digital Markets Act (DMA), and the issues concerning the functioning of the digital single market, including the obligations and responsibilities of intermediate service providers operating in this market, are regulated by the Digital Services Act (DSA).

Digital Markets Act (DMA)

In December 2020, the European Commission published a draft regulation on online platforms – the Digital Markets Act. The President of UOKiK has been engaged in work aimed at developing a Polish standpoint on the most relevant issues subject to regulation. The Office participated in the activities of the working groups, meetings and closely cooperated with the Ministry of Economic Development, Labour and Technology, the Office of Electronic Communications and other ministries. Work on the project will continue in 2021, including the development of a definition of systemically important platforms and the development of tools to regulate the market behaviour of these entities.

New Competition Tool (NCT)

In June 2020, the EC launched an initiative on the so-called New Competition Tool. This proposal is one of the measures to ensure that competition policy and rules are fit for the modern economy. It aims to **address potential loopholes in the current EU competition rules**, which have been identified on the basis of enforcement experience in digital markets. This includes a broader reflection on the need for changes to the current competition law framework to keep markets competitive. The President of UOKiK was involved in the work on this legislation and prepared detailed information on

experiences in competition law enforcement and problems of a structural nature, concerning, *inter alia*, the characteristics of digital markets and the strategies of undertakings in these markets that have an adverse impact on competition.

Directive on representative actions for the protection of the collective consumer interests

The directive on representative actions²⁶ is intended to replace the existing regulations in this area. Published in November 2020, the document provides that so-called authorised entities can seek injunctions to stop prohibited practices and compensation orders. It is possible to seek both orders at the same time or each one separately. Such an order would be issued by a court or an administrative authority. The choice of model, as well as the procedure, depends on the Member State. The Directive, while accommodating the diversity of the legal traditions of the individual Member States, allows the State to retain its existing collective redress systems. According to the Directive, however, one of the procedures must comply with the conditions set out therein. It is up to the Member States whether, when implementing the directive, they leave the existing procedures in place or amend them to bring them into line with the requirements of the directive. The Directive also provides for two types of authorised entities (cross-border and domestic). When engaging in the work on this regulation, the President of UOKiK placed particular emphasis on the proposed solutions that ensure:

- that two separate mechanisms (public and private) should be put in place with regard to the protection of the collective consumer interests,
- preserving the right of consumers to withdraw from the procedure if they are dissatisfied with it,
- retaining the possibility to accept a final decision of a court or administrative authority finding an infringement as evidence of the infringement in other proceedings concerning the same infringement and the same undertaking (so-called prejudication).

Legal acts in the field of state aid – examples

In 2020, the President of UOKiK carried out consultations as well as prepared and presented Poland's standpoint to, *inter alia*, the following pieces of legislation:

- draft Commission regulation amending Regulation (EU) No 360/2021 as regards an extension of its application and a temporary derogation allowing this aid to be granted to companies in difficult situations due to the COVID-19 pandemic,
- draft Commission Regulation amending Regulation (EU) No 1407/2013 and Regulation (EU) No 651/2014 as regards their period of application and the corresponding adaptations to Regulation (EU) No 651/2014,
- draft Commission Regulation (EU) amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (as regards the combination of national funds with certain Union funds).

²⁶ Directive (EU) 2020/1828 of the European Parliament and of the Council

of 25 November 2020 on representative actions for the protection of the collec-

tive consumer interests, and repealing Directive 2009/22/EC (Official Journal of

the EU of 4 December 2020, L 409/1).



3.2.3 Preliminary ruling matters

The preliminary ruling procedure aims **to ensure the effective and uniform application of Community law**, in particular, to avoid discrepancies between national and European Union rules. Under this arrangement, the national courts of the EU countries may refer to the Court of Justice (CJEU) to interpret the EU law. The President of UOKiK monitors the preliminary ruling proceedings on an ongoing basis and analyses them in terms of the justification to proceed in case a given verdict may have an impact on the Polish case law.

In 2020, UOKiK received approximately **50 new preliminary ruling cases** referred by the CJEU. These included consumer protection, antitrust law and state aid.

Examples of actions taken by the President of UOKiK in relation to preliminary ruling proceedings before the CJEU

C198/20 X Bank

The proceedings were initiated by a preliminary ruling from the District Court for Warsaw-Wola. Among other things, the court sought to clarify whether:

- the protection afforded by Directive 93/13/EEC²⁷ on unfair terms in consumer contracts is available to every consumer, or only to the so-called average consumer, who is understood to be reasonably well-informed and reasonably observant and circumspect,
- granting the consumer this protection may be influenced by his conduct, i.e. the degree of care taken to understand the terms of the contract fully.

According to the interpretation of the President of UOKiK, **the protection granted by Directive 93/13/EEC**

applies to any consumer regardless of whether they display the characteristics of an average consumer. The average consumer model, on the other hand, is only taken into account to determine whether the contract terms have been drafted in plain and intelligible language. The interpretation of the President of UOKiK is reflected in Poland's stance on the matter.

C-212/20 A. SA

The issue of the interpretation of Directive 93/13/EEC was also the subject of another preliminary ruling by the District Court for Warsaw-Wola. The application to the CJEU sought, among other things, clarification as to whether:

- the term of the credit agreement concerning the rates of purchase and sale of foreign currency should be formulated in such a way that the consumer can determine the rate on a given day on the basis of the term, or is it possible to formulate the term in a more general way, referring to the market value of the foreign currency,
- it is permissible for a court to adopt an interpretation of a contractual provision to the effect that foreign exchange rates are not determined arbitrarily but by the free market.

The President of UOKiK has proposed an interpretation of the provisions of Directive 93/13/EEC according to which:

- **the contract term must be formulated in such a way that the average consumer is able to understand the method (criteria) of calculating the exchange rate** and thus to estimate the amount of their financial obligations,
- in the context of the Directive, when examining whether a contract term satisfies the requirement as to plain and intelligible language or whether it is unfair, it is not appropriate to examine only the best possible meaning of that term or to amend its content for the purpose of that examination.

²⁷ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (Official Journal of the EU of 21 April 1993, L 95/29).



Poland's stance presented in the proceedings takes into account the interpretation proposed by the President of UOKiK.

C-213/20 "A." Life Insurance Company

In its preliminary ruling, the District Court for Warsaw-Wola asks, *inter alia*, whether, in the context of the provisions of Directive 2002/83/EC:²⁸

- information obligations shall also apply to the insured if they are not the policyholder and, as a consumer, have joined a group life insurance with an insurance capital fund,
- the obligation to inform about the characteristics of the capital assets associated with an insurance capital fund also implies that the consumer should be informed in a comprehensive and comprehensible manner about all types and scale of risks associated with investing in the capital fund assets,
- the consumer should be informed of all investment risks and related conditions communicated to the insurer by the issuer of the assets,
- prior to the conclusion of the contract, the consumer must be informed in a separate pre-contractual procedure of the characteristics of capital assets and the risks associated with investing in those assets, and whether the Directive precludes a rule such as that laid down in Article 13 sec. 4 of the Act on Insurance Activity of 22 May 2003, i.e. the provision of this information only at the time of conclusion of the contract or accession to insurance,
- the implementation of the information obligations set out in the Directive should be regarded as an essential element of the contract, and failure to comply with them may render the declaration of adhesion null and void or ineffective.

In the course of the work on the Polish position, the President of UOKiK proposed an interpretation of the provisions of Directive 2002/83/EC according to which:

→ the information obligations also cover the provision of information to the consumer who, as a policyholder, has joined a group life insurance contract with an insurance capital fund (as a real investor) and is not a policyholder,

→ the obligation to inform about the characteristics of the capital assets associated with an insurance capital fund means that **the consumer should be informed in a comprehensive and comprehensible manner about all risks** (nature and extent) associated with investing in these assets and the factors determining the consumer's risk, including the risks communicated by the issuer to the insurer,

→ the consumer, prior to the conclusion of the insurance contract (individual or group insurance), must be provided with information on the characteristics of the capital assets and the risks associated with investing in them, even if that information is included in the content of the contract, and the provisions of the Directive preclude an interpretation of national law which permits that information to be provided only at the time of conclusion of the contract or taking out an insurance policy,

→ in the event of a failure to provide the consumer with the necessary information to make an informed decision on whether to take out an insurance contract, the national court is required to assess the trader's practice also in the light of the provisions of Directive 2005/29/EC and, if an unfair commercial practice is established, to draw all the consequences of that breach under national law.

Poland's stance presented in the proceedings takes into account the interpretation proposed by the President of UOKiK.

C-88/20 ENR Grenelle Habitat e.a.

UOKiK was analysing a reference for a preliminary ruling from a French national court. The case involved a company selling devices called electricity savers. It contacted

²⁸ Directive 2002/83/EC of the European Parliament and of the Council of

5 November 2002 on life assurance (Official Journal of the EU of 19 December

2002, L 345/1).



consumers by telephone without obtaining their prior consent for direct marketing. As a result of consumer complaints, two proceedings were initiated in this regard.

The first proceeding was of an administrative nature and was conducted by the French public consumer protection authority. It ended with a decision imposing administrative fines on the company for conducting "direct telephone marketing without obtaining prior written or electronic consent". The second proceeding was judicial in nature and was conducted at the request of the French prosecution authorities. The accusation concerned a misleading commercial practice. First, in announcing the alleged energy savings, the company used, among other things, false or misleading information. These included, for example, important product features or characteristics, service results or product test results. Secondly, when presenting the offer, the company's representatives impersonated another operator, thus making it impossible to identify the entity commissioning the marketing contact correctly.

The preliminary ruling, in that case, concerned the question of whether the cumulation of criminal provisions and the unjustified double punishment for the same act were permissible. Regarding the French court's doubts, the President of UOKiK stated first of all that they do not relate to the essence of prohibited market practices within the meaning of EU Directive 2005/29/EC on commercial practices.²⁹ What they do relate to, however, is **the question of the imposition of sanctions for this type of practice in criminal law and administrative law**, and in particular, the question of authorising double punishment for the same act. Meanwhile, the directive does not harmonise enforcement regimes, leaving the determination of sanctions to national law. The President of UOKiK pointed out that under Polish regulations, there is a possibility of concurrence of liability for unfair market practices, as in the French system, and **in this context, different types of liability are possible**. For example, an undertaking that uses an aggressive market practice is subject to a fine within the meaning of the

provisions on misdemeanours, and if at the same time the practice infringes collective consumer interests – they are subject to an administrative fine imposed by the President of UOKiK. Seemingly, it may appear that in this instance, the prohibition of double adjudication (punishment) in a single case is violated. It should be noted, however, that the Competition and Consumer Protection Act foresees a sanction for a practice infringing the collective consumer interests and not for an illicit market practice per se. Therefore, the President of UOKiK stated that the judgment in the described preliminary ruling case should not result in the need for legislative changes on the Polish ground, nor should it affect the practice of law application. By the end of 2020, there was no verdict in the case.

C-117/20 bpost

The case involved the behaviour of the historical postal operator on the Belgian market – bpost SA – regarding the granting of volume discounts for non-universal postal services to intermediaries ("mail consolidators"). In 2010, bpost SA changed the rules for volume discounts in such a way that the discount was granted only for the volume of mail generated by a given consolidator's customer, which constituted the so-called single-sender discount.³⁰ The above-mentioned change in the terms and conditions of cooperation of the company with intermediaries introduced by bpost was examined by the Belgian authority regulating the postal services sector (IBTP) in the light of the rules of Belgian postal law and by the Belgian antitrust authority (Conseil de la concurrence) from the perspective of antitrust law. In the first ("regulatory") proceeding on the practice in question, the IBTP examined the practice in particular on the basis of the provisions of national law implementing Directive 97/67.³¹ By decision of 20 July 2011, the IBPT fined bpost EUR 2.3 million for discrimination in bpost's tariff system based on the unjustified different treatment of bulk senders and intermediaries (12 of Directive 97/67). The Belgian Court of Appeal, which was considering an action for the overturning of this decision, referred



a question to the CJEU for a preliminary ruling on this matter, in response to which the CJEU, in its judgment of 11 February 2015 (C-340/13, bpost, EU:C:2015:77) indicated that the system of volume discounts per shipper does not constitute discrimination prohibited by Article 12 of Directive 97/67.³² Accordingly, in a judgment of 10 March 2016, the Court of Appeal overturned the IBPT decision.

The second ("competitive") proceeding on the practice at issue was initiated following an appeal against the Belgian antitrust authority's decision of 10 December 2012. The authority found that, although bpost's differential treatment of counterparties in terms of volume discounts between January 2010 and July 2011 does not constitute discrimination in the strict sense of the term, it nonetheless constitutes an abuse of bpost's dominant position (in the light of Article 102 of the Treaty on the Functioning of the European Union and the national equivalent of that provision), because such conduct of the company puts consolidators at a competitive disadvantage in relation to that postal operator.

In the present case, a legal issue arose as to **whether the imposition of a penalty** on bpost by the Belgian antitrust authority for abuse of a dominant position **did not constitute a breach of the ne bis in idem**³³ principle. Initially, in the second of (competitive) proceedings, the Belgian Court of Appeal ruled that bpost was entitled to invoke the ne bis in idem principle. However, the Belgian Court of Cassation overturned the judgment of the Court of Appeal and concluded that Article 50 of the CFR did not preclude the concurrence of both proceedings within the meaning of this provision. After the judgment was overturned by the Court of Cassation, the Court of Appeal, reconsidering the disputed case, found it necessary to ask the CJEU to interpret the ne bis in idem principle on the grounds of competition law. Hitherto, under this law, in accordance with the CJEU jurisprudence, the standard of protection of undertakings accused of antitrust law infringement – under the

ne bis in idem principle – has been lower than in cases resolved under other laws, in particular, due to one of the premises formulated by the CJEU for this principle, i.e. the premise of identity of the protected legal interest.³⁴ The national court, therefore, sought to ascertain whether the principle in question precludes a penalty being imposed on the same company under competition law where that company's conduct had previously been found – in a final court judgment – not to infringe the principles of postal law. The Belgian court also sought to answer the question of whether competition law pursues a different (complementary) objective to the provisions of postal law.

The President of UOKiK indicated that **maintaining the criterion of legal interest**, as well as the previous jurisprudence practice of the CJEU, **is justified due to the specificity of competition law** (cases under competition law differ from criminal cases in the strict sense) and due to the need to ensure the effectiveness of EU competition law. The President of the Office also stressed that under the European Convention on Human Rights, the European Court of Human Rights accepted the possibility of lower standards of procedural guarantees taking into account the specificities of administrative adjudication.³⁵ A change in this approach by the CJEU, through the abandonment of the legal interest criterion under EU competition rules, will narrow the applicability of national and EU competition rules and may jeopardise the effectiveness of the parallel application of EU and national competition rules by the EC and national competition authorities. Application of the condition of identical legal interest does not exclude that sometimes in an individual case under different regulations (e.g. antitrust law and sectoral regulations, e.g. postal law), legal interests can be similar or identical. By examining an anti-competitive practice solely from the perspective of specific historical facts (without regard to the legal qualification of that conduct), the features that distinguish competition law infringements would not be

²⁹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 on unfair business-to-consumer commercial practices in the

internal market (Official Journal of the EU of 11 June 2005, L 149/22).

³⁰ For example, if a consolidator transferred postage from ten of its cus-

tomers to bpost, the discount was given for the volumes of postage generated for each of those customers separately, rather than as a cumulative volume of

all postage.

³¹ Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the

development of the internal market of Community postal services and the improvement of quality of service, OJ L 15, 21.1.1998, p. 14–25. Pursuant to Article 12 of the Directive, in the case of volume discounts granted by postal operators ("special tariffs"), these tariffs must be transparent and non-discriminatory.

³² Bulk mailers and intermediaries are not in a comparable situation in the light of the objective pursued by the system of volume discounts per sender, namely the stimulation of demand in the area of postal services.

³³ Pursuant to Article 50 of the Charter of Fundamental Rights (CFR): "No one

shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law".

³⁴ Judgment of the CJEU of 14 February 2012, in Case C-17/10, Toshiba

Corporation and Others. Against Úřad pro ochranu hospodářské soutěže, EU:C:2012:72, paragraph 97.

³⁵ This also applies to antitrust cases. See the judgment of the ECHR of 27.09.2011, in case 43509/08, A. Menarini Diagnostics S.R.L. v. Italy, HUDOC.



taken into account. The assessment of these behaviours (anti-competitive agreements and abuse of a dominant position) occurs from the perspective of their economic objectives or effects, including in their territorial dimension. In fact, they are prohibited and prosecuted precisely because, by their very nature, they have an effect on competition or are likely to have such an effect.

The Court of Justice joined the present case with Case C-151/20, Nordzucker, and asked the parties involved about the need to maintain or reject legal interest as a criterion for the ne bis in idem principle. The case will continue in 2021.

C-306/20 Visma Enterprise

The preliminary question from the Administratīvā apgabaltiesa (District Administrative Court of Latvia) concerned a case in which the Latvian Competition Council imposed a penalty on SIA Visma Enterprise for having entered into an anti-competitive agreement by using, in the distribution contracts for the products of that company, **a provision reserving customers to a particular distributor** for a certain period (up to six months) **prior to the conclusion of the sales contract**, i.e. during the sales process.

In the preliminary questions, the Court asked, *inter alia* whether an agreement between a manufacturer and distributors, such as that at issue in the present case:

- may be regarded as an agreement between undertakings which has as its object the prevention, restriction or distortion of competition within the meaning of Article 101 sec. 1 TFEU,
- shows indications that make it possible to assess that the agreement is not exempted from the general prohibition of cartels,
- can be regarded as an exception allowing the conclusion of vertical agreements providing for a restriction on active sales.

The analysis of the actual facts of the case indicates that the restriction of sales by registering a potential trans-

action can be qualified as vertical market partitioning, which is in principle prohibited. This arises from Article 4(b) of Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101 sec. 3 TFEU to categories of vertical agreements and concerted practices. However, it is exceptionally permissible to restrict active sales by a buyer that is a party to an agreement to a certain group of customers that the supplier has reserved for itself. However, such protection of exclusively allocated customers must allow for passive sales to these customer groups, which does not appear to be the intention in this case. Therefore, restricting passive sales in addition to active sales is a practice prohibited by the competition law. Such an agreement restricts competition and is prohibited on the grounds of its objective. The above does not exclude that, in the event that antitrust proceedings are initiated, an undertaking may prove that all cumulative conditions defined in Art. 101 sec. 3 TFEU are met and thus benefit from an individual exemption. The case will continue in 2021.

C-377/20 Servizio Elettrico Nazionale

The case concerns a request by the Italian court Consiglio di Stato for a preliminary ruling on abuse of a dominant position.

The Italian court seeks to ascertain whether the conduct which constitutes an abuse of a dominant position may in itself be lawful (e.g. civil or data protection law) and qualify as abuse solely because of the effect generated on the market, or whether it must be characterised by a specific element of illegality, consisting in the use of methods or means of competition other than normal. With regard to this issue, the President of UOKiK pointed out that, in the light of the case-law of the EU Court of Justice to date, conduct that complies with the provisions of civil or administrative law of a given Member State may be deemed an abuse of a dominant position.

The Italian court also asked about the purpose of the provision sanctioning the abuse of a dominant position, i.e. whether it is to maximise consumer welfare or whether the provision is intended to preserve the competitive structure of the market. In the opinion of the President of the Office, this issue has also already been



substantially resolved by the case-law of the EU Court of Justice. From these judgments, it can be deduced that **there is no contradiction between the objective of maximising consumer welfare and the objective of maintaining a competitive market structure**. The prohibition of Article 102 TFEU covers conduct that harms consumers, but this harm is not necessarily direct and may be caused by breaching the structure of effective competition.

In addition, the Italian court seeks to determine whether the exclusionary practice described in the factual circumstances constitutes an infringement per se or whether the dominant can protect itself from liability by demonstrating the absence of actual effects of the practice. The question of whether proof of actual effects is necessary to establish abuse of a dominant position by exclusion from the market may be subject to some doubt. The resolution of the question on the absolute illegality of exclusionary practices will be interesting in the context of the case-law of the EU Court of Justice, which increasingly emphasises the need for the competition authority to demonstrate the anti-competitive effects of practice in the form of abuse of a dominant position. The case will continue in 2021.

C-915/19 do C-917/19 Eco Fox i in.

The proceedings before the Italian national court concerned doubts regarding the possibility of qualifying as new state aid – subject to the obligation to notify the EC – of a normative act of secondary law, which had an ex tunc (retroactive) effect on the detailed rules of application of the reduced excise duty rate on biodiesel, changing retroactively the criteria for the distribution of benefits to the applicant companies without extending the duration of the tax credit scheme. The information provided showed that the Italian State had developed three aid schemes to facilitate the launch of the domestic biodiesel market, which were subsequently approved by the European Commission. However, part of the provisions relating to the criteria for granting biodiesel pro-

ducers a quantity of product exempt from excise duty contained in the programmes were nullified with ex tunc effect by the Consiglio di Stato (Council of State). New regulations in this regard were adopted by the contested Decree 37/2015, which, however, was not notified to the European Commission.

In examining that reference for a preliminary ruling, it was necessary first of all to refer to Article 108 sec. 3 of the Treaty on the Functioning of the European Union, according to which "the Commission shall be informed, within sufficient time to enable it to submit its comments, of any plans to grant or alter aid". This principle is reiterated in Article 2 sec. 1 of the Council Regulation (EU) 2015/1589 of 13 July 2015, laying down detailed rules for the application of Article 108 TFEU³⁶ – "... the State concerned shall notify the Commission in due time of any plans to grant new aid". **New aid**, on the other hand, **means all aid**, namely aid schemes and individual aid, which **is not existing aid, including alterations to existing aid** (Article 1 letter c) of the Regulation 2015/1589). On the other hand, the concept of "alteration to existing aid" is clarified in Article 4 of Commission Regulation (EC) No 794/2004,³⁷ which states that "alteration to existing aid shall mean any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market".

On the basis of an analysis of the information provided in that reference for a preliminary ruling, it cannot be considered that the amendments made by the Italian authorities to the aid schemes approved by the Commission were merely changes "of a purely administrative or formal nature". They should therefore be notified to the Commission in accordance with Article 108 sec. 3 TFEU.

³⁶ Official Journal of the EU L 248 of 24 September 2015.

³⁷ Commission Regulation (EC) No

794/2004 of 21 April 2004, on the implementation of Council Regulation (EU) 2015/1589 laying down detailed

rules for the application of Article 108 TFEU (Official Journal of the EU L 140 of 30 April 2004, as amended).



3.3

Social research and market analysis

Market research is an important source of information for the President of UOKiK on the state of competition in selected sectors of the economy. They serve to collect evidence for ongoing proceedings and analyses of concentration processes. The Office also conducts social surveys to diagnose the level of knowledge of selected legal issues among consumers and undertakings.

Market research

The President of UOKiK conducts **research aimed at diagnosing the general market situation, selected sectors or a specific problem** affecting the situation of consumers or the conditions for conducting business activity. Such analyses are carried out **in the form of separate administrative proceedings**, and their results may be used for the Office's intervention. Market research is carried out, among other things, by asking questions to undertakings operating in a given industry. Cooperation with undertakings during the research process is essential for establishing facts and gathering evidence. The analyses shall focus in particular on markets that, due to their existing structure or changes, are at greater risk of anti-competitive behaviour. They can be nationwide or local. In 2020, the President of UOKiK initiated a total of 31 proceedings to collect information on individual markets. They served to identify possible distortions of competition or the threat thereof or to analyse their impact on consumer interests. 32 such proceedings have been completed.

The President of UOKiK also conducts **market research directly related to merger proceedings**. They serve to determine whether the deal will not lead to a significant restriction of competition in the market. Such analyses are not conducted as separate proceedings but are an integral part of the case. More information: 1.2 Concentration control.

Market research³⁸ in 2020

	New proceedings	Completed proceedings
Nationwide research	13	14
Local research	18	18

Market research – examples

Market study on municipal waste management services in installations (phase II of the market study on municipal waste management services)

UOKiK has received signals of large increases in municipal waste management fees. Therefore, in 2019, the President of the Office launched a market investigation, which was conducted in two stages. The first phase (completed in 2019) examined all 302 urban municipalities.

The purpose of the analysis was to gather information on the fees charged to residents between 2014 and 2019 and to learn more about the factors influencing the fees (for more information: UOKiK's 2019 Activity Report).

In the second phase, **regional installations for municipal waste management** were examined, and the conclusions were presented in a separate report published in 2020. The analysis covered the market situation from 2014 to 2019. **The survey covered a total of 171 installations**, i.e. all those applying the most popular mechanical-biological waste processing method in Poland. The majority of such systems are managed by operators with predominantly public capital, mainly local government, and about 30 per cent of the companies are privately owned. The study by the President of UOKiK indicates that the main reasons for the increase in waste processing prices were: an increase in the costs of operation of the installations, insufficient competition, insufficient influence of local governments on the prices offered by undertakings. It should be noted that during the course of the work on the report, the regulations for the regional installation for municipal waste management changed. Until September 2019, they could only serve a specific area (Municipal Waste Management Region). Companies collecting waste in a given municipal waste management region had to bring it to a specific installation. Under the new regulations, as of September 2019, the division into regions has been abolished, regional installations for municipal waste management have been replaced by municipal installations, and waste collection companies are allowed to export waste over long distances. Greater freedom for companies to choose where to process their waste has not led, at least during the first months of no regionalisation (as of the date of publication of the report, i.e. 11 May 2020), to widespread and effective price competition among installations nationwide. Transporting waste over long distances is associated with higher costs, which may exceed the possible benefits of a lower price. Therefore, few companies seize this opportunity. It is only used by some of them in the areas with the most expensive installations.

In the opinion of the President of UOKiK, the solution to the problem of price increases may lie in, *inter alia*,

greater activity on the part of local governments, further expansion of the processing capacity of installations, mechanisms for intensifying competition or the creation of market supervision in the field of pricing (establishment of a regulatory institution).

Market survey on tomato procurement and processing

The aim of the 2019-2020 survey was to analyse the tomato procurement and processing market in Poland. In the course of the examination, **information was collected from tomato traders and companies processing tomatoes into semi-finished and finished products. The survey covered 97 entities**, of which 37 are involved in the intermediation of tomatoes and semi-finished products, and 60 entities process tomatoes into semi-finished and finished products. In total, these entities purchased 165 thousand tonnes of tomatoes from Polish producers for processing. In addition to information on market structure, the study analysed the clauses of fresh tomato supply contracts with farmers and with intermediaries. A comparative analysis was also made of how contractors were selected and how often they changed suppliers. The most important clauses of these contracts were examined concerning, among other things: the length of time for which they were concluded, the means of setting the price, payment deadlines, force majeure, contractual penalties and clauses aimed at ensuring quality. The analysis was conducted in the context of their compliance with the provisions on unfair use of contractual advantage.

Examples of studies initiated in 2020

- Study of freight exchanges
- Study of the market for daily consumer goods
- Study of the automotive spare parts and accessories market for motor vehicles
- Study of the pork market

³⁸ Investigations aimed at gathering information on specific markets, conducted as separate explanatory proceedings and classified as separate

cases (independent from a merger or antitrust proceedings). Some of the proceedings concerning local markets are linked to nationwide research pro-

jects coordinated by the UOKiK headquarters. In 2020, one of the initiated proceedings was related to an ongoing nationwide project and 5 of the com-

pleted proceedings related to a total of 2 nationwide research projects.



Social research

The President of UOKiK commissions social surveys that serve both intervention and legislative purposes, as well as the implementation of the Office's educational and information policy. The research may concern, among other things, knowledge of consumer rights, antitrust law, consumer attitudes to specific market phenomena. In 2020, **2 social surveys** were carried out.

The first research³⁹ addressed, among other things, the question of **knowledge of basic consumer protection rights and institutions**. The results of the survey showed that among this type of organisations, UOKiK and consumer ombudsmen enjoy the highest recognition (72 per cent of indications each from the list of institutions), followed by the Trade Inspection (60 per cent). At the same time, UOKiK was most frequently mentioned in the case of so-called spontaneous recognition (without a supporting list of entities). The survey revealed a widespread awareness among Poles of the existence of consumer rights (99 per cent of respondents) and the need to promote the applicable rules constantly. In the second part of the survey, respondents shared their opinions and experiences regarding **fake online shopping reviews, the use of smart devices (SMART), and the use of financial apps**.

The second social research⁴⁰ was directly related to the educational project "UOKiK tests". Its purpose was to learn about consumer preferences for products tested in UOKiK's laboratory comparison tests.

The recognition of UOKiK
among consumers is



³⁹ The survey commissioned by UOKiK and conducted by PBS Sp. z o.o. on a representative sample of Poles aged 15 and older.

⁴⁰ The survey commissioned by UOKiK and conducted by PBS Sp. z o.o. on a representative sample of Poles aged 18 and over.

3.4 International cooperation

Globalisation and the growth of the digital economy have brought threats to consumers and competition beyond national borders. Effective protection of market participants is therefore closely linked to international cooperation between governments and competent authorities. In 2020, UOKiK was involved both in initiatives undertaken in the European Union forum and within global organisations and networks.

Cooperation on antitrust issues

European Competition Network (ECN)

The EC and national competition authorities in all EU Member States work together through the European Competition Network. The joint actions concern, among other things, mutual information on planned enforcement decisions, coordination of proceedings or exchange of evidence.

On 26-27 November 2020, the President of UOKiK took part in the European Competition Network's DG Meeting. Issues discussed at the meeting included existing merger and acquisition regulations, the P2B,⁴¹ Regulation, competition law issues vis-à-vis sustainable development, the planned Digital Markets Act (DMA) proposal, state aid in the era of COVID-19.

Council of the European Union – German Presidency

The German Presidency of the EU Council organised the **European Competition Day** on 7-8 September 2020 in

⁴¹ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users using

online intermediary services.

Berlin, which was attended by the President of UOKiK. The main topic was the issue of ensuring a level playing field for European companies and state-owned companies from third countries, meeting the challenges of competition policy in the context of international crises (such as COVID-19) and competitive conditions within the digital economy. The President of UOKiK also participated in the **Conference of Directors General** on Competition Policy, organised on 17 December 2020.

Representatives of UOKiK also took part in the activities of the **Working Party on Competition**, which is responsible for reviewing EU legislation in this field. In October and December 2020, two meetings were held by means of videoconferencing. The topics discussed the evaluation of the Commission's notice on the definition of the relevant market, the regulation and guidelines on vertical and horizontal block exemption, and the White Paper on foreign subsidies.

European Commission – competition policy in support of the European Green Deal

The Green Deal is an action plan for a sustainable EU economy. In 2020, the EC collected, among other things, proposals from antitrust authorities, academia or business on how competition policy could support the Green Deal. Nearly 200 institutions participated in the project. UOKiK referred to the topic of state aid control, antitrust legislation and concentration control. The project's closing conference took place on 4 February 2021.

International Competition Network (ICN)

The International Competition Network (ICN) is a platform for cooperation and exchange of experiences of more than 130 competition authorities from around the world. In 2020, UOKiK participated in two working groups on cartels and agency effectiveness.

As part of the **Cartel Working Group**, UOKiK was involved in a project on the challenges faced by competition authorities during the COVID-19 crisis. Particular attention was paid to the detection, assessment and sanctioning of cartels formed during the crisis. UOKiK also partici-

pated in a November webinar setting out the group's priorities in this area. The outcome of the work is intended to set out the competition authorities' approach to horizontal agreements to overcome the effects of the crisis and prepare the ground for further competition development during the post-crisis recovery.

As part of the **Agency Effectiveness Working Group**, UOKiK was involved in a project on Case Initiation and Prioritisation. Representatives of UOKiK participated in an October webinar on agency prioritisation of competition law enforcement (means, criteria, challenges). UOKiK also cooperated in a project on Digitalisation, Innovation and Agency Effectiveness, including determining the level of technological sophistication of such institutions.

UOKiK also attended the **International Competition Network 2020 Virtual Annual Conference (ICN)** on 14-17 September 2020. The meeting was co-organised with the US Federal Trade Commission. The event was attended by competition agency executives from around the world, including the President of UOKiK. Competition experts from international organisations, lawyers, academics and business representatives were also present. The meeting focused on the digital economy, including agency strategies or concentrations in the digital services market. In his speech, the President of UOKiK pointed out the need to use artificial intelligence tools to achieve the Office's statutory objectives and also addressed the issue of large digital platforms that may limit competition and thus harm consumers' interests.

The Competition Committee of the Organisation for Economic Cooperation and Development (OECD)

In February 2020, UOKiK participated in the OECD Competition Open Day, organised for the third time by the OECD. In June 2020, representatives of the Office participated in a meeting of the **Working Party No. 3 on Cooperation and Enforcement**, during which they presented actions undertaken by UOKiK in the area of counteracting collusive tendering.



As part of its cooperation with the OECD, the Office also provided its input to the competition agency's annual reports for 2019 (Annual Reports by Competition Agencies on recent developments). UOKiK summarised, among other things, key legislative changes and key decisions on competition and concentration control. Representatives of the Authority also participated in the OECD's **Global Forum on Competition**, held on 7-10 December 2020. The conference covered issues such as abuse of dominance in digital markets, economic analysis in concentration control, and market research.

Cooperation with the European Commission on state aid

In June and September 2020, UOKiK participated in the meetings of **the Advisory Committee** with the participation of the Member States, the EFTA Surveillance Authority and the EC. The main topic covered the proposed amendments to Regulation (EU) No 360/2021 with regard to the extension of its application and the temporary derogation allowing this aid to be granted to companies in difficulty as a result of the COVID-19 pandemic.

In addition, UOKiK participated in the work of **the Transparency Steering Group**. The group's activities are aimed at developing EC guidelines on how to record data in the TAM system. It is a system for the Member States to publish information on a single website about the largest cases of aid granted in terms of value. In 2020, Poland participated, as part of the group, in a study to examine how Member States implement the transparency obligation. As part of the project, the system of reporting and monitoring state aid in Poland was described in detail; several video conferences were held with a representative of the European Policies Research Centre (EPRC) operating within the University of Strathclyde in Glasgow and TU Delft.

In October 2020, the Office participated in a **webinar on horizontal enabling conditions**. The event presented the EC criteria for fulfilling particular conditions by the Member States in connection with the adoption and implementation of operational programmes under the new financial perspective.

In 2020, UOKiK was also involved in the work on the construction of a new system for monitoring state aid in the Member States – SARI2. The SARI system is capable of providing the EC with annual reports on state aid granted. The resulting data are used to produce the Commission's State Aid Scoreboard, which provides a cross-sectional overview of state aid across the EU and in each Member State, broken down by form, type and use. Within the framework of the work on SARI2, the Office gave its opinion on its functions and tested a draft version of the system.

Other events

UOKiK also participated in the **UNCTAD Eighth UN Conference on Competition and Consumer Protection**, which took place on 19-23 October. This event is organised every 5 years, and the previous editions were dedicated to the topic of competition rules. In 2020, for the first time, issues directly related to consumer protection were also discussed. During the conference, discussions covered, among others, the strengthening of competition and consumer protection in the digital economy, the fight against cross-border cartels and the enforcement between consumer protection authorities in e-commerce.

UOKiK also participated in the **FTC's 13th Annual Central & Eastern Europe Competition Conference**. The event was organised on 1 October 2020 by the US Federal Trade Commission. The meeting discussed, among other issues, the economic conditions of competition and economic tools for assessing concentration.

Cooperation on consumer protection

Consumer Policy Network (CPN)

The CPN network consists of institutions responsible for enforcing EU consumer protection legislation. The EC organises CPN meetings several times a year, which provide a platform for the exchange of experience on the most topical horizontal consumer protection issues, both at the EU and national levels.



UOKiK participated in two meetings planned for 2020 (in May and October). During the meetings, the shape of the New Consumer Agenda for digitalisation, sustainability and enforcement was discussed, as well as the impact of the COVID-19 pandemic on consumers. The EC also organised two ministerial-level meetings in 2020.

Cooperation between Member States' authorities in the field of consumer protection (Consumer Protection Cooperation – CPC)

The CPC Network operates under the provisions of Regulation 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws. In the framework of the CPC, the European Commission organises meetings of Member States' competent authorities three times a year. Representatives of UOKiK regularly participated in CPC working group meetings held in March, June, October and December. The meetings focused on the situation of consumers during the COVID-19 pandemic, especially in the context of cancelled tourism events, unfair practices of traders offering their goods on online platforms and the definition of common priorities for next year. In addition to these events, there were also meetings of

permanent thematic groups, e.g. e-enforcement group, which deals with, e.g. online marketing, false product/service reviews, influencers. Additional workshop-type meetings, e.g. with online platforms, were also among the important initiatives.

International Consumer Safety Network (CSN)

In March 2020, UOKiK representatives took part in the meeting of the International Consumer Safety Network (CSN). The main topic of the meeting was the planned revision of the GPSD. Issues concerning the risks posed by new technologies, the challenges of selling products online and the effectiveness of market surveillance were also discussed. In addition, the discussion touched on the issues of standardisation and international cooperation.

UOKiK also participated in a workshop in June on the requirements for specific types of protective masks in the context of COVID-19. In addition, in September 2020, the Office took part in discussion with the representatives of the EC and the Polish Representation in Brussels on the planned amendments to the General Product Safety Directive.



3.1
Information and
educational activities

3.2
Legislative work

3.2.1
National legislation

3.2.2
International legislation

3.2.3
Preliminary ruling
matters

3.3
Social research
and market analysis

3.4
International
cooperation

Cooperation between Member States' authorities on market surveillance

European cooperation on market surveillance is achieved, among other things, through informal groups of market surveillance authorities called **Administrative Cooperation Groups (ADCOs)**. The members of these groups are appointed by the Member States and represent the national authorities responsible for market surveillance in the sector concerned.

Within ADCO, the Authority participates in cyclical group meetings on the Textile Regulation 1007/2011 (Textile ADCO), the Toy Directive 2009/48 (ADCO TOYS), the Low Voltage Directive 2014/35 (ADCO LVD), the RoHS Directive 2011/65 (ADCO RoHS), acts on ecodesign and dealing with energy labelling (ADCO ECO&EL), the Pyrotechnics Directive 2013/29 (ADCO PA), the PPE Regulation 2016/425 (ADCO PPE), and in the Tyres group (Tyres labelling ADCO). ADCO working group meetings are used to exchange experience and share the practices of market surveillance authorities in a given sector. They also provide a venue for the exchange of information on interpretative and practical problems encountered during inspections.

The Office also participated in two meetings of the **Market Surveillance Sub-Working Group** of the Expert Group on the Internal Market for Products – Market Surveillance Group (IMP-MSG⁴²). Meetings were held in June and October. The main topic of the meetings was the preparation for the application of the new Regulation (EU) 2019/1020 on Market Surveillance and Product Conformity, which is intended to improve the functioning of the market surveillance system. In particular, the work concerned the creation of the EU Product Compliance Network, which became operational on 1 January 2021. In addition, due to the new Regulation (EU) 2019/1020 on Market Surveillance and Product Conformity, a Market Surveillance Committee has been established to discuss issues related to the implementation of the provisions of this Regulation and the reform of the market surveillance system. The Committee held its first two meetings in November and December 2020.

In 2020, **two meetings of the RAPEX Contact Points** were held (February, October). The meetings were attended by representatives of the EC (DG JUST) and members of national contact points, including UOKiK. The meetings discussed the functioning of the RAPEX system, the risks posed by individual products (e.g. new chemical hazards) and planned changes to product safety legislation.

The Directorate-General for Communications Networks, Content and Technology (DG Connect)

DG Connect is responsible for EU policies on the digital single market, internet security and digital learning and innovation. In December 2020, UOKiK participated in an online meeting with representatives of DG Connect, during which consumer protection issues in the telecommunications services market were discussed.

International Consumer Protection and Enforcement Network (ICPEN)

The ICPEN network is formed by consumer protection authorities from more than 60 countries. The organisation serves to exchange information on market practices with a cross-border dimension that may adversely affect consumers' interests. In 2020, UOKiK provided information on, *inter alia*, pyramid schemes, out-of-court settlement of consumer disputes, liability regulation of digital platforms. One of the leading topics of cooperation concerned consumer protection issues in relation to the COVID-19 pandemic.

The Authority has been involved in **Enforcement During the COVID-19 Working Group** project. The group organises regular regional webinars. UOKiK participated in the first event of its kind, organised in November 2020. Apart from Poland, it was attended by partners from Hungary, Germany and the Netherlands, as well as representatives of the ICPEN Secretariat and the EC. The meeting analysed issues concerning national experiences (problems and solutions) in relation to COVID-19.

Within the working group, UOKiK also participated in another part of the above-mentioned project concerning the analysis of consumer complaints related to unfair market practices during a pandemic. A comparison of the experiences of ICPEN countries presented in special reports in this regard is planned. The project will continue into 2021.

Within ICPEN, the Authority participated in the **Artificial Intelligence Working Group**. The group addresses the question of how authorities can use artificial intelligence to protect consumers effectively. In 2020, a special survey in this regard was developed for consumer and government agencies of ICPEN member countries. Information will be collected and compiled collectively in 2021.

Members of the network also meet in plenary conferences organised by the country currently holding the ICPEN presidency. In 2020, UOKiK participated in two such online events. **The ICPEN Colombia Conference** took place on 28 May. The meeting discussed, among other things, unfair commercial practices of online travel agencies and travel platforms. **The ICPEN Canada Conference** took place on 30 November, 2 and 3 December 2020. Examples of the covered topics include law enforcement in the context of the COVID-19 pandemic and digital platforms, the use of artificial intelligence as an investigative tool, countering fraudulent environmental claims by businesses.

The Committee on Consumer Policy of the Organisation for Economic Cooperation and Development (OECD)

The Committee on Consumer Policy (CCP) helps public authorities to develop effective consumer policies. The CCP's operations include, among other things, conducting research and analysis and developing guidelines. In 2020, UOKiK representatives attended a virtual **meeting of the Committee** and **the Working Party on Consumer Product Safety** operating within the CCP. The 5-day November meeting discussed, among other things, a revision of the recommendations for the e-commerce sector, as well as a draft recommendation on online child safety.

⁴² On 1 January 2021, the IMP-MSG group has evolved into the EU Product Compliance Network following the implementation of Article 29 of Regulation

2019/1020/EU.

Conclusions

In 2021, UOKiK will face many legislative challenges, both in the consumer and antitrust areas. This is due to, *inter alia*, the need to **implement European regulations into the Polish legal system: the ECN+ Directive and the CPC Regulation**. Both pieces of legislation aim to strengthen national authorities to enforce EU competition rules more effectively and protect consumers in a world of increasing digitalisation of the economy. The ECN+ Directive will be related to, for example, clarification of the investigative powers of the President of the Office, closer cooperation of EU antitrust authorities, changes in the imposition of financial penalties and in the leniency programme. Meanwhile, thanks to the amendment resulting from the CPC Regulation, the Office will be given new rights, e.g. the possibility of using an assumed or disguised identity, blocking websites or conducting searches at a trader's premises in consumer matters.

An important legislative initiative of the President of UOKiK, which should be finalised in 2021, is the **new developer law**. By creating the Developer Guarantee Fund, it is supposed to provide full financial security to the buyers of flats in situations such as the bankruptcy of a developer or a bank.

The experience gathered in the first year of functioning of the provisions on **counteracting payment gridlocks** has shown that the value of imposed penalties resulting from the statutory formula is too low, and the proceedings excessively engage the resources of the Office and undertakings. Together with the Ministries of Finance and Development, Labour and Technology, **UOKiK is working on legislative changes** that will streamline the conduct of proceedings and, through the sanction mechanism, increase pressure on large businesses to settle accounts with their counterparties in a timely and fair manner.

Work is also underway on **the implementation of the EU Directive on Unfair Commercial Practices in the Agri-Food Market**. On the initiative of the President of UOKiK,

the draft act identifies the practice relating to the unjustified reduction of the amount due for the supply of agricultural or food products after it has been accepted by the purchaser, in particular as a result of a demand for a discount, as absolutely prohibited.

In the coming year, activities related to **the implementation of Directive 2019/2161** are planned with regard to improving enforcement and modernising EU consumer protection rules. This regulation aims to increase transparency in consumers' online purchases and to eliminate so-called double quality products. Introducing a product on the market as being identical to one that is sold in several other EU countries, when it differs substantially from it, e.g. in its composition, will be regarded as misleading consumers.

Apart from legislation in 2021, **financial matters** will remain one of the main priorities for the President of UOKiK – protecting consumers against unfair practices of banks as well as loan companies or undertakings offering risky alternative investments. Analogous to antitrust proceedings, penalties will be able to be imposed not only on undertakings but also on managers responsible for the violations. In addition, in the case of pyramid-type incentive schemes, sanctions will cover their organisers and so-called "pushers", e.g. YouTubers or bloggers who encourage people to invest money in such projects and introduce others to them.

In 2021, the Office will continue to **educate consumers**, including the most vulnerable among them. New educational projects for the youngest consumers are planned, as raising awareness among children and youth is still the best investment in a safe and sustainable market. The "UOKiK tests" project, i.e. comparative consumer tests of everyday products, which have met with a great public interest, will also be continued. Warning consumers of the dangers of rogue traders will remain one of the key aspects.

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