

REPORT

ON ACTIVITIES 2015



UOKiK – key information

The President of UOKiK

The President of the Office of Competition and Consumer Protection (UOKiK) is a central governmental authority. The powers of UOKiK are laid down in the Act of 16 February 2007 on Competition and Consumer Protection¹. The authority's activities are financed from the state budget.

What UOKiK does

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

Mission



Management

President of UOKiK: Adam Jasser (from 20 March 2014 until 21 January 2016)

Vice-President of UOKiK (competition protection) Bernadeta Kasztelan-Świetlik (appointed 11 June 2014)

Vice-President of UOKiK (consumer protection): Dorota Karczewska (appointed 11 June 2014)

Director General: Monika Bronkau-Ługowska (appointed by the Prime Minister on 21 August 2008)

Chief Economist

Wojciech Szymczak, Director of the Market Analyses Department

¹ Consolidated text, Journal of Laws of 2015, item 184 as amended



BUDGET **PLN 64.7 M**



NUMBER OF EMPLOYEES² **464**, including



168
lawyers



90
economists



39
chemists



28
food technologists



9
biotechnologists



GCR RANKING ★ ★ ★

UOKiK's ranking in the Global Competition Review: three star (level: good)

² As at 31.12.2015.



NUMBER OF DECISIONS³ **1095**, including

- 145** • decisions concerning practices infringing collective consumer interests
- 42** • decisions concerning competition-restricting practices
- 14** • decisions issuing fines (in connection with cases concerning practices infringing collective consumer interests and competition-restricting practices)⁴
- 219** • decisions concerning concentration control
- 122** • decisions concerning general product safety
- 325** • decisions concerning product compliance with essential requirements
- 228** • decisions concerning appeals against decisions issued by Trade Inspection Authority voivodship inspectorates (WIIH) and concerning payment of costs of laboratory tests on fuels⁵



FINES⁶ IMPOSED ON BUSINESS UNDERTAKINGS

more than **PLN 47 M**

more than

PLN 6,5 M

The highest fine for practices infringing collective consumer interests (mBank SA in Warsaw)⁷

more than

PLN 14,2 M

The highest fine for competition-restricting practices (PKP Cargo SA in Warsaw)⁸

³ This includes decisions discontinuing proceedings.

⁴ This relates to fines for: failing to comply with a decision or failing to comply within the requisite time limit, failure to provide the Office with information, failure to cooperate during an inspection or search (in cases being conducted in connection with practices infringing collective consumer interests and competition-restricting practices).

⁵ Decisions requiring undertakings to pay costs of laboratory tests of fuel which does not comply with legal norms.

⁶ This figure includes fines for practices infringing collective consumer interests, competition-restricting practices, failure to file notification of intent to concentrate or effecting a concentration without UOKiK clearance, failing to comply with a decision or failing to comply within the requisite time limit, failure to provide the Office with information, and failure to cooperate during an inspection or search – with respect to general product safety.

⁷ Decision DDK-20/2015. The undertaking appealed to SOKiK.

⁸ Decision DOK-5/2015. The undertaking did not appeal to SOKiK.



TABLE OF
CONTENTS



EDUCATION
PROHIBITED
CLAUSES

EFFICIENCY

REGULATIONS

BUSINESS ADR MARKET

COMPETITION

AND CONSUMER

PROTECTION

DECISIONS

TRADE
SAFETY

ENTREPRENEUR
ANALYSES



Foreword

The year 2015 was special for UOKiK in light of enactment of an amendment to the Act on Competition and Consumer Protection (the “Act”) with respect to competition law and parts concerning consumer issues⁹. The new solutions in place enable prohibited practices to be eliminated effectively and warnings to be given about unfair activities of undertakings.

Changes to competition law which came into force in January 2015 led among other things to a reduction of time taken to handle concentration-related proceedings and a longer period in which action can be taken with respect to competition-restricting practices under the statute of limitations. This will make detection of prohibited agreements between undertakings more efficient.

More effective detection of collusion and cartels is also possible due to organisational changes in the UOKiK Competition Protection Division, which provide support for analytical and investigative operations. One of the issues discussed in 2015, including at European level, was evaluation of vertical agreements in terms of the impact they have on competition. This issue was addressed in an international seminar organised by UOKiK, focusing in particular on the e-commerce market.

The expanding e-commerce sector is also important in terms of consumer protection. December 2015 marked twelve months since the enactment of the Act on Consumer Rights¹⁰, which is highly relevant to that market, and regulates in particular off-premises and distance sales. Consumers were able to learn of their rights in this respect due to an awareness campaign conducted by UOKiK.

The year 2015 also saw an amendment to the Act. This will afford consumers more effective protection, especially in the financial sector, which was an UOKiK priority last year. In this context mention should be made of the success in the form of conclusion of 16 out of 17 cases handled¹¹ with respect to insurance companies offering unit-linked life insurance, which voluntarily undertook to cease the questioned practices.

With regard to consumer issues, 2015 also saw new developments with respect to so-called public compensation and the release of the first consumer warning.

As in other years, UOKiK consistently worked with other public authorities within the competition and consumer protection network. Due to this network it is possible to develop effective systemic solutions and eliminate harmful practices more quickly.

Measures to work in partnership with market players were also continued based on the principle of openness and transparency of UOKiK activities, and one example that demonstrates this was the introduction of detailed statements of objections or publication of a range of statements clarifying procedural issues.

The issues raised in this foreword are presented in greater detail in the Competition and Consumer Protection Policy adopted in 2015. This policy is a systemic approach to the most vital issues determining the functioning of these two areas in the Polish economy.

⁹ Journal of Laws of 2015, item 1634.

¹⁰ Journal of Laws of 2014, item 827 as amended


¹¹ The last of the 17 cases was concluded in 2016.


Calendar of events 2015


– selected events and achievements


- 15.01 Completion of a social survey¹² on familiarity of Polish consumers with financial products.
- 27.03 First instance of use of public compensation in UOKiK rulings was used. It was in connection with conclusion of proceedings in a case against Canal+. The undertaking made a commitment among other things to return a specified amount of money to consumers in light of a change of conditions in agreements with customers which was unilateral and unjustified.
- 1.09 Introduction of detailed statements of objections in cases concerning competition-restricting practices and practices infringing collective consumer interests. At the same time information was released explaining this new procedure.
- 16.09 Clearance for a concentration on the regional forwarding market. The filing concerned a takeover by the Industrial Development Agency (Agencja Rozwoju Przemysłu – ARP) of more than 50 per cent of the share capital of the Regional Transport Company (Przewozy Regionalne).
- 25.09 Fine imposed on PGNiG for failure to comply with a decision. This related to removal of contractual clauses questioned by UOKiK which were plausibly shown to restrict competition on the energy market.
- 7.10 Preliminary proceedings were concluded regarding internet platforms offering accommodation. The proceedings led to undertakings voluntarily ceasing use of clauses which UOKiK questioned as being MFN clauses.
- 26.11 Consent was obtained from the EC for state aid used for the purpose of compensation for the Polish postal services operator (Poczta Polska). For the first time, the EC gave consent to use of a compensation fund in the postal services sector.
- 8.12 Decisions issued concerning prohibited agreements restricting competition on the watch distribution market. A case was brought to a close concerning a number of brands for which the sole distributor is Swatch Group Polska.
- 28.12 First decisions issued against banks offering mortgages in Swiss francs (ING Bank Śląski and mBank) for failing for account for negative interest rates.
- 30.12 The last decision of the year was issued, concerning insurance companies offering unit-linked life insurance. In 2015, in total, 16 out of 17 cases of this kind were concluded. The undertakings made a commitment to significantly cut the cancellation fees in current agreements and remove them from the new standard agreements.
- 30.12 The first warning was issued concerning practices infringing collective consumer interests. The information released concerned Invest-Net Braniewski Tomasz, which did not provide accurate information about the fees connected with placing advertisements on the firm's websites.


¹² The study was conducted at the turn of 2014 and 2015 and a quantitative study was performed in January.


- 


18.01 **Enactment of an amendment to the Act** with respect to antimonopoly law. Among other things the amendment means that concentration proceedings can be handled in less time and a longer period in which action can be taken with respect to competition-restricting practices under the statute of limitations.
- 


22.09 **The Council of Ministers approved the Competition and Consumer Protection Policy.** This document lays down the principal objectives of the system of development of competition and consumer protection and the means whereby they will be achieved.
- 


28.09 **President signs amendment to the Act** with respect to consumer issues following approval of the bill by the Sejm. The amendments mean among other things more effective protection of consumers on the financial market.
- 


1.06 **Organisational changes in the Department of Competition Protection:** separation of strategic/ analytical activities from operational activities, greater investigative effectiveness.
- 


4.09 **An internal evaluation committee** was set up to ensure consistency of proceedings and decisions with UOKiK policy and priorities.
- 


5.01 **Launch of a campaign** to provide information about the Act on Consumer Rights.
- 


16.01 **Launch of the website** www.ustawa-antymonopolowa.uokik.gov.pl, explaining the main changes to competition legislation in connection with the amendment to the Act.
- 

13.03 **Debate on good advertising of financial services**, organised to mark World Consumer Day.
- 

13.04 **Session to mark the 25th anniversary of UOKiK**, an event accompanying the first Polish Competition Law Congress.
- 

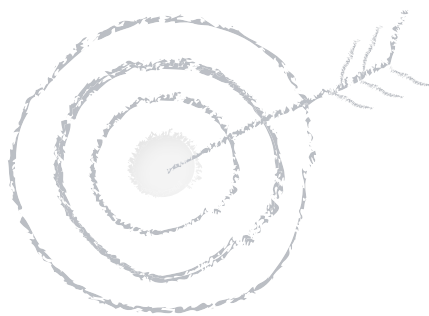
27.04 **Launch of the website** finanse.uokik.gov.pl, which is a compendium of information on the state of the market for mortgages in Swiss francs and unit-linked life insurance market.
- 

13.10 **International seminar on vertical agreements**, on the subject of e-commerce.
- 

30.10 **Launch of a database of court judgements** with respect to UOKiK decisions.
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29.12 **Updated information** was released explaining the policy for setting of fines in cases relating to competition-restricting practices – the last document in a set of guidelines published by UOKiK in 2015.

TABLE OF
CONTENTS



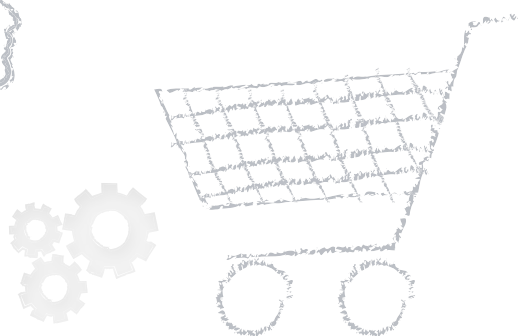
EDUCATION
PROHIBITED
CLAUSES

REGULATIONS
BUSINESS ADR MARKET

COMPETITION AND CONSUMER PROTECTION

DECISIONS

ENTREPRENEUR
ANALYSES



TRADE
SALES



TABLE OF CONTENTS

Chapter 1. Mission in practice – the Competition and Consumer Protection Policy 10

- 1.1. Mission and values 10
- 1.2. The Competition and Consumer Protection Policy
– the main principles and implementation in 2015 10

Chapter 2. Consumer Protection 14

- 2.1. Practices infringing collective consumer interests 15
 - 2.1.1. Monitoring of standard agreements 17
 - 2.1.2. Selected cases and decisions concerning collective consumer interests 17
- 2.2. Court judgements concerning infringement of collective consumer interests 21
 - 2.2.1. Examples of judgements in case law regarding UOKiK decisions concerning practices infringing collective consumer interests 22
- 2.3. Market surveillance and product safety 24
 - 2.3.1. Product safety 24
 - 2.3.2. Compliance assessment system 25
 - 2.3.3. Supervision of the Trade Inspection Authority 26
 - 2.3.4. UOKiK laboratories 27
 - 2.3.5. Fuel quality inspection system 27
- 2.4. Working with consumer organisations 28

Chapter 3. Competition protection 29

- 3.1. Competition-restricting practices 29
 - 3.1.1. Selected decisions and proceedings concerning competition-restricting practices 32
 - 3.1.2. *Leniency* and *leniency plus programmes* 35
 - 3.1.3. Applicability of EU competition law 36
- 3.2. Concentration control 36
 - 3.2.1. Selected decisions and concentration control cases 38
- 3.3. Court judgements in competition protection cases 39
 - 3.3.1. Examples of court judgements in competition protection cases 40
- 3.4. State aid 42
 - 3.4.1. Selected projects for which opinions were issued and notification filed by UOKiK 43

Chapter 4. Legislative works 44

- 4.1. Legislative works carried out at the initiative of UOKiK 44
 - 4.1.2. Involvement in legislative works conducted at the initiative of other institutions 47
 - 4.1.3. UOKiK involvement in legislative work conducted in the EU 49

Chapter 5. Social surveys and market analyses 50

- 5.1. Market studies and market analyses 50
 - 5.1.1. Selected market studies and market analyses 50
- 5.2. Social surveys 51
 - 5.2.1. Selected social surveys 51

Chapter 6. Information and awareness campaigns 52

- 6.1. Information campaigns and activities 52
- 6.2. UOKiK conferences and events 53
- 6.3. Competitions and campaigns 54
- 6.4. Publications 54
- 6.5. Cooperation with the mass media 54

Chapter 7. International cooperation 56

- 7.1. Multilateral cooperation 56
- 7.2. Bilateral Cooperation 61
- 7.3. International meetings and conferences 61

Postscript 62

Organisational structure 63

Chapter 1.

Mission in practice – the Competition and Consumer Protection Policy

1.1. Mission and values

UOKiK's mission is to work to improve consumer welfare by effectively protecting consumer interests and rights, and providing support for competition, in order to optimise economic growth and innovativeness.

The mission puts consumers at the centre of UOKiK's activities, because competition is not an end in itself. The ultimate beneficiary is always the consumer. The emphasis in the mission on **effective** protection of consumers and development of competition requires among other things **efficiency** of the Office's activities, and **openness** to dialogue with the community.

1.2. The Competition and Consumer Protection Policy – the main principles and implementation in 2015

The UOKiK mission and main values were laid down in the **Competition and Consumer Protection Policy** adopted in September 2015 (the "Policy")¹³. For the first time, the strategy for protection of competition and the strategy for protection of consumers were combined in a single document, and thus defined as having a common goal, which is striving to ensure consumer welfare and creating conditions in which effective competition also means integrity in trader-consumer relationships. Distortion of competition does in fact often manifest itself in the form of infringement of consumer interests.

Under the basic principles adopted in the Policy, any activities UOKiK performs must be transparent and guarantee respect for the principle of procedural fairness and right to present a defence.

Improvement of the legal system

A vital aspect of UOKiK activities is its role in the process of formulating legislation which protects consumers and supports development of competition.

¹³ Document approved by the Council of Ministers on 22 September 2015.

The need to strengthen the consumer protection system, especially on the financial market, is reflected in work on an amendment to **elements of the Act on Competition and Consumer Protection concerning consumer issues**, which was an UOKiK initiative. The amendment underwent a broad range of public consultations. It came into force on 17 April 2016 and introduces a series of improvements such as a new model for monitoring standard agreements, interim decisions with regard to prohibited practices affecting consumers, the mystery shopper system, the option of UOKiK making known its **reasoned opinion** in a case, and free publication of information and consumer warnings. The question of definition of a new practice infringing collective consumer interests with respect to unfair selling of financial services (misselling) is an extremely important one (more information is given about this in **chapter 2**).

The year 2015 was also the first year in which the **amendment to the Act on Competition and Consumer Protection was put into practice with respect to antimonopoly law**. This made it possible, among other things, to reduce the time taken to conduct concentration proceedings, extend the time limit for action taken with respect to competition-restricting practices under the statute of limitations, and introduce the leniency plus and settlement system (more information is given about this in **chapter 3**).

More efficient UOKiK operations

Work to improve the law is accompanied by measures to make UOKiK more effective. The year 2015 was the first year of operation of the new organisational structure¹⁴, creating a clear distinction between the competition protection and consumer protection divisions – these are supported by departments, available to assist them with respect to legal issues, economic analysis, media, and communication. The main area in

¹⁴ Organisational changes made at the end of 2014.

which the Office's operations were improved was the putting of greater store in economic analysis when formulating UOKiK rulings, both with regard to antimonopoly and consumer aspects. In 2015 organisational changes were made to the competition division, strengthening the Office's analytical functions and investigative operations. The systems adopted – in particular the separation of operational and investigative functions from responsibility for strategic and analytical areas, mean that cartels can be prosecuted and combated, and competition protected against monopolistic practices, more effectively.

Along with the organisational changes, an internal system was introduced for evaluating the quality of official activities. The evaluation committee set up makes the decision-making process at UOKiK more efficient, and by the same token leads to greater consistency of rulings and timely handling of proceedings.

Creating the competition and consumer protection network

In line with the basic principles of the Policy, one of the essential elements of an effective competition and consumer protection system is creation of a **competition and consumer protection network**. In working to achieve this, UOKiK focuses on information sharing and the taking of coordinated measures by the relevant authorities when a threat becomes apparent. As in other years, UOKiK was provided with and analysed information concerning possible violation of competition law and infringement of consumer rights. Due to cooperation between various institutions, information of this kind was received from local government authorities, the Financial Supervision Authority (Komisja Nadzoru Finansowego – KNF), the Office of Electronic Communications (Urząd Komunikacji Elektronicznej – UKE), the Financial Ombudsman (Rzecznik Finansowy) (then the Insurance Ombudsman – Rzecznik Ubezpieczonych), consumer ombudsmen, consumer organisations, the Central Anticorruption Bureau (Centralne Biuro Antykorupcyjne – CBA), the police, and the Ministry for Education. In addition, UOKiK submitted notifications to other institutions, such as the police, Prosecutor General's Office (Prokuratura Generalna), Supreme Audit Office (Najwyższa Izba Kontroli – NIK), the Financial Supervision Authority, and Trade Inspection Authority voivodship inspectorates (wojewódzkie inspektoraty Inspekcji Handlowej – WIIH). An

example of operations in connection with this network can be seen as well in UOKiK collaboration with various entities within campaigns aimed at raising the awareness of consumers and business undertakings of competition and consumer protection law (more information is given about this in chapter 6).

The network is being built not only at a domestic level. UOKiK is actively involved in the work of EU institutions and international organisations dealing with competition and consumer protection (more information is given about this in chapter 7).

Working in partnership with market players

Creation of the network also means that a new standard is defined for UOKiK's relationship with stakeholders – including undertakings. **Openness** to relations with market players is built during the various stages of proceedings in a case. It has become standard practice for UOKiK to conduct an interview with an undertaking and for the undertaking to present its point of view in an informal context, without legal procedures being applied and in direct contact with the employee responsible for handling the proceedings – whenever this is reasonable and there are no legal grounds or factual circumstances preventing this. It should be easy for an undertaking to obtain necessary information pertaining to ongoing proceedings. The rules for relations between the market and the Office were issued in the document **Rules for contact with enterprises**.

Partnership-style relationships rely on the openness of UOKiK in its contacts with the community, and this also means transparency of its operations. This is also reflected in the **negotiation-style approach to application** of competition and consumer protection law, based on the assumption that UOKiK and undertakings share a common goal of eliminating the activity being questioned by UOKiK. In practice, this principle is put into effect in the form of **commitment decisions** (and these incorporate the solution proposed by the undertaking), notices demanding modification/cessation of particular practices (**soft measures**) and the **settlement** procedure.

The **transparency policy** is also reinforced by a new procedure introduced in 2015 of **detailed statements of objections** – application of this procedure comes as a result of suggestions made by undertakings. A statement of objections applies to proceedings initiated after 1 September 2015 concerning competition-restricting practices,

practices restricting collective consumer interests, and fines for breach of the act. The **statement of objections** is the equivalent of the *Statement of Objections* used by the EC and other European competition authorities. This is intended as a means of raising procedural fairness standards, including the right to present a defence.

Efforts to achieve transparency also resulted in the launch in 2015 of a **database of court judgements**. This contains information concerning all rulings on appeals against decisions relating to competition-restricting practices, concentration control, infringement of collective consumer interests, and cases of clauses being declared prohibited. Initially, the database contained judgements issued subsequent to 1 September 2015, but earlier rulings are now being added successively. This system supplements the database existing to date, **the database of UOKiK President decisions**, with which it is integrated. In addition, press releases are published regularly which provide summaries of the most important court judgements relating to decisions issued by UOKiK – whether the court concurred with UOKiK’s policy with respect to rulings, or whether the court partially upheld or overturned a decision.

Another factor which helps to improve transparency of UOKiK’s activities is the online **clarifications and guidelines**, which relate to the Office’s procedural solutions and information release policy. In addition to updating some of the guidelines relating to legislative changes which occurred in 2015, new documents have been drawn up and made available concerning notification of intent to concentrate, settlement procedures, detailed statements of objections, the rules for contact with enterprises, and providing information about court judgements. Notes have been published which explain the rules for publishing information about the findings of market studies, which is also a response to suggestions made by the market.

In 2015 measures were taken to increase the transparency of the state aid mechanism. In this respect work was carried out to construct the electronic State Aid Data Access System (System Udostępniania Danych o Pomocy Publicznej –SUDOP)¹⁵ and – in cooperation with the Ministry of Finance – a process was initiated of modernisation of the system of collection of data about aid granted, i.e. the System for Scheduling, Registration and Monitoring of State Aid (System

Harmonogramowania Rejestracji i Monitorowania Pomocy – SHRiMP).

Openness to sharing of information and know-how and promoting a culture of compliance

In its activities, UOKiK relies on the conclusions reached based on its knowledge and practice to date, and also domestic case law. Monitoring rulings issued by authorities in other countries and involvement in the international forum is also important (more information is given about this in chapter 7).

In addition, legal and economic information, and also know-how, is shared in the form of **advocacy** by UOKiK of **competition and consumer protection issues**. This is done through informational and awareness-raising schemes aimed both at consumers and undertakings. UOKiK advocacy activities include publication of **the contents of speeches and presentations** given by members of Management, **awareness and information** campaigns, topic-oriented websites¹⁶, organising conferences and competitions, and releasing publications (more information is given about this in chapter 6).

UOKiK’s informational activities are intended to encourage undertakings to self-regulate, which is a vital element of competition and consumer protection. In this respect, UOKiK propagates the introduction of a culture of **compliance**, i.e. measures taken by an undertaking to ensure that all personnel abide by the law in their activities. A culture of compliance is a grassroots element in the forming of a culture of fair market conduct, of which a vital complimentary element is prosecution by UOKiK for infringements of this kind, including making use of fines.

The Office’s operations according to the Policy are appreciated by the market, and one example of this is the award given to UOKiK in November 2015 by the Polish Association of Corporate Counsel (Polskie Stowarzyszenie Prawników Przedsiębiorstw). Among the reasons given for this there was emphasis on consistent application of a policy of openness, as well as effective promotion of compliance rules and of good examples set in Polish business enterprises.

¹⁶ Websites: <http://ustawa-antymonopolowa.uokik.gov.pl/>; <https://finanse.uokik.gov.pl/>; <http://ezakupy.uokik.gov.pl/>; <http://www.prawakonsumenta.uokik.gov.pl/>.

¹⁵ One of the parts of **SUDOP** was made available to users on 10.03.2016.

Working towards strategic goals in 2015

Work to implement the Competition and Consumer Protection Policy is being done as a medium-term goal. The basic principles adopted in the Policy are reflected in UOKiK's strategic plans for a

particular year. The information presented below relates to the goals set for 2015 according to the measures taken to achieve them.

Table 1. Implementation of strategic plans in 2015

Goal	Measures planned for 2015
Increasing the level of consumer protection on the market	<p>↔ The envisaged optimisation of use of instruments used to eliminate irregularities on the market was achieved. In addition to official activities (proceedings, decisions) a legislative initiative was employed with respect to amendment of consumer legislation, awareness and information campaigns were conducted, and soft measures and social surveys were performed.</p>
	<p>↔ The expected level of preparation for implementation of an consumer Alternative Dispute Resolution (ADR) system was achieved. Consultations on the basic principles of an ADR Act were completed and the basic principles were approved by the Council of Ministers in March 2015.</p>
	<p>↔ The planned informational campaign about the new consumer regulations was conducted.</p>
	<p>↑ Information was drawn up and distributed concerning the findings of inspections conducted by the Trade Inspection Authority, among other things by publishing press releases on this subject and conducting joint media campaigns with institutions. Higher statistics for provision of information about inspections on product markets was achieved than expected.</p>
Greater transparency in the activities of UOKiK	<p>↑ Some guidelines were updated and new explanations were published with regard to procedural issues and UOKiK's information policy.</p>
	<p>↑ The time taken to complete proceedings relating to concentration control was significantly reduced – due to the introduction of a two-step procedure and reducing the time taken to conduct proceedings in the initial phase (to a month).</p>
Greater transparency with respect to state aid that has been granted	<p>↑ Greater progress was achieved than expected for work to build a state aid data access system SUDOP.</p>
	<p>↔ An analysis was carried out of modernisation of the System for Scheduling, Registration and Monitoring of State Aid (SHRIMP). This makes it possible for UOKiK to be provided – in a standardised form – with reports on state aid that has been granted and information about aid being denied.</p>
<p>↔ met expected level</p> <p>↑ exceeded expected level</p>	

¹⁷ 2015/2016 – the test phase for the system, made available to users in March 2016.

Chapter 2.

Consumer Protection

The activities performed by state institutions in connection with the consumer protection system include both enforcement of the law and propagating the desired approaches among business undertakings.

One of UOKiK's principal tasks is to eliminate infringements of consumer rights. This is done by: conducting proceedings concerning practices infringing collective consumer interests and reviewing standard agreements used in transactions with consumers;

monitoring the system of inspection of products in terms of compliance with essential requirements, monitoring product safety, and managing the fuel quality monitoring and inspection system – by working with the Trade Inspection Authority, which conducts inspections.

Elimination of infringements requires UOKiK to monitor product and service markets and analyse information coming in from the market, such as consumer complaints. This makes it possible to identify the areas in which the situation of consumers requires the Office's particular attention. The

media is also monitored, in particular with respect to the question of potentially misleading advertising. Another important aspect of UOKiK's activities is working with consumer organisations such as the Association of Polish Consumers (Stowarzyszenie Konsumentów Polskich) and the Consumer Federation (Federacja Konsumentów). The Office works with the European Consumer Centre and consumer ombudsmen, including their representatives in the National Council of Consumer Ombudsmen (Krajowa Rada Rzeczników Konsumentów). This council is an advisory body to the President of UOKiK.

The other areas for which the Office is active with respect to protection of both consumers and competition are legislative initiatives, awareness and information campaigns, social surveys, and international cooperation. These issues are addressed in separate chapters.

**PRACTICES INFRINGING
COLLECTIVE CONSUMER
INTERESTS AND
MONITORING OF
STANDARD AGREEMENTS
(PROHIBITED CLAUSES)**

**MARKET SURVEILLANCE,
PRODUCT SAFETY, FUEL
QUALITY - IN COOPERATION
WITH THE TRADE INSPECTION
AUTHORITY, WHICH
CONDUCTS INSPECTIONS**

**CONSUMER
PROTECTION**

**WORKING
WITH CONSUMER
ORGANISATIONS,
CONSUMER OMBUDSMEN
AND THE EUROPEAN
CONSUMER CENTRE**

**COURT
JUDGEMENTS**

2.1. Practices infringing collective consumer interests

Practices infringing collective consumer interests are unlawful actions on the part of undertakings which in principle affect a potentially unlimited number of persons. In 2015 UOKiK launched¹⁸ proceedings in 106 cases concerning practices infringing collective consumer interests and there were 473 instances of preliminary proceedings being instigated in this respect.

The drop in the number of cases handled in previous years (table 2) and resulting decisions (table 3) is due to greater focus on the part of UOKiK on soft measures. These include pointing out best practices and issuing demands for improvements.

Soft measures relate to a negotiation-style approach to application of consumer protection law (more information is given about this in chapter 1). They make it possible to enforce the principles of market fairness and eliminate infringements without proceedings being instigated against an undertaking.

In 2015 523 soft measures were taken, and 357 were completed, which is three times more than in 2014. A large majority – in 351 cases – of these measures brought about the intended result, and the undertaking complied with the UOKiK's instructions.

Table 2. The number of cases handled with respect to practices infringing the collective consumer interests, 2013–2015

2013	number	2014	number	2015	number
Proceedings in cases of practices infringing collective consumer interests, including:	523	Proceedings in cases of practices infringing collective consumer interests, including:	401	Proceedings in cases of practices infringing collective consumer interests, including:	232
– instigated in 2013.	389	– instigated in 2014	209	– instigated in 2015	106
– instigated in previous years but conducted in 2013	134	– instigated in previous years but conducted in 2014	192	– instigated in previous years but conducted in 2015	126
– concluded in 2013.	333	– concluded in 2014.	281	– concluded in 2015.	145
Proceedings concerning a fine imposed on an undertaking ¹⁹ , including:	40	Proceedings concerning a fine imposed on an undertaking ²⁰ , including:	26	Proceedings concerning a fine imposed on an undertaking ²¹ , including:	21
– instigated in 2013	21	– instigated in 2014	22	– instigated in 2015	13
– instigated in previous years but conducted in 2013	19	– instigated in previous years but conducted in 2014	4	– instigated in previous years but conducted in 2015	8
– concluded in 2013	35	– concluded in 2014	19	– concluded in 2015	10
Preliminary proceedings, including:	1103	Preliminary proceedings, including:	872	Preliminary proceedings, including:	754
– instigated in 2013	746	– instigated in 2014	543	– instigated in 2015	473
– instigated in previous years but conducted in 2013	357	– instigated in previous years but conducted in 2014	329	– instigated in previous years but conducted in 2015	281
– concluded in 2013	715	– concluded in 2014	481	– concluded in 2015	488

¹⁸ Proceedings concerning practices infringing collective consumer interests can only be instigated ex officio.

¹⁹ The statistics cover proceedings concerning fines imposed on undertakings for failure to comply with a decision or not complying within the requisite time limit, failing to provide UOKiK with requested information, providing false or misleading information, or failing to cooperate during an inspection.

²⁰ The statistics cover proceedings concerning fines imposed on undertakings for failure to comply with a decision or not complying within the requisite time limit, failing to provide UOKiK with requested information, providing false or misleading information, or failing to cooperate during an inspection.

²¹ The statistics cover proceedings concerning fines imposed on undertakings for failure to comply with a decision or not complying within the requisite time limit, failing to provide UOKiK with requested information, providing false or misleading information, or failing to cooperate during an inspection.

It is possible to report suspected practices infringing collective consumer interests to UOKiK in writing. In 2015 the Office received 1473 reports of this kind, of which 138 led to preliminary proceedings being instigated. At the same time, on the basis of reports, proceedings were instigated in 24 cases²² concerning infringement of collective consumer interests.^{23,24}

December 2015 saw the first complete year of applicability of the Act on Consumer Rights, which has a major impact on the terms of off-premises and distance sales. UOKiK received information from consumers indicating that some undertakings were not complying with the newly introduced obligation to obtain consent to commence providing a service within 14 days, as well as consent for each additional payment. In 2016 UOKiK intends to take measures to determine whether undertakings have complied with the new regulations.

Proceedings concerning practices infringing collective consumer interests can lead to the questioned activities being ordered stopped (decisions finding the practice to have occurred and ordering that it be discontinued) or a voluntary commitment on the part of an undertaking to take certain measures or cease certain activities

in order to prevent infringements occurring (commitment decisions). Commitment decisions have a restorative function, as they are intended to restore the proper state of affairs existing prior to the infringement. Fulfilling the commitment eliminates prohibited practices or remedies the resulting circumstances, but must always be proportional to the alleged infringement. This system both benefits undertakings and is in the public interest. UOKiK decisions can also have an educational/informative function – due to an order being given for the decision to be published on the undertaking's website.

An undertaking can also be fined. In 2015 the total fines imposed for practices infringing collective consumer interests came to more than PLN 18.9 m. Fines fulfil two functions – preventative and repressive – while in practice they can have a limited effect. Above all, undertakings exercise the right to appeal to the Court of Competition and Consumer Protection (SOKiK), which frequently lowers the fine. In 2013–2015, following issuance of court judgements, fines were approximately 40 per cent of the level of fines imposed by UOKiK during the same period.

Fines imposed on undertakings do not compensate for consumer losses incurred as a result of a prohibited practice. For this reason, in 2015,

Table 3. Decisions issued in the years 2013–2015

	2013	2014	2015
Decisions finding practices to be practices infringing collective consumer interests and ordering them stopped	98	53	24
Decisions finding practices to be practices infringing collective consumer interests and confirming that the practices have been discontinued	112	82	40
Commitment decisions	116	142	80 ²³
Total	326	277	144
Decisions imposing fines on an undertaking ²⁴	26	17	8
Decisions discontinuing proceedings concerning infringement of collective consumer interests, including:	14	8	1
due to practices not being found to be practices infringing collective consumer interests	0	1	0
due to other reasons	14	7	1
Proceedings which resulted in issuance of a ruling	1	2	2

²² This figure includes proceedings instigated on the basis of filings made in other years.

²³ This number also covers decisions in which, in addition to making of a commitment, some other ruling was given (for example the practice was found to have ceased).

²⁴ The statistics include decisions imposing fines on undertakings for failure to comply with decisions or not complying with decisions within the requisite time limit, failure to provide UOKiK with requested information or providing misleading information, and for failing to cooperate during an inspection.

UOKiK started to incorporate a new system into its rulings – **public compensation**. When a decision is issued concerning infringement of collective consumer interests, the results of remedying the infringement are defined, for example giving of a refund to consumers, the option of recovering an

insurance premium, or free access to a television channel. This gives consumers real benefits. It is worth noting that the compensation can only be in the form of the practice that was an infringement of consumer rights. This measure has a repressive function at the same time, because it results in costs for the undertaking.

Public compensation is a form of **consumer benefit awarded in an UOKiK decision**. They include both remedy of the current effects of a prohibited practice, as well as actual elimination of the detrimental practice – the future adverse effects. Examples of UOKiK decisions that allow for providing of benefits to consumers, including public compensation, are described later in this chapter.

Apart from conducting proceedings and employing soft measures, UOKiK has the option of releasing a **consumer warning**²⁵ containing information about questioned conduct of an undertaking and the likely consequences. A warning of this kind is published if the information collected during the proceedings is particularly justified grounds for suspecting that an undertaking is employing an unlawful practice which could put a large number of consumers at risk of severe financial losses or other adverse consequences. Warnings are made public and among other things are posted on the Office's website (a consumer warning issued in 2015 is described in detail in [point 1.2](#)).

2.1.1. Monitoring of standard agreements

One prohibited practice is use of **prohibited clauses** in standard agreements with consumers. As in other years, UOKiK monitored on an ongoing basis the standard agreements used by undertakings to check for clauses of that kind. As a result, a filing was made with the SOKiK. Contractual clauses which were declared to be prohibited clauses in final and binding SOKiK rulings were recorded in a register of prohibited clauses maintained by UOKiK.

In 2015 the number of clauses declared to be prohibited by SOKiK to be prohibited and placed in the [register of prohibited clauses](#) was 305, of which 60 resulted from filings made by UOKiK. On the basis of conducted inspections, 202 notices were issued requiring questioned contractual clauses to be amended. In 121 cases, the entities complied with the notices voluntarily.

²⁵ Consumer warnings were introduced in an amendment to the Act on Competition and Consumer Protection. The amendment came into force on 18 January 2015.

Case law and legal literature was inconsistent as whether a clause being declared to be a prohibited clause used by one undertaking can be used in other standard agreements by the same or a different undertaking. This issue was resolved by the Supreme Court (SN) in a ruling in November 2015 r.26 The Supreme Court stated that if SOKiK issues a judgement stating that a clause used by a particular undertaking is a prohibited clause, no further court action against that undertaking is required in relation to the same clause, and this applies equally when only the wording of the clause has changed. The clause will continue to be a prohibited clause if the normative content remains the same. If a court has issued a judgement stating that a clause used by a particular undertaking is prohibited and it has been entered in the register, this applies solely to the undertaking in question and the consumers who entered into an agreement with that undertaking using the questioned standard agreement.

The inconsistencies resolved in a resolution adopted by the Supreme Court were among the grounds for **amending the model for monitoring standard agreements**. New regulations on this issue have been introduced in an amendment to the Act on Competition and Consumer Protection which came into force on 17 April 2016. UOKiK was given powers with regard to finding clauses in standard agreements to be prohibited and ordering that their use be stopped. UOKiK decisions in which clauses are declared to be prohibited clauses are effective solely with respect to the undertaking that applies them.

2.1.2. Selected cases and decisions concerning collective consumer interests

Monitoring service and product markets, as well as conclusions drawn from proceedings conducted, enable areas of priority to be determined for UOKiK. In 2015, the Office's main focus was on the financial, energy, and telecommunications sectors. UOKiK also looked at e-commerce transactions, in which for instance goods or services can be purchased online.

The financial market

The financial services market is one of the main points of focus for UOKiK – due to the complexity of the products on offer, and the resulting increased risk of an agreement being entered into to the consumer's disadvantage, and

²⁶ Case file no. III CZP 17/15.

material loss. The average consumer does not have sufficient knowledge to be able to properly assess complex products such as unit-linked life insurance or mortgages in foreign currencies. As a result, products may be offered which are ill-suited to the customer's possibilities or needs (*misselling*). For this reason monitoring of how investment products, credit facilities, and loans are offered is particularly important. The key issue is determining whether undertakings comply with the obligation to provide clear and accurate information about investments being made, the risk, how the entrusted assets are used, and the means by which the assets are secured. Products are also analysed by a team of economists at UOKiK, in particular in order to ensure that the annual percentage rate, which is a parameter against which the total cost of consumer credit can be compared – is calculated properly.

Insurance products – consumer benefits based on the example of decisions concerning unit-linked life insurance

In 2015, UOKiK continued the measures taken in the previous year with respect to unit-linked life insurance. The method by which they are offered to customers might constitute an example of misselling because they are frequently portrayed as a safe and attractive investment product for people who wish set up ordinary savings accounts. Consumers were not aware that they could lose a significant amount of their funds if they wished to withdraw (cancellation charges).

UOKiK concluded with respect to 17 insurance companies offering unit-linked life insurance that the cancellation fees provided for in standard agreements pass on the initial costs of taking out the insurance – mainly the insurance intermediaries' fees – to consumers. The Office took the view that these should mainly be paid by the insurance companies, and incurring them was a normal business risk. In 2015, UOKiK issued commitment decisions with respect to 16 insurance companies, which were the following: Allianz²⁷, Aviva²⁸, Nationale Nederlanden²⁹, MetLife³⁰, PKO Życie (formerly Nordea Życie)³¹, PZU Życie³², Axa³³, Europa³⁴, Pramerica Życie³⁵, Sopockie TUnŻ

Ergo Hestia³⁶, UNIQA TUnŻ³⁷, TUnŻ WARTA³⁸, Aegon³⁹, Compensa⁴⁰, Generali⁴¹ and Open Life⁴². The insurance companies agreed voluntarily to significantly reduce the cancellation charges in the agreements currently in effect and remove the fees from the new standard agreements. UOKiK will monitor compliance with decisions on the basis of reports submitted by insurance companies.

Proceedings regarding unit-linked life insurance are an example of implementation of the concept of a consumer protection network. When drawing up decisions, UOKiK worked closely with the Financial Supervision Authority (Komisja Nadzoru Finansowego – KNF), the Financial Ombudsman (the then Insurance Ombudsman), and undertakings.

The benefits awarded to consumers in connection with decisions concerning unit-linked life insurance products are due to reduction of the fees charged for early termination of the agreement. If all of the agreements which are subject to commitment decisions⁴³ were terminated now, consumers would pay approximately PLN 1.16 bn (which is 60 per cent) less than when the previous rates applied. When calculated per customer, the average cancellation fee went down from PLN 3128 to 1229. In practice, most customers do not terminate agreements, and therefore the direct benefit of the reduction in fees is only felt by people who cancel the agreements. Assuming that the percentage of agreements cancelled remains at the level for 2010–2014, the direct benefits for consumers due to the coming into effect of insurance company commitments can be expected to be approximately PLN 48.3 m in the first year for which the decision applies. If the percentage of withdrawals increases, the benefits will increase proportionally as well.

Banking – mortgages in Swiss francs

In January 2015 UOKiK instigated preliminary proceedings with respect to all banks offering mortgages in Swiss francs. These actions taken by the Office were connected with a strengthening

²⁷ Decision RKT-10/2015.

²⁸ Decision RBG -11/2015.

²⁹ Decision RKR-10/2015.

³⁰ Decision RLO-8/2015.

³¹ Decision RLU-4/2015.

³² Decision RPZ-11/2015.

³³ Decision RWR-18/2015.

³⁴ Decision RKT-11/2015.

³⁵ Decision RPZ-12/2015.

³⁶ Decision RGD-6/2015.

³⁷ Decision RGD-7/2015.

³⁸ Decision RWR-22/2015.

³⁹ Decision RBG-14/2015.

⁴⁰ Decision RBG-15/2015.

⁴¹ Decision RLO-12/2015.

⁴² Decision RKT-20/2015.

⁴³ Concerns 16 decisions issued in 2015.

of the Swiss franc against the Polish zloty, which occurred at the beginning of 2015 and caused a rise in payments in mortgages in CHF. At the same time the LIBOR rate, which is the rate applied when calculating interest on mortgages of that kind, fell to below zero, which is included in calculation, in turn leading to lower payments. According to information received by UOKiK, not all banks factored in the negative interest rate, despite the fact that under the mortgage agreements interest was to be calculated according to the LIBOR base rate and the margin on the loan. For this reason, in connection with the ongoing preliminary proceedings, financial institutions were asked about their practices in this regard. A breakdown of responses given by banks is available at www.finance.uokik.gov.pl.

In 2015 the first two decisions regarding the issue of the negative interest rate not being taken into account by ING Bank Śląski⁴⁴ and mBank⁴⁵ were issued. ING Bank Śląski made a voluntary commitment to make changes to practices, including accounting for the negative interest rate, conversion of the respective interest rate, and refunding to customers the difference between the interest rate that had previously applied and the rate according to the drop in the LIBOR rate. One of the commitments made was also to inform customers of the measures taken.

mBank did not incorporate the negative interest rate in mortgages in CHF, and therefore UOKiK ordered that the practice be stopped. It also ordered mBank to remedy the effects of the infringement: borrowers were to be reimbursed for interest following conversion of the interest rate taking into account the negative value. The undertaking was fined PLN 6.5 m for infringement of collective consumer interests. mBank filed an appeal against the decision with SOKiK. Both of the banks were ordered to publish the UOKiK decision on their websites.

Advertising of consumer credit

In November and December 2014 UOKiK carried out a review of advertising of pre-christmas-season holiday credit facilities offered by 28 financial institutions (the case was described in the **UOKiK Report on Activities for 2014**). As a result of an analysis of marketing messages broadcast on radio, television, and elsewhere, in 2015 proceedings were conducted and concluded

in 9 cases⁴⁶. The decisions issued mostly found that a disclosure obligation under the Act on Consumer Rights had not been complied with. A consumer watching the advertisement was not informed for instance of the interest rate for the credit facility, with a detailed breakdown of fees, the amount of interest, the overall amount to be paid, and the annual percentage rate. At times, this information was provided in an unintelligible way. It was also found that credit facilities were advertised as commission-free, whereas a commission was in fact charged. Another breach was provision of information about a product that was subject to interest at 0%, although at the time at which the advertisement was broadcast the product in question was not available to consumers.

Wonga.pl was ordered to remedy long-term effects of a practice by refunding PLN 10 (cost of the first loan) to consumers who entered into agreements during the period in which the questioned advertisements were broadcast. In turn, Alior Bank was ordered to inform consumers in the form of a letter of an UOKiK decision and of the option of cancellation of the insurance and refund of the entire insurance premium. Idea Bank SA was fined in total more than PLN 400 000 in consideration among other things of the damaging nature of an infringement, and Tempus Finance was fined PLN 12 000. Both undertakings filed appeals against the UOKiK decision, as did Vivus Finance. In this last case, the undertaking was ordered among other things to publish an announcement providing information about the decision issued by the President of UOKiK in one printed edition and one online edition of three nationwide Polish daily newspapers of a circulation of no less than 100 000.

The telecommunications market

The telecommunications market was one of the first areas in which, in UOKiK rulings, so-called **public compensation** was used. Public compensation was used in decisions concerning P4 – the operator for Play, Canal+, T-Mobile Polska, and Multimedia Polska. The proceedings conducted concerned a unilateral change to the terms of consumer agreements: raising the subscription fee or changing the scope covered by the subscription. In all three cases the public compensation took the form of refunds of a specified amount to consumers or providing consumers with certain

⁴⁴ Decision DDK-21/2015.

⁴⁵ Decision DDK-20/2015.

⁴⁶ Decisions: RKR-14/2015; RBG-13/2015; RŁO-10/2015; RKT-15/2015; RKT-17/2015; RKR-15/2015; RKT-16/2015; RWR 24/2015; RWA-29/2015.

benefits (for example granting of access to an extra television channel).

In a decision issued against T-Mobile Polska⁴⁷ UOKiK found collective consumer interests to have been infringed due to a groundless increase in the subscription fee. Customers could agree to the new conditions, cancel the service, or take advantage of a different offer proposed by the undertaking. In the view of UOKiK, T-Mobile misled subscribers. The agreements signed with subscribers for telecommunications services did not specify grounds for a change of this kind, because they did not contain the relevant agreement amendment clause. In addition, the unilateral change of conditions of the agreement was an infringement of good customs because it related to an essential issue, which was the level of the subscription fee. The undertaking was ordered to remedy the effects of a change that was disadvantageous to customers – in the form of public compensation. Each consumer who had been informed of the unilateral change to the subscription fee was to receive PLN 65 in compensation once the decision became legally final and binding, regardless of whether the consumer had agreed to the new terms of the agreement or cancelled the services. The operator was ordered to publish the decision on its website. The Office also fined it more than PLN 4.5 m. T-Mobile appealed against the decision to SOKiK.

Another case concerned an increase in the subscription fee for satellite television channels provided by Canal+ (which later became ITI Neovision S.A.). If a consumer did not agree to the new conditions the agreement was to end. UOKiK found that the undertaking might have been in breach of the principle of abiding by agreements and might have put consumers at risk of inconvenience and loss due to fees being incurred unexpectedly, a change of provider, and costs of purchase and installation. The operator undertook⁴⁸ voluntarily to take measures to remedy the effects of the questioned practice. Customers who continued to use the television service were to be offered free services, and former subscribers were to be allowed to enter into an agreement on special conditions or receive a cash refund of PLN 43.16.

Another example of a ruling in which public compensation was used was a decision⁴⁹ issued in October 2015 concerning P4. The operator of

the network Play made a unilateral change to agreements concluded as part of the product *Formuła Europa Unlimited*, by abolishing free incoming roaming calls within the Eurozone. The Office accepted a commitment made by the undertaking to offer consumers public compensation. Subscribers affected by the questioned practice were given, among other things, the option of roaming calls, text messages and data transmission via the Internet in the EU. Holders of pre-paid cards had their cards topped up, and former customers a refund of PLN 95 or PLN 180.50, depending on the kind of agreement signed.

In agreements with subscribers, the company Multimedia Polska only guaranteed a certain number of channels within a particular package, without specifying the content of the package. This led to customers being denied the right not to consent to changes in channels and terminate the agreement without incurring costs if the operator maintained the appropriate number of channels in the package. Multimedia Polska was fined more than PLN 4.81 m⁵⁰ for employing this practice. UOKiK also ordered in the decision that the company's former customers who terminated their agreements in connection with the change in channels and repaid to the undertaking relief granted for entering into an agreement for a definite period of time should receive a refund of the amounts charged. At the same time, the undertaking was ordered to inform the other subscribers affected by the changes in channels of their right to terminate the agreement at no further cost in the event of a unilateral change in the channels provided by the operator. An appeal was filed against the decision with SOKiK.

The energy market

Liberalising the electricity sales market increased competition between providers, but also led to activation of mechanisms which are not always welcomed by consumers (unfair rivalry, offering new products that have not been seen before and which users do not understand).

Following an analysis of complaints received from consumers, in July and August UOKiK instigated proceedings against three firms selling electricity, which were Polska Energetyka Pro, Novum, and Energetyczne Centrum. These undertakings were concluding off-premises contracts.

⁴⁷ Decision DDK-28/2015.

⁴⁸ Decision DDK-2/2015.

⁴⁹ Decision DDK-14/2015.

⁵⁰ Decision DDK-30/2015.

According to the complaints made by consumers, representatives of these firms were misleading customers by pretending to be the service providers already providing services at the time, and did not provide information which they were required to disclose under legislation on distance and off-premises contracts.

The examples given relate to the energy market, while it needs to be stressed that Novum had employed comparable practices in the past when operating on the telecommunications market. Novum was penalised by UOKiK in December 2015, in a decision⁵¹ in which a number of ways in which customers were misled were described, for example suggesting that a representative was acting for the operator providing customers with services at the time. Novum filed an appeal against the decision.

E-commerce

The first **consumer warning**, which was released by UOKiK in 2015, concerned an undertaking providing a service online which was the placing of advertisements on websites which it owned.

UOKiK received numerous complaints from consumers and consumer ombudsmen about practices employed by the owner of the firm Invest-Net Braniewski Tomasz in Warsaw. The undertaking was operating websites⁵² on which advertisements could be placed for real estate on specific websites. When ordering services customers were required to fill in an online form, consent to the conditions of use, and click on “place offer”. Once the advertisement was placed, according to the information on the internet page, the service was supposed to be available for a three-month trial period free of charge. Consumers were not adequately informed however that at the end of the three-month period a fee would be charged for the service (the fee for each subsequent month was approximately PLN 500). Consumers were not finding out about this until they received notices demanding payment. Moreover, they did not have the option of cancelling the service immediately because the set notice period was between one and three months, depending on the type of agreement.

In most cases however the notices served by the undertaking were not legally effective, because an agreement is concluded online only when

information is provided with the button that is used to place an order clearly stating that a fee will be charged for the agreement being concluded, which this undertaking did not do. During the proceedings UOKiK released a warning about the practice. The proceedings were not concluded in 2015 r.⁵³

Automotive market

For the purpose of protecting Polish consumers, UOKiK also reacts to global information.

In October 2015 UOKiK instigated preliminary proceedings when information came to light of the rigging of exhaust emissions readings in Volkswagen cars. The Office requested information from Volkswagen Group Polska in order to determine whether there were grounds for a charge of infringement of collective consumer interests. Progress with regard to remedies applied by the firm is being analysed on an ongoing basis. Volkswagen confirmed that it had placed approximately 140 000 vehicles with a rigged exhaust emission reading system on the Polish market. UOKiK will review the way in which sales personnel review complaints submitted on the basis of warranty in connection with the revelations concerning irregularities with regard to exhaust emissions.

2.2. Court judgements concerning infringement of collective consumer interests

In 2015 the Court of Competition and Consumer Protection (SOKiK) issued 65 judgements concerning appeals against UOKiK decisions concerning infringement of collective consumer interests. The Appeal Court in Warsaw issued 44 judgements of this type, and the Supreme Court 4. In 42 cases SOKiK dismissed the undertakings’ appeals, in 7 cases it amended the ruling, and in 16 it overturned UOKiK’s decision⁵⁴.

⁵¹ Decision DDK-29/2015.

⁵² The websites operated by the undertaking are: ale-gratka.pl, ale-gratka.com, alegratka.eu, bez-posrednikow.pl, ofertynet.com.pl, and top-gratka.pl.

⁵³ As at 14.03.2016 – the proceedings are ongoing.

⁵⁴ Rulings handed down subsequent to 1 September 2015 are posted in the [database of court judgements](#).

Table 4. Statistics with regard to judgements concerning infringement of collective consumer interests in the years 2013–2015

	SOKiK	Appeal Court in Warsaw	SN
Judgements issued in 2013	77	30	1
Judgements issued in 2014	113	34	1
Judgements issued in 2015	65	44	4

Table 5. Content of judgements issued by SOKiK concerning infringement of collective consumer interests in the years 2013–2015

year	2013		2014		2015	
SOKiK judgement	number	%	number	%	number	%
UOKiK decision overturned	6	8	13	11,5	16	25
UOKiK decision amended	12	15	26	23	7	11
Undertaking's appeal dismissed	59	77	74	65,5	42	64 ⁵⁵

2.2.1. Examples of judgements in case law regarding UOKiK decisions concerning practices infringing collective consumer interests

SOKiK judgement of 5 November 2015 concerning an appeal filed by Getin Noble Bank against an UOKiK decision⁵⁶

The UOKiK decision issued in 2013⁵⁷ regarding Getin Noble Bank concerned leaflets advertising group life insurance products and unit-linked life insurance products: Lucro and the Savings Plan for a Secure Future (Plan Oszczędnościowy Bezpieczna Przyszłość). UOKiK found the leaflets to be misleading for consumers as regards the risk connected with the financial products being advertised – the benefits were underlined but the explanations about possible losses of savings were vague and written in print which was too small. The fine imposed on the bank for misleading consumers was more than PLN 1 m. The undertaking was also ordered to publish the decision on its website.

UOKiK's ruling was upheld by SOKiK, which stressed in the statement of reasons for its judgement that banks have disclosure obligations due to trust on the part of consumers in such institutions. The court said that in its view a bank should, as a minimum, provide information in equal measure

regarding the dangers connected with the product being advertised, and the potential benefits, because the average consumer is not sufficiently knowledgeable about complex products on the financial products market.

SOKiK judgement of 19 November 2015 concerning an appeal filed by Fundusz Hipoteczny DOM against an UOKiK decision⁵⁸

SOKiK dismissed the appeal filed by Fundusz Hipoteczny DOM against the UOKiK decision of 2013 concerning a mortgage life annuity⁵⁹ in its entirety. UOKiK found that Fundusz Hipoteczny DOM had misled consumers by making contractual terms appear more attractive than they were in reality. Among other things it suggested on its website that regardless of the annuity paid to a consumer the fund would also pay rent for the transferred real property. In fact this was paid out of the annuity paid to senior citizens, thereby reducing the amount paid to customers. SOKiK pointed out that many people could be misled – due to the poor financial standing of Polish pensioners, a large number of them might be interested in a life annuity offer.

SOKiK judgement of 27 December 2015 concerning an appeal filed by Aegon TUnŻ against an UOKiK decision⁶⁰

The SOKiK judgement concerned a decision issued by UOKiK in 2014⁶¹ concerning Aegon Towarzystwo Ubezpieczeń na Życie with respect to unit-linked

⁵⁵ From 2014 onwards there were a smaller proportion of judgements dismissing appeals filed by undertakings. This was a result of a change in SOKiK ruling policy with regard to prohibited contractual clauses. This issue is discussed in greater detail in point 1.1 – *Monitoring of standard agreements*.

⁵⁶ Case file number XVII AmA 83/14.

⁵⁷ Decision RKT-54/2013.

⁵⁸ Case file number XVII Ama 108/14.

⁵⁹ Decision RWA 38/2013.

⁶⁰ Case file number XVII Ama 165/14.

⁶¹ Decision RBG-30/2014; the proceedings against Aegon are described in the UOKiK Report on activities for 2014.

life insurance policies. UOKiK found that the insurance company had misled customers by informing them that the manner in which the cancellation fee was calculated had changed. SOKiK had declared the initial clause regarding this fee a prohibited clause and had placed it in the register of prohibited clauses. Aegon imposed on customers, unilaterally, an amendment to the agreement following adoption of an internal management board resolution. Meanwhile, under the law, an amendment of this kind can only be made upon mutual consent of both parties. UOKiK ordered the company to cease this unfair practice and fined it almost PLN 23.5 m. SOKiK dismissed the insurance company's appeal and upheld the decision. In a statement of grounds delivered verbally, it stated among other things that the regulations that Aegon had breached were quite clear, and that the desire to shift a portion of losses onto consumers, and the fear that consumers would terminate agreements at no cost on the basis of the proposed annex, could not be justification for employing unlawful practices.

Appeal Court judgement of 8 July 2015 concerning an appeal filed by the Polish Association of Developers (Polski Związek Firm Deweloperskich)⁶²

The Appeal Court judgement relates to an UOKiK decision⁶³ of 2010 determining collective consumer interests to have been infringed by the Polish Association of Developers. UOKiK questioned certain clauses contained on the association's list of good practices, which provided guidelines as to standard agreements used by property developers. The concerns arose among other things with regard to a clause stipulating that a consumer did not have the right to rescind a contract if the difference between the area of premises approved for use and handed over and the area stated in the contract was less than 2%. UOKiK did not question the percentage stated but above all the legal implications of placing a clause of that kind in standard agreements. These legal implications include: the fact that the parties to the agreement cannot regulate payment of the difference in the price being the difference in the surface area stated in the design documentation and the surface area of the premises once built, consumers being prevented from rescinding the agreement in the event of an increase in price due to an increase in the surface area of the



residential premises, and the fact that only the customer bears the risk of improper performance of the contract.

The standpoint adopted by UOKiK was upheld by both SOKiK⁶⁴, and the Appeal Court⁶⁵. Following a cassation appeal the Supreme Court⁶⁶ overturned the Appeal Court judgement and referred the case for re-examination, pointing out, among other things, that clauses in a good practice guide cannot be evaluated in the same way as clauses in standard agreements. The Appeal Court pointed out that the Supreme Court ruling had an impact on its judgement. In the Appeal Court's view the questioned clauses on the list of good practices are not contrary to the law or good customs.

Appeal Court judgement of 24 November 2015 concerning an appeal filed by Samsung⁶⁷

In a decision⁶⁸ of 2013 UOKiK stated that an advertising campaign for the company's televisions – which imitated government announcements on digitisation – was misleading for consumers. Use of elements that were characteristic of a campaign conducted by the Polish Ministry of Administration and Digitisation (Ministerstwo Administracji i Cyfryzacji - MAiC) might suggest to consumers that Samsung's retail product range was part of a government information campaign. In UOKiK's view this might have influenced decisions to buy the product. The UOKiK decision was upheld by SOKiK⁶⁹, and subsequently overturned by the Appeal Court, which concluded that consumers were sufficiently aware not to consider

⁶² Case file number VI ACa 831/15.

⁶³ Decision DDK-17/2010.

⁶⁴ Case file number XVII AmA 44/11.

⁶⁵ Case file number VI ACa 761/13.

⁶⁶ Case file number III SK 47/14.

⁶⁷ Case file number VI ACa 1725/14.

⁶⁸ Decision DDK-2/2013.

⁶⁹ Case file number XVII AmA 103/13.

the advertisement as a true continuation of the MAiC campaign, and thus were not misled. The judgement is legally binding and final.

Appeal Court judgement of 30 November 2015 concerning appeal filed by ING Bank Śląski⁷⁰

In 2012 UOKiK found that advertisements for the Bank Śląski Konto Direct ING were misleading for consumers. According to the information conveyed in the advertisements, money transfers made online and by telephone were free of charge. In fact, fees were provided for for electronic money transfers in a foreign currency. The advertisement also did not mention the fee for a payment card. In the decision issued⁷¹ the bank was fined almost PLN 1.3 m. In 2014 SOKiK⁷² stated that it concurred with UOKiK and dismissed the bank's appeal. As a result however of review of the case by the Appeal Court, the questioned decision was amended. Only the failure to provide information about the fees was found to be a violation of law, while payment cards were described as being sufficiently common and popular that average consumers realise that these are products that are separate from an account and may entail additional fees. The Appeal Court also concluded that consumers are aware that an online advertisement is intended to incline addressees to review the offer, and for this reason only the benefits of purchasing a product are mentioned. Due to the amendment of the UOKiK decision the fine eventually came to PLN 650 000. The judgement is legally binding and final.

2.3. Market surveillance and product safety

2.3.1. Product safety

UOKiK monitors safety of non-food products intended for consumers. Direct inspections at premises of undertakings are performed by the Trade Inspection Authority – at its own initiative or at the request of UOKiK⁷³.

In 2015 UOKiK handled 290 cases concerning general product safety⁷⁴, and 207 were concluded. In a similar way to 2014, most activities concerned children's clothing (148). There were also numerous cases concerning electrical accessories (41) and furniture (35).

Of the cases handled in 2015, 169 were administrative proceedings, of which 118 were concluded. UOKiK instigates administrative proceedings upon receipt of information from the Trade Inspection Authority or other sources, including from consumers. If the Office finds that a particular product might pose a risk to life or health of users, it can impose specific obligations on the manufacturer or distributor, and these include prohibiting the product being placed on the market, ordering a warning to be issued to consumers (for example through announcements made in the press), elimination of the danger, and withdrawal from the market or recall of the product⁷⁵. In addition, UOKiK can fine the entity responsible for placing the product on the market up to PLN 100 000.

In 2015 122 decisions were issued⁷⁶, while there were 21 cases of UOKiK imposing obligations on undertakings, and 18 cases of fines being imposed. In most cases, the proceedings were discontinued (88), mainly due to an undertaking being proven to have eliminated the danger posed by the product while the proceedings were still in progress. This demonstrates that manufacturers and distributors are willing to work with UOKiK in this regard.

Register of dangerous products

Products which UOKiK finds not to comply with safety requirements are entered into the [register of dangerous products](#). In 2015 another 33 products were added to the register.

Voluntary notifications from undertakings

Undertakings more and more frequently inform UOKiK voluntarily of irregularities they have discovered and remedies undertaken. The notifications received are next placed on UOKiK's website. The Office also monitors progress with the remedies undertaken. In 2015 undertakings submitted 134 voluntary notifications of activities of that kind. As in other years, most of the notifications concerned motor vehicles (114). The other information provided related to electrical devices, articles for children, and toys.

RAPEX

[RAPEX](#) (Rapid Alert System for non-food consumer products) is a tool used for rapid sharing of

⁷⁰ Case file number VI ACa 1685/14.

⁷¹ Decision DDK-4/2012.

⁷² Case file number XVII AmA 55/13.

⁷³ UOKiK approves plans for inspections conducted by the Trade Inspection Authority, both scheduled inspections and inspections conducted by Voivodship Inspectorates as part of their own area of responsibilities.

⁷⁴ The Act of 12 December 2003 on General Product Safety (consolidated text, Journal of Laws of 2015, item 322).

⁷⁵ Recall of a product means that a trader is required to purchase the product back from users at the price at which the trader sold it, regardless of the condition of the product. A consumer who holds proof of purchase may submit a claim of this kind to the distributor from whom the product was purchased, and if it does not have proof of purchase – to the manufacturer directly.

⁷⁶ The number of decisions issued is higher than the number of cases concluded because it includes among other things cases concerning re-examination of a case.

information between Member States and the EC about dangers posed by consumer products. Each week the EC publishes notices on its website, based on this information, about dangerous products reported by Member States. A Polish point of contact operates at UOKiK for this system.

In 2015 Member States placed 2122 reports in the system, of which 30 related to products that were placed on the market in the EU for the first time by Polish manufacturers (22) or importers (8).

2.3.2. Compliance assessment system

UOKiK monitors the system of control of non-food products to determine conformity to essential requirements specified in the new approach *directives*⁷⁷. Under the Act on the Compliance Assessment System⁷⁸ UOKiK conducts administrative proceedings, and in cases in which it determines that a particular product violates essential requirements, it issues a decision ordering it to be withdrawn from the market and lists the product in a special register. In 2015 UOKiK handled 461 cases of this kind, and concluded 372. The measures taken concerned principally toys (233), personal protective equipment (59) and electrical devices (57).

In 2015 proceedings were concluded in 248 out of 315 administrative cases. The Office issued 325 decisions⁷⁹, of which 224 discontinued the proceedings and 24 placed obligations on undertakings as specified in the act. The main reason for issuing decisions discontinuing proceedings is submission by undertakings of proof that the breach has been rectified or products have been withdrawn while the proceedings are ongoing.



Effectiveness of UOKiK activities based on the example of toys

183 notifications sent to undertakings

⁷⁷ These concern more than 20 groups of products, among others electrical devices (electronic devices and household appliances), toys, personal protective equipment, building materials, machinery, and lifts. Only articles with respect to which essential requirements are laid down in legislation should bear the CE sign.

⁷⁸ The Act of 30 August 2002 on the Compliance Assessment System (consolidated text, Journal of Laws of 2014, item 1645 as amended).

⁷⁹ This number concerns not only decisions issued in cases which have been concluded, but also decisions issued for instance while proceedings are ongoing.

63 074 products withdrawn from sale
4551 irregularities rectified



Effectiveness of UOKiK activities based on the example of electric devices

11 notifications sent to undertakings
103 143 products withdrawn from sale
1508 irregularities rectified

Register of products which are not compliant with essential, specific, or other requirements

UOKiK maintains a register of products which are non-compliant with essential, specific, or other requirements, which is available on the website. In 2015, 84 products were placed in the register.

Cooperating with other specialist bodies

In cases in which information is obtained about products which are not compliant with essential requirements, UOKiK may, among other things, commission an inspection or pass on the relevant information to the competent specialist body. The body responsible for inspecting products which are on the market is, among others, the Trade Inspection Authority, which is subordinate to UOKiK. This body performs its activities with the help of voivodship inspectors and inspection and analysis laboratories which support it. In 2015 the Office commissioned inspections to Trade Inspection Authority voivodship inspectorates in 25 cases, and in one case the Chief Labour Inspectorate.

ICSMS

The ICSMS (Information and Communication System for Market Surveillance) makes it possible to gather information about products that are not compliant with requirements laid down in the community harmonisation legislation and for that information to be shared between market surveillance authorities in EU Member States. A Polish point of contact is located at UOKiK. In 2015 UOKiK placed **five** notifications in the system

and in 19 cases took action in response to reports provided by other Member States.

2.3.3. Supervision of the Trade Inspection Authority

UOKiK plans, coordinates and monitors inspections conducted by the Trade Inspection Authority voivodship inspectorates concerning food and non-food services and products, and analyses the findings. The Office also performs tasks relating to fuel quality inspection.

65th anniversary of the Trade Inspection Authority

The Trade Inspection Authority was created on 21 September 1950, and even at that time it was responsible for protecting consumer rights and interests. Over the years its duties have changed, and in effect it has become a key institution in the consumer protection network. Nowadays it is also responsible for conducting inspections of undertakings and the goods and services they offer, and for providing support for consumers in the exercising of their rights.

voivodship inspectorates. In September 2015 the Voivodship Administrative Court in Warsaw⁸¹ stated that it concurred entirely with UOKiK's standpoint with respect to liability of retailers under the new legislation, and, by the same token, it was confirmed that it was correct to impose fines.

In 2015 18 nationwide inspections of food products were conducted, of which two were carried out as part of coordinated plans of the European Commission⁸² jointly with the Foodstuff Trade Quality Inspectorate.

The first of the EU-wide inspections was intended to rectify irregularities with respect to fish on offer to consumers. Seventy-nine samples taken for laboratory testing matched the information about the species of fish given on the original product packaging. Checks on labelling in retail stores (in particular products that are sold loose) and in gastronomic establishments revealed a series of irregularities with respect to falsification of species of fish. For the purpose of laboratory tests UOKiK introduced specialist methods based on DNA analysis.

Table 6. Number of inspections conducted by the Trade Inspection Authority ordered by UOKiK in the years 2013–2015

Subject matter	Number of inspections in 2013	Number of inspections in 2014	Number of inspections in 2015
Food products	9751	2518	8914
Non-food products and services	4463	1244	4369
General product safety	1469	1148	985
Compliance with new approach directives ⁸⁰	2130	1541	1557

With regard to food products, 2015 was the first year in which the latest legislation on labelling food products – regulation (EU) 1169/2011 on the provision of food information to consumers, was in force. In order to prepare undertakings to comply with the new legislation, UOKiK issued, in consultation with the Minister of Agriculture and Rural Development and other official food product inspection authorities, explanatory notes to help with interpretation of the legislation. The areas of interpretation adopted by UOKiK underwent judicial review because some undertakings questioned whether the legislation was applicable to them and fines imposed on them by Trade Inspection Authority

Another inspection at EU level concerned the quality of honey. Authenticity of honey was checked with respect to 50 samples tested in a UOKiK laboratory. In addition, 30 samples from the same batches were forwarded (as required under EC guidelines) for testing in external laboratories in Germany. The purpose of this element of the inspection was to detect the presence of sugars that do not come from honey. When the Polish and German laboratory results were considered, a total of 10 per cent of the samples tested were falsified.

⁸⁰ The numbers given relate to scheduled inspections. A single product can be subject to a number of legislative acts, for example electrical devices are subject to two directives: the low voltage directive and directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment.

⁸¹ Judgement: VI SA/Wa 1199/15.

⁸² Commission Recommendation of 12.03.2015 on a coordinated control plan with a view to establishing the prevalence of fraudulent practices in the marketing of certain types of food (unpublished). Annex I: *Coordinated control plan for honey authenticity*; Annex II: *Coordinated control plan for fish species substitution*.

In 2015 UOKiK prepared the following summaries of inspections carried out by the Trade Inspection Authority:

- the results of a year-long inspection of trade quality of olive oil
- the results of inspection of trade quality of frozen fish products
- the results of inspection of quality and proper labelling of chicken eggs.

In 2015 UOKiK also took part in drawing up an integrated plan for official inspection of food products for Poland (MANCP) for the years 2015–2019. The principal aim of the official inspection of food products is to protect consumers against dangerous food products and unfair trading practices in this regard. The MANCP plan was incorporated into the Trade Inspection Authority inspection plan for the year, which was prepared by UOKiK.

In 2015, at the instructions of UOKiK, Trade Inspection Authority bodies also conducted 11 nationwide inspections with respect to **non-food products and services**.

Particular attention should be paid to inspections to check correct placing on the market of automobile fittings or parts intended for consumers for which a certificate of initial fitness is required. The inspections were also intended to make undertakings aware of the need to label goods properly as required by law. The inspections conducted in this respect covered 117 undertakings. Ninety out of 441 batches of products placed on the market were questioned. On the basis of the activities performed, 5 notices were issued to undertakings being inspected, 18 post-inspection notices were issued to manufacturers/importers, and in three cases administrative proceedings were initiated concerning fines.

In this respect, in 2015, inspections conducted by the Trade Inspection Authority were summarised and consumers were informed of their rights in connection with the following activities:

- results of a year-long inspection of quality of textile products
- advice with respect to hotel services.

2.3.4. UOKiK laboratories

UOKiK was in charge of operations of accredited laboratories conducting tests for the purpose of Trade Inspection Authority inspections with respect to food products, fuels, toys, textile products and other non-food products. All of the

Office's laboratories operate within a management system which complies with norm PN-EN ISO/IEC 17025, which guarantees credible and reliable test results. Information about samples questioned by laboratories can help the Trade Inspection Authority to take the appropriate measures, above all to eliminate from the market products which are not compliant with the law.

In 2015 laboratories tested **4341** samples, of which **1518** were questioned due to not meeting legal requirements or requirements specified by the undertaking.

2.3.5. Fuel quality inspection system

UOKiK is in charge of the system of inspection and monitoring of fuel quality⁸³, which is aimed at counteracting the transportation, storage, placement on the market, and gathering in establishments' stations fuels which do not meet quality standards laid down by law. UOKiK plans inspections of quality of fuels conducted by the Trade Inspection Authority, monitors how the inspections proceed, gathers data, and draws up reports.

Inspection of quality of fuels covers the entire distribution chain, from producers to petrol stations. The results of inspections conducted in 2015 revealed that the quality of LPG is questioned more frequently than the quality of fuel:

- with respect to liquid fuels – petrol and diesel – 2.79 per cent of the 933 samples tested did not meet quality standards (in 2014 this figure was 3.87 per cent).
- with respect to LPG the inspection revealed irregularities in 3.91 per cent of the 486 samples taken (in 2014 2.29 per cent of samples were questioned).

UOKiK issued **86** decisions requiring undertakings to pay the costs of tests if the samples tested did not meet quality standards.

The Office also conducts proceedings concerning appeals against decisions issued by Trade Inspection Authority voivodship inspectors which fine inspected undertakings for failing to provide at petrol stations information about the contents of biocomponents in the liquid fuels on sale. In 2015, in each case, UOKiK upheld the decision issued by the voivodship inspector.

UOKiK also collects all information about fuel of inadequate quality – which is obtained from

⁸³ Act of 25 August 2006 on the Fuel Quality Monitoring and Inspection System (Journal of Laws of 2014 item 1728).

drivers, the police, customs offices, tax offices, etc. This data is considered on an ongoing basis when planning further inspections and is forwarded to Trade Inspection Authority voivodship inspectors. In 2015 654 reports of that kind were received.

On this basis UOKiK publishes on its website a list of petrol stations and wholesalers, together with the findings of inspections which are scheduled in view of complaints from drivers concerning fuel of inadequate quality. The list is updated on a monthly basis⁸⁴.

2.4. Working with consumer organisations

UOKiK works with consumer organisations above all with respect to ordering consumer advice activities. UOKiK provides funds for this purpose by way of a competition⁸⁵. In 2015 UOKiK provided funds of a total value of PLN 2.7 m. These went to:

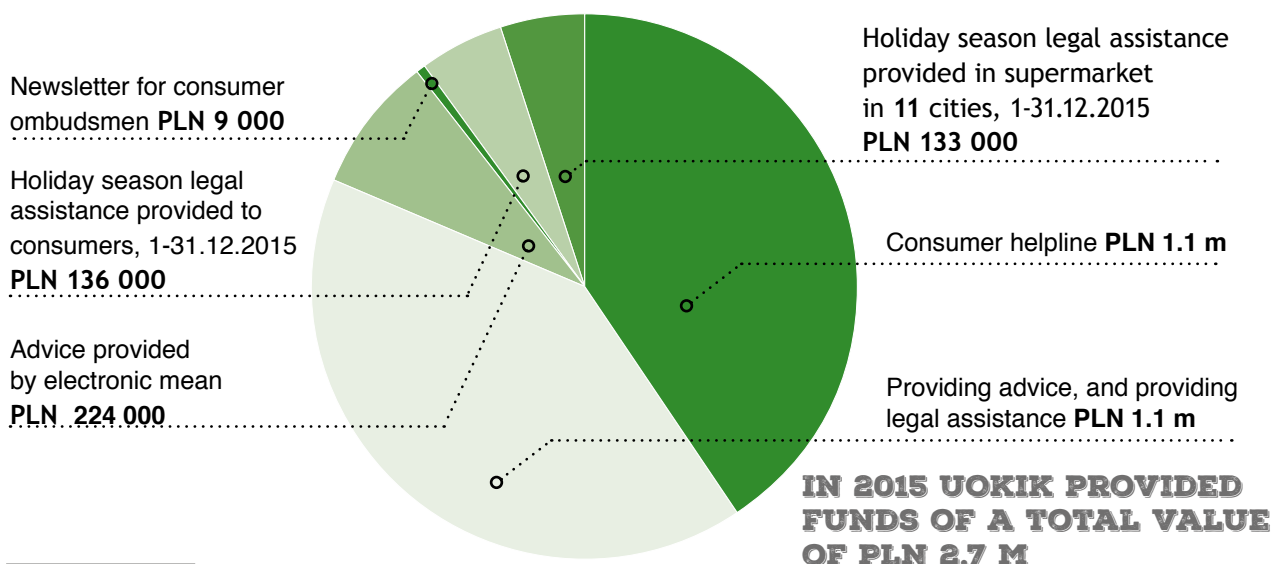
- A consortium of the Association of Polish Consumers (Stowarzyszenie Konsumentów Polskich) and the Consumers Foundation (Fundacja Konsumentów) – for a consumer helpline (PLN 1.1 m), on which 70 330 consultancies were given, and holiday season legal advice provided for consumers free of charge in the period 1–31 December 2015 (PLN 136 000).
- Polish Consumer Federation (Federacja Konsumentów) – for free of charge consultancy and legal advice with respect to pursuit of claims by consumers (PLN 1.1 m), in connection with

which 61 262 consultancies were given, for the consumer e-mail centre E-Poradnictwo⁸⁶ (PLN 224 000), in which 19 200 consultancies were given via e-mail. The organization was also given funds for free of charge holiday season legal advice in the period 1–31 December 2015 (PLN 133 000). Advice was given in supermarkets in 11 cities, and help was also provided via social networking sites⁸⁷.

- ANTERIS Legal Aid Foundation (ANTERIS Fundacja Pomocy Prawnej) – for the drawing up, editing, and distribution by e-mail of a newsletter in electronic form for consumer ombudsmen (PLN 9 000).

The increase in spending on the consumer helpline compared to 2014 was due to longer hours of operation of the helpline, resulting in an increase in the number of consultancies given and less time being spent waiting to be put through.

UOKiK also works closely with the European Consumer Centre (ECC), which is part of a network of European Consumer Centres – ECC-Net. The year 2015 saw the 10th anniversary of creation of ECC-Net. The ECC provides legal advice and organisational assistance to consumers in Poland who are having problems with foreign business undertakings. It also helps resolve disputes between citizens of countries in which ECC-Net functions and business undertakings in Poland. The ECC is financed by EU funds and UOKiK, which oversees performance of the Centre's duties.



⁸⁴ Complaints can be submitted on a form provided on the UOKiK website http://www.uokik.gov.pl/zgloszenie_paliwa_zlej_jakosci_formularz.php.

⁸⁵ The rules for contracting to organisations consumer protection tasks and the procedures for providing them with funds are provided for in the Act on Public Benefit and Volunteer Work. The amount that can be allocated for performing these tasks is set annually in the budget. Information about competitions is placed in the press and in the UOKiK Bulletin and is available at the UOKiK offices.

⁸⁶ A consumer can make use of free of charge legal advice provided by experienced lawyers by e-mail.

⁸⁷ The consultations were given on the Polish Consumer Federation Facebook page. Due to confidentiality requirements contact with consumers took the form of private messages which could not be seen by other users.

Chapter 3.

Competition protection

Competition is one of the key elements of the economy, and determines its growth. For this reason it is extraordinarily important to: effectively eliminate any signs appearing of disruption of market rivalry, prevent similar problems arising, and promote competition-friendly solutions. Competition is not however an end in itself because a properly functioning market is beneficial to consumers. Improving consumer welfare is the ultimate goal of the operations of public institutions with respect to competition protection.



UOKiK's activities with respect to competition protection relate to:

- counteracting competition-restricting practices;
- concentration control;
- monitoring state aid.

3.1. Competition-restricting practices

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

Competition-restricting agreements are prohibited under competition protection law. In particular price-fixing and bid-rigging, and market sharing agreements are considered practices of this type⁸⁸. The law does provide however for a

few exceptions to this general ban – so-called agreements of minor importance and block and individual exemptions – if the statutory grounds exist⁸⁹.

Abuse of a dominant position is also prohibited. An entity has a dominant position if it can, to a substantial extent, operate independently of its competitors, counterparties and consumers. Under the Act on Competition and Consumer

⁸⁸ An example of a list of competition-restricting practices is given in art. 6 section 1 of the Act on Competition and Consumer Protection (the "Act").

⁸⁹ Art. 7 and 8 of the Act. All of the regulations issued by the Council of Ministers concerning certain types of agreements not declared to be prohibited competition-restricting agreements are available on the UOKiK website.

Protection, an undertaking is assumed to hold a dominant position if its market share is more than 40 per cent. This should be assessed on a case-by-case basis, while the basic criterion according to which it is determined that an undertaking has a dominant position is its true market strength, not solely its percentage share of a particular market. The mere holding of a dominant position is not prohibited, but abuse of a dominant position – i.e. use of market strength to limit the ease with which counterparties and competitors operate by imposing terms of business that are less favourable than would be the case in conditions of effective competition, and elimination of competition or preventing new entities entering the market, is prohibited⁹⁰.

In 2015 UOKiK initiated proceedings in 34 cases concerning competition-restricting practices, and preliminary proceedings in 177 cases of this kind. The lower number of cases handled than in other years (table 7) and decisions therefore issued (table 8) is due to more and more frequent use by UOKiK of soft measures. These include identifying best practices and issuing notices to undertakings requesting voluntary rectification of an infringement and making of the relevant changes.

The soft measures applied by UOKiK are reflected in the negotiation-style approach to competition protection law. Activities of this type enable infringements to be rectified without instigating proceedings against an undertaking (more information is given about this in chapter 1).

In 2015 soft measures were applied 58 times with respect to protection of competition, while 52 cases were concluded. The effectiveness of soft measures is confirmed by 50 examples in which undertakings complied with the suggestions made by the Office.

The lower number of cases is also a result of awareness-raising campaigns conducted by UOKiK aimed at undertakings. The Office's practice shows that some infringements occur due to lack of awareness of antimonopoly law. One sector in which there was a low level of awareness of legislation was the funeral services sector. For this reason, in October 2014, UOKiK conducted an awareness campaign, and a specially prepared guide was issued *Providing cemetery and funeral services – the obligations of cemetery administrators under the Act on Competition and Consumer Protection* (described in detail in the Report on Activities for 2014). As a result, in 2015, a considerable reduction in violations of antimonopoly law was recorded in this sector than in other years. The guide that was drawn up and the promotional activities performed in this respect were well received in the international forum. In 2016 UOKiK received an award for the best competition law awareness-raising and information project in the International Competition Network and World Bank 2015–2016 Competition Advocacy Contest: How to Build a Culture of Competition for Private Sector Development and Economic Growth.

Antimonopoly proceedings concerning competition-restricting practices are only initiated ex officio, while this does not exclude the possibility of submitting notification in writing to UOKiK of a suspected prohibited practice. In 2015 570 notifications of this kind were received, as a result of which preliminary proceedings were instigated in 96 cases and there were 16 concerning competition-restricting practices.

In proceedings concerning competition-restricting practices, economic analysis is particularly important, as it enables the conduct of undertakings to be assessed individually in market terms. The most complex cases and cases most essential for the economy are reviewed at UOKiK by teams made up of lawyers and economists, and this guarantees analysis from all angles.



⁹⁰ An example of a list of practices which constitute abuse of a dominant position is given in art. 9 section 2 of the Act.

Table 7. Proceedings in cases concerning competition-restricting practices in the years 2013–2015

	2013			2014			2015		
	Instigated	Conducted in 2013 but instigated in previous years	Concluded	Instigated	Conducted in 2014 but instigated in previous years	Concluded	Instigated	Conducted in 2015 but instigated in previous years	Concluded
Antimonopoly proceedings (total)	87	54	92	64	34	68	34	37	42
Antimonopoly proceedings concerning horizontal agreements ⁹¹ , including:	20	8	15	15	5	14	11	14	12
– Conducted on the basis of art. 101 of the TFEU ⁹²	1	1	0	0	2	0	0	2	1
Antimonopoly proceedings concerning vertical agreements ⁹³ , including:	19	13	13	3	8	6	0	5	1
– Conducted on the basis of art. 101 of the TFEU	0	0	0	0	0	0	0	0	0
Antimonopoly proceedings concerning abuse of a dominant position , including:	48	33	64	46	19	48	23	18	29
– Conducted on the basis of art. 102 of the TFEU	2	0	1	0	1	0	0	1	0
Proceedings concerning fining an undertaking ⁹⁴	8	3	6	4	6	4	21	5	22
Preliminary proceedings	354	153	267	324	227	341	177	201	290

For the purpose of eliminating anti-competitive agreements and abuse of a dominant position, UOKiK may order that prohibited practices be ceased (decisions finding practices to be competition-restricting practices and ordering them stopped) or accept a voluntary commitment by an undertaking in this regard (commitment decisions). It is also possible to fine an undertaking. In 2015 the total value of fines with respect to competition-restricting practices was more than PLN 17.5 m. Towards the end of 2015, as part of a

transparency policy, an update to the information explaining the policy for setting fines for competition-restricting practices was published. This document presents the methodology applied when setting fines, and thus enables an undertaking to make a preliminary estimate of the level of fines in the event of actions which are against the law.

In an amendment to antimonopoly law of 18 January 2015 the option was introduced of **settlement** with regard to cases concerning competition-restricting practices. Under this procedure an undertaking has a fine reduced by 10 per cent. In this way a competition-restricting practice can be eliminated from the market more quickly in a manner favourable for all market players. In 2015 UOKiK published detailed information explaining the settlement procedure.

⁹¹ The parties to horizontal agreements are undertakings which compete with each other, i.e. which operate at the same level of economic trade. Their principal aim is to limit mutual competition for example by agreeing prices.

⁹² In cases in which a practice which is being examined might affect trade between EU Member States, antimonopoly proceedings are also conducted according to EU law, i.e. art. 101 and 102 of the TFEU.

⁹³ Vertical agreements are concluded between undertakings operating at different levels of trade, i.e. which are not competitors. In this case the parties might be for example a manufacturer and distributor or a wholesaler and a retailer.

⁹⁴ The statistics include proceedings concerning fines for failure to comply with decisions or not properly complying with decisions issued by UOKiK (including with regard to control of those decisions), failure to provide information or providing misleading information and for failing to cooperate during an inspection or search.

Table 8. Number of decisions issued in 2013–2015

Type of agreement	2013			2014			2015		
	Horizontal	Vertical	Abuse of a dominant position	Horizontal	Vertical	Abuse of a dominant position	Horizontal	Vertical	Abuse of a dominant position
Decisions finding practices to be competition-restricting practices and ordering that they be ceased	2	4	24	1	2	9	2	0	7
							1 (decision concerning a vertical-horizontal agreement)		
Decisions finding practices to be competition-restricting practices and ordering that they be ceased	13	9	17	12	3	11	7	0	4
Commitment decisions	0	0	23	0	0	25	0	1	11
Total	15	13	64	13	5	45	9	1	22
							1 ⁹⁵		
Decisions concerning fines ⁹⁶	0	0	6	0	4	0	2	0	4
Proceedings discontinued by way of a decision:	0	0	3	1	1	4	2	0	7
due to a practice not being determined	0	0	2	1	1	3	1	0	7
for other reasons	0	0	1	0	0	1	1	0	0
Proceedings discontinued by way of a resolution		0			0			1	

3.1.1. Selected decisions and proceedings concerning competition-restricting practices

In light of the risk of abuse of a dominant position, markets with a high level of concentration remain a priority for UOKiK. These include network industries and local markets (on which firms have a dominant position). Among construction-related markets and markets that make use of physical network infrastructure, the energy sector, the transport sector, and telecommunications sector are especially important. UOKiK monitors these sectors and where necessary takes the appropriate action.

With respect to local markets, among those of top priority are the municipal waste treatment sector,

and water supply and sewage discharge sector, as well as regional passenger services. Detection of local bid rigging arrangements is particularly important because it is in public procurement procedures that agreements for projects that are vital to the functioning of local communities are concluded. Local UOKiK branch offices play an important role in handling cases of this nature as they understand the processes that exist at local level.

Network industries based on the example of the energy and transport sectors

Abuse of a dominant position on the energy market – monitoring of compliance with a decision

The application of a negotiation-style approach to antimonopoly law (for more information about this see chapter 1) is accompanied by a consistent approach to monitoring the way in

⁹⁵ Decision concerning a vertical-horizontal agreement.

⁹⁶ The statistics include proceedings concerning fines for failure to comply with decisions or not properly complying with decisions issued by UOKiK (including with regard to monitoring those decisions), failure to provide information or providing misleading information and for failing to cooperate during an inspection or search.

which undertakings comply with commitments made in the course of proceedings. If an inspection reveals that an undertaking is not honouring commitments, UOKiK will make use of the instruments provided for in law to bring about effective enforcement.

In December 2013 proceedings were concluded in a case in which it was plausibly shown that PGNiG S.A. was abusing a dominant position. In this case, a decision was issued⁹⁷ accepting a commitment made by the firm to remove clauses from agreements relating to sale of gas which were questioned by UOKiK. The solution proposed involved among other things abolishing restrictions for PGNiG customers relating to reduction of amounts of fuel and of contractual capacity for which orders were placed for the next gas year. UOKiK stopped at the proposal made by the firm to insert annexes to contracts. The annexes were to delete or appropriately amend the questioned clauses. In this regard doubts arose as to whether the decision was being complied with properly. An inquiry launched in 2014 revealed that the commitment was not complied with fully. The company made proposals to customers to delete the questioned clauses, and at the same time inserted new clauses into the contracts to which the annexes had been added. Acceptance by customers of the new conditions also meant at the same time an undertaking to purchase gas of a fixed minimum amount agreed at the level provided for in the order from 2014. PGNiG S.A. was fined⁹⁸ a total of more than PLN 10 m, which included each day of delay in performance of the proposed commitment. The decision is not binding because the company filed an appeal.

An inquiry was also conducted into PGNiG Obrót Detaliczny, which was created following issuance of a decision in December 2013, and became a party to certain agreements containing questioned clauses. UOKiK found that this undertaking had complied with the decision within the required time, and thus the proceedings were discontinued.

Abuse of a dominant position in the railway services sector

Proceedings concerning PKP Cargo were instigated in 2006 at the request of a competitor – CTL Logistics. In 2009 a decision was issued⁹⁹ fining PKP Cargo more than PLN 60 m. Despite an appeal the

UOKiK ruling was upheld by courts of successive instances. In October 2013 however the Supreme Court overturned the previous judgements and referred the case to SOKiK for re-examination. The main reason given for this was expansion of the subject matter of the ongoing proceedings. The original allegation made had concerned rules applied since 2006 according to which the firm was able to refuse to sign a special agreement (providing for discounts) with an undertaking considered to be a competitor. Following a change to trading policy by PKP Cargo the allegation was expanded to include refusal to sign commercial agreements providing for discounts. In March 2014 SOKiK overturned the final decision issued by UOKiK. For this reason the proceedings were continued but limited to the original allegation concerning special agreements. In December 2015 a decision was issued in the case¹⁰⁰, finding that abuse of a dominant position had occurred in the years 2006–2007, preventing the company’s competitors from expanding their own business and finding new customers, and thus at the same time preventing market rivalry with the dominant firm. The questioned practice therefore had an adverse effect on growth of competition on the rail forwarding market. PKP Cargo was fined more than PLN 14.2 m. One of the factors that led to the fine being decreased was the long period of time that had elapsed between the instigation of proceedings in 2006 and the moment at which the decision was issued in 2015. The undertaking did not appeal against the decision.

Retail market

Countermeasures with respect to competition-restricting agreements on the wristwatch market

Proceedings were instigated in June 2013 regarding a prohibited agreement on the wristwatch market. Swatch Group Polska and distributors were found to be agreeing minimum retail prices for watches in conventional and online stores. As a result, consumers were not able to purchase products below the imposed price, less a specific discount. The case related to a number of watch brands (these include the Omega, Tissot and Swatch brands) for which the exclusive distributor in Poland was Swatch Group Polska in Poland. The decision¹⁰¹ stated that the agreement entailed various kinds of conduct. These were vertical arrangements between a supplier and distributors,

⁹⁷ Decision DOK-8/2013.

⁹⁸ Decision DOK-3/2015.

⁹⁹ Decision DOK-3/2009.

¹⁰⁰ Decision DOK-5/2015.

¹⁰¹ Decision DOK-4/2015.

which at the same time bore the hallmarks of hub and spoke agreements. This is an agreement in which information concerning resale prices is shared among competitors through a middleman (in this case Swatch Group Polska) operating at a different level within the same commercial chain. This meant that distributors were aware of their competitors' pricing policies. In addition, three undertakings agreed prices with each other directly. When prohibiting the use of competition-restricting agreements, UOKiK also fined the undertakings in total more than PLN 2 m. Appeals were filed against the decision with SOKiK.

E-commerce

MFN clauses used by websites

In October 2015 UOKiK completed preliminary proceedings concerning websites offering accommodation (for instance in hotels and private apartments). The use of a so-called most favoured nation (MFN) clause was questioned. Under the clause, the reservation service website obtained a guarantee that the price, availability of rooms, and other conditions it was offering would not be any less favourable than those on offer in any other sale channel.

UOKiK's analysis revealed that the clauses which were the cause of concern were applied by four owners of reservation service websites operating in Poland: Hotel Reservation Service (which was serving among others hrs.pl), Expedia Lodging Partner (among others expedia.com), Booking.com (among others booking.com) and eTravel (among others hotele.pl). As a result, people reserving accommodation did not have an opportunity to make reservations at lower price on other websites, or directly at the accommodation location itself, even if there was a lot of availability. UOKiK suggested that the undertakings remove the questioned clauses directly affecting consumers voluntarily. UOKiK was informed that use of the questioned clauses had ceased. Similar situations occurred in other countries, and for this reason, during the proceedings, UOKiK worked with European competition authorities and the EC, within the European Competition Network.

Local markets based on the example of the municipal and food product sector

Abuse of a dominant position on the water supply and sewage discharge market

In March 2015 UOKiK instigated antimonopoly proceedings against the municipal water supply and sewage discharge provider (Przedsiębiorstwo

Wodociągów i Kanalizacji – PWiK) in Inowrocław concerning abuse of a dominant position. In the course of the proceedings the firm was plausibly shown to be employing a prohibited practice in which it was imposing unfair pricing. Due to being exclusive in the provision of water supply and sewage discharge services, PWiK Inowrocław was charging owners of real property unjustified fees for specific actions relating to connection of premises to the water supply and sewage discharge system in Inowrocław. Under the law¹⁰², infrastructure is constructed at the expense of a water supply system operator, and thus that undertaking is not permitted to charge unlimited fees to people who connect their properties to municipal networks. The pricelists in effect in Inowrocław in the years 2014–2015 also did not provide for fees of this kind. The undertaking made a commitment to stop charging the unjustified fees. The decision¹⁰³ is legally binding and final. No appeal was filed.

Case law does not maintain a consistent line with regard to interpretation of the definitions of a water discharge network connection and connection to a water supply network given in the Act on Collective Supply of Water¹⁰⁴. In rulings issued by the President of UOKiK and some courts to date, the view taken is that a connection is only the section located within the area of the property, and pipes which are located outside of the property are an element of the network. For this reason, the imposing by a water supply and sewage discharge system operator of an obligation to cover the cost of construction of pipes which do not constitute a water discharge network connection or a water supply network connection according to this definition was considered a sign that those entities were abusing a dominant position. A different definition of a connection also appeared in court judgements, however, which was a pipes connecting an internal installation to the network even if situated outside the boundaries of the property. In view of the discrepancies that appeared, in December 2015 UOKiK asked the Ministry of Infrastructure and Construction for the law to be made more precise with respect to this subject.

¹⁰² The Act on Collective Supply of Water and Collective Discharge of Sewage (consolidated text, Journal of Laws of 2015, item 139 as amended); Regulation issued by the Minister of Construction of 28 June 2006 specifying tariffs, the standard template for an application for approval of tariffs, and the requirements for settlement of payments for collective supply of water and collective discharge of sewage (Journal of Laws of 2006 no. 127, item 886).

¹⁰³ Decision RBG-17/2015.

¹⁰⁴ The Act on Collective Supply of Water and Collective Discharge of Sewage (consolidated text, Journal of Laws of 2015, item 139 as amended).

Bid rigging in a tender for municipal services

Proceedings concerning MAR-MAT Usługi Komunalne (MAR-MAT Municipal Services) and WULMAT were instigated in September 2014 with respect to a tender organised by the Łódź city authorities for the mowing of grass and gardening services. The winner in the tender was originally WULMAT, but this undertaking did not sign the agreement. This made it possible for the next bidder in line, MAR-MAT, which offered a higher price, to be selected. An investigation revealed that the undertakings had coordinated between themselves the terms of the bids and their actions, including WULMAT not signing the agreement. UOKiK found that there were no objective, reasonable grounds for this firm not to honour the bid submitted. That collaboration had occurred was indicated among other things by the fact that both bids had been filled in by the same persons. In addition, the personnel in the undertakings were related. As a result of proceedings MAR-MAT was fined for employing a competition-restricting practice. In the case of WULMAT the proceedings were discontinued due to not serving any further purpose¹⁰⁵. In 2014 WULMAT ceased to hold the status of an undertaking as defined in the Act on Competition and Consumer Protection, and therefore its actions could not be assessed in terms of prohibited competition-restricting practices. No appeal was filed against the UOKiK decision.

Bid rigging in a tender for deliveries of bread

As a result of proceedings instigated in March 2015 UOKiK found that FPU Natex and Młyn Malinie Dziewit had entered into an arrangement concerning bids in tenders for deliveries of bread. When the two firms' bids were selected as the most favourable, the winner decided not to enter into the agreement, did not contact the organiser, or gave vague reasons for its decision, for example economic factors or the management being abroad. This led to a higher bid being chosen which was the bid submitted by the other party to the bid rigging arrangement. That collaboration had occurred was indicated among other things by the fact that (in some cases) the bids submitted by the two undertakings were signed by the same person, matching errors in the documentation, particular appendices being missing, and the bids being sent at the same time from the same post office. By doing this the undertakings influenced the outcome of eight public tenders, organised among

others by social welfare centres and a military unit. As a result of the bid rigging arrangement the organisers lost between a few thousand and more than ten thousand zlotys. Family relations existing between the undertakings might have been a factor contributing to the arrangement. The undertakings were fined in total more than PLN 130 000 for participation in a competition-restricting agreement. An appeal was filed with SOKiK against the decision¹⁰⁶.

3.1.2. Leniency and leniency plus programmes

Leniency programmes are intended for parties to anti-competitive agreements. Under these programmes undertakings have a fine decreased or are granted full immunity from a fine when they decide to cooperate with UOKiK. In addition to voluntarily ceasing the unlawful practice, an undertaking is required to submit information and evidence indicating that collusion has taken place. The information obtained in this way is a valuable source of evidence for UOKiK of existence of unlawful competition-restricting agreements¹⁰⁷.

On 18 January 2015¹⁰⁸ another system was introduced – leniency plus – in which an undertaking which submits an application which is the second or subsequent application can have a fine further decreased by 30 per cent if it provides the Office with information about another instance of collusion to which it was also party. In the second case, it will be the first applicant and will avoid a fine. Due to the programme being extended, price-fixing arrangements, which result in higher costs for consumers, can be detected and eliminated.

¹⁰⁵ Decision RŁO-6/2015.

¹⁰⁶ Decision RKR-18/2015.

¹⁰⁷ Details can be found on the UOKiK website: https://www.uokik.gov.pl/leniency_programme.php.

¹⁰⁸ The date on which an amendment to the Act on Competition and Consumer Protection came into force, providing for the leniency plus programme.

Table 9. Number of applications filed with UOKiK under the leniency programme

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Number of applications	0	2	3	6	3	6	8	2	16	5	10	2

3.1.3. Applicability of EU competition law

Competition-restricting practices are prohibited under the Treaty on the Functioning of the European Union (TFEU). In cases in which the actions of undertakings affect trade between EU Member States, EU legislation requires administrative offices and courts of Member States to apply the treaty directly (art. 101-102 of the TFEU) at the same time as the national competition legislation. In 2015 UOKiK conducted proceedings in **three cases**, in which it applied EU law and Polish law concurrently, and concluded proceedings in one case in this regard.

3.2. Concentration control

Concentrations which reinforce the position of undertakings on the market are standard in a modern economy. Competition authorities assess the impact of transactions of this kind on the situation as regards competition, and in cases in which there are legal grounds, prohibit the concentration. This is because they have an obligation to act to prevent concentrations that would potentially restrict competition and which would lead to a permanent change in market structure.

The transactions which are subject to control by the President of UOKiK are those which have an impact or could have an impact in Poland. In the case of intent to concentrate a notification obligation applies if the total worldwide turnover of the undertakings which are party to the concentration exceeded, in the financial year preceding the year in which the notification is filed, the equivalent of EUR 1 bn, or the total turnover in Poland of the undertakings which are party to the concentration exceeded the equivalent of EUR 50 m in the financial preceding the year in which the notification is filed.

In 2015, proceedings were instigated in **228** cases with respect to concentration control, and concluded in **235**¹⁰⁹.

As part of the policy of openness and dialogue with undertakings, UOKiK has introduced the option of **prenotification consultations** to

resolve any concerns and possible objections as to planned concentrations. This allows undertakings to structure the transaction in such a way that it does not give rise to objections on the part of the competition and consumer protection authority.

Upon completion of proceedings UOKiK may:

- grant clearance for the concentration – if the concentration would not lead to significant restriction of competition on the market, which occurs in particular when a dominant position on the market is created or strengthened;
- give conditional clearance – if the appropriate grounds will exist once the conditions are met;
- issue so-called special clearance – if despite anti-competitive consequences the transaction will help bring about economic growth or technical progress, or will have a positive effect on the national economy;
- prohibit the transaction – if as a result of the transaction competition on the market will be significantly restricted, in particular due to a dominant position on the market being created or strengthened.

Failure to provide UOKiK with information during concentration proceedings or proceeding with a transaction without clearance can lead to a fine of up to 10 per cent of the turnover gained in the preceding year. Situations of this kind occur very rarely and in 2015 no fines were imposed in this respect.

A concentration is assessed by UOKiK with respect to the economic consequences, and for this reason **economic analysis** plays an important role. In particular, resolving of problematic cases – i.e. in which there is a significant increase in concentration on the market – requires analysis that takes into account the multifaceted relationships between the firms active on the market, the rate of growth of the competitive environment, and the role of market barriers.

¹⁰⁹ This number also applies to proceedings instigated prior to 2015.

Table 10. Proceedings with respect to concentration control and types of rulings (2013–2015)

	Number of cases		
	2013	2014	2015
Cases concerning concentration control handled in:	206	224	262
– including concluded in:	177	190	235
Types of ruling:	2013	2014	2015
– clearance	156	169	218
– clearance in cases in which a concentration will lead to significant restriction of competition on the market – derogation from prohibition of the concentration (art. 20 section 2 of the Act)	0	0	0
– conditional clearance	2	4	1
– prohibition	0	0	0
– decision discontinuing concentration control proceedings	0	0	0
– ruling discontinuing concentration control proceeding	3	4	5
– return of the notification of intent to concentrate	16	12	11
– decision imposing fine for failure to file notification of intent to concentrate	2	1	0
– decision imposing a fine for failure by an undertaking to provide information during concentration proceedings	3	0	0
– withdrawal of the notification	3	4	5

In 2015 there were major changes to the procedure for reviewing applications. As a result of an amendment to antimonopoly legislation of 18 January 2015¹¹⁰ a **two-step procedure for review of concentration applications was introduced**: concentrations which are not of complex nature are assessed within a month, and an extra four months is required for more complex concentrations. Previous legislation provided for a two-month time limit for completion of proceedings. This time period did not include periods of waiting for responses from undertakings, which meant that in reality review of more complex

concentrations took longer. The changes led to **the average duration of proceedings** with regard to concentrations being reduced: in 2015 it was 34 days (in the preceding year – 57). In 2015 proceedings in three cases were concluded¹¹¹ out of seven which proceeded to the second step.

In addition, due to the amendment, an undertaking is given a prognosis as to the ruling, including the Office's objections, while the proceedings are ongoing. In such a case the undertaking can address the objections, and even make modifications to the scope of a merger or acquisition, in order to avoid the transaction being prohibited.

¹¹⁰ The date on which the amendment to the Act on Competition and Consumer Protection came into force, changing the manner in which concentration proceedings are conducted.

¹¹¹ This is the number of cases in which a decision was issued.

Table 11. Duration of concentration control proceedings in 2014 and 2015.

	Average duration of proceedings in a single case (in days)	
	2014	2015
Q I	78	41
Q II	59	34
Q III	50	26
Q IV	42	37

3.2.1. Selected decisions and concentration control cases

Decisions issued in 2015 in concentration cases usually related to the real estate market (including

the property development market) and chemical sector. Details of selected decisions are given below.

Table 12. Examples of UOKiK decisions concerning concentration control in selected sectors in 2015.

Sector	Number of cases	Examples of decisions
real estate (including the property development market)	24	<ul style="list-style-type: none"> • clearance for acquisition by Union Investment Real Estate GmbH in Germany of assets of Centrum Riviera sp. z o.o. in Warsaw (DKK-78/2015) • clearance for the creation by PKP S.A. in Warsaw and GD&K Investment sp. z o.o. in Cracow of a joint venture (DKK-129/2015) • clearance for acquisition by CBRE ESCF II Management Sarl in Luxembourg of assets of Bielsko Business Center 3 sp. z o.o. in Warsaw (DKK-179/2015).
chemical sector	18	<ul style="list-style-type: none"> • clearance for takeover by FMC Corporation in the USA of control over Cheminova A/S in Denmark (DKK-22/2015) • clearance for takeover by PLATFORM Specialty Products Corporation in the USA of control over ARYSTA LifeScience Ltd in Ireland (DKK-23/2015); • clearance for takeover by Brenntag Nordic AB in Sweden of control over FRED HOLMBERG&Co AB in Sweden (DKK-28/2015)
banking/financial services	13	<ul style="list-style-type: none"> • clearance for takeover by PZU S.A. in Warsaw of control over ALIOR Bank S.A. in Warsaw (DKK-126/2015) • clearance for takeover by PROTECTOR FIZAN in Wrocław of control over GP Investment sp. z o.o. in Bolszewo (DKK-135/2015) • clearance for takeover by MCI.Private Ventures FIZ in Warsaw of control over eCard S.A. in Gdańsk (DKK-180/2015)
retail and wholesale of FMCG	12	<ul style="list-style-type: none"> • clearance for takeover by STOKROTKA sp. z o.o. in Lublin of assets in FRAC Handel sp. z o.o. k-a in Rzeszów and FRAC Handel sp. z o.o. Detal sp. k-a in Rzeszów (DKK-73/2015) • clearance for the creation by POLOMARKET sp. z o.o. in Giebnia and STOKROTKA sp. z o.o. in Lublin of the joint venture Polskie Supermarkety sp. z o.o. in Warsaw (DKK-94/2015) • clearance for takeover by CCC S.A. w Polkowice of control over eobuwie.pl S.A. in Zielona Góra (DKK-213/2015)
machinery sector (machinery, devices, parts)	11	<ul style="list-style-type: none"> • clearance for takeover by Geberit AG in Switzerland of control over Sanitec OYJ Corporation in Finland (DKK-24/2015) • clearance for takeover by TDJ S.A in Katowice of control over FMP S.A. in Mikołów (DKK-29/2015) • clearance for the creation by DANFOSS Silicon Power GmbH in Germany and BOSCH Thermotechnik GmbH in Germany of the joint venture BD Kompressor (DKK-34/2015)

Decisions issued as a result of proceedings that proceeded to the second step

Condition clearance for a concentration on the cement production market

Proceedings instigated in February 2015 concerned plans for Górażdże Cement (Heidelberg Cement group) to take over Duda Beton and Duda Kruszywa. An analysis conducted by UOKiK revealed that the proceedings would have to be extended and that a market study would be needed, covering the competitors of the parties to the concentration (in total 112 firms). The study covered among other things volume and geographical reach of sales, and opinions on the subject of the envisaged concentration were collected. An assessment was carried out of both the impact of the transaction on the entire relevant market, and the impact on the sand and gravel markets separately. It was determined during the proceedings that competition would be significantly restricted on the local market for sale of cement. It was here that the parties to the concentration had the largest shares, which would significantly exceed 40 per cent as a result of the transaction – and from the statutory point of view a market share at this level is assumed to be a dominant position. Due to UOKiK's objections, modifications to the transaction were proposed, and the Office accepted this subject to certain conditions. The decision issued in October 2015¹¹² stated that any assets, tangible and intangible, being part of the Duda Beton cement mixing plant in Olszowa, were excluded from the transaction.

Clearance for a concentration on the regional forwarding market

A concentration filing was made in 2015 for takeover by the Industrial Development Agency (Agencja Rozwoju Przemysłu - ARP) of more than 50 per cent of the share capital of the Regional Transport Company (Przewozy Regionalne). A preliminary analysis of the transaction revealed that competition might be restricted with respect to repair of electric traction assemblies and passenger carriages. Concerns arose above all regarding the electric traction assembly repair market, on which the ARP group operated through H. Cegielski – Fabryka Pojazdów Szynowych (H. Cegielski – Rail Vehicles Factory). At the same time this was a purchase market for the Regional Transport Company. There was therefore a supplier-customer relationship between the undertakings. UOKiK extended the proceedings in order to study the national rolling stock production and repair market. The study revealed that the electric traction assembly market would continue to the competitive subsequent to the transaction because

approximately half of electric traction assemblies would continue to be held by undertakings other than Przewozy Regionalne. It was also ascertained that the production capacity of FPS was limited, and that enhancing that capacity would be expensive and time-consuming. It was therefore deemed rather unlikely that FPS could pose a significant danger to other, larger firms in the rolling stock repair sector, and take on most of the orders from Przewozy Regionalne for electric traction assembly repairs. As a result of the proceedings clearance was issued for the concentration in September 2015¹¹³.

Clearance for a concentration on the internet services market

The concentration proceedings concerned takeover by 1&1 Internet of control over home.pl. UOKiK received information as to concerns about the impact the concentration would have on competition. Also, there was no publicly available and reliable data on the subject of the scope of activities of the two companies, i.e. cloud computing (including for instance hosting, registration and maintaining websites). For this reason, UOKiK decided to extend the proceedings and conduct a market study. Queries were sent to more than 30 firms, including Research and Academic Computer Network (Naukowa i Akademicka Sieć Komputerowa - NASK), which stated that the transaction did not pose a threat to competition. The analysis made it possible to issue clearance for the concentration in December 2015¹¹⁴. It was found that the transaction would have the greatest impact on the national markets for registration and operation of the national “.pl” domain, and hosting services – but that competition would not be restricted on any of these markets, and that subsequent to the transaction 1&1 Internet could still expect to face competition from other undertakings.

3.3. Court judgements in competition protection cases

Appeals against UOKiK decisions and complaints concerning UOKiK rulings can be filed with the Court of Competition and Consumer Protection (SOKiK)¹¹⁵ in Warsaw. An appeal against a SOKiK judgement can be filed with the Appeal Court in Warsaw, and subsequently it is possible to file a cassation appeal with the Supreme Court. Statistics show (table 14) that in most cases UOKiK decisions concerning competition protection are upheld by SOKiK.

¹¹³ Decision DKK-161/2015.

¹¹⁴ Decision DKK-216/2015.

¹¹⁵ With respect to decisions concerning general product safety, an undertaking can file an application for re-examination of a case, and next a complaint with the Voivodship Administrative Court in Warsaw.

¹¹² Decision DKK-176/2015.

Table 13. Statistics for competition protection judgements (2013–2015)¹¹⁶

	SOKiK			Appeal Court in Warsaw			Supreme Court		
	2013	2014	2015	2013	2014	2015	2013	2014	2015
Judgements issued in competition protection cases in 2013–2015 in total, comprising judgements concerning:	71	64	41	22	26	51	3	3	3
vertical agreements	44	16	8	9	14	25	0	0	1
horizontal agreements	8	10	15	1	2	6	0	0	0
abuse of a dominant position	19	35	17	10	10	19	2	2	2
concentration control	0	3	1	2	0	1	1	1	0

Table 14. SOKiK judgements in competition protection cases (2013–2015)

SOKiK judgements in competition protection cases	2013		2014		2015	
	Amount	%	Amount	%	Amount	%
UOKiK decisions overturned	3	4	6	9	7	17
UOKiK decisions modified	7	10	17	27	8	20
Undertaking's appeals dismissed	61	86	41	64	26	63

3.3.1. Examples of court judgements in competition protection cases

SOKiK decision of 19 February 2015 concerning an appeal filed by MPO and ASTWA¹¹⁷

The judgement concerned a decision issued by UOKiK in 2012¹¹⁸ concerning the forming of a consortium by MPO and ASTWA for the purpose of entering a tender for collection and transportation of municipal waste organised by the Municipal Property Authority (Zarząd Mienia Komunalnego) in Białystok. The reasons the undertakings in the consortium gave for forming the consortium related to technical limitations preventing them competing for the tender individually. UOKiK found that in fact the cooperation needed between the two companies to provide the services, which the consortium supposedly enabled, did not occur. The consortium was thus deemed to be anti-competitive and was found to be an attempt at maintaining the current market shares, and evading competition mechanisms. SOKiK overturned UOKiK's decision however, saying that performance of municipal

waste collection and transportation services by each of the undertakings individually would not be economically viable, and, among other things, that prior to entering the tender neither of the undertakings had the number of waste containers required by the contracting authority. UOKiK appealed in the case.

SOKiK judgement of 19 June 2015 concerning an appeal filed by mobile operators¹¹⁹

SOKiK overturned a decision issued by UOKiK in 2011¹²⁰ finding that a prohibited agreement had been entered into by the four largest mobile telephone operators: Polkomtel, Polska Telefonia Cyfrowa (now T-Mobile), PTK Centertel (now Orange), and P4. The case concerned a competition organised by the Office of Electronic Communications (Urząd Komunikacji Elektronicznej - UKE) for frequencies enabling, for instance, reception of television on mobile telephones using digital technology. Upon UOKiK clearance and other approvals being granted for the concentration, the undertakings mentioned formed the consortium Mobile TV in order to enter the competition. In the end a bid submitted by a competitor – Info-TV-FM – was chosen. In order to

¹¹⁶ Information concerning all UOKiK decisions appealed against is available in the decision database at: http://www.uokik.gov.pl/decyzje_prezesa_uokik3.php.

¹¹⁷ Case file number XVII AmA 73/13.

¹¹⁸ Decision RLU-38/2012.

¹¹⁹ Case file number XVII AmA 112/12.

¹²⁰ Decision DOK-8/2011.

provide services, this firm had to sign agreements with the mobile telephone operators. UOKiK found however that after losing the tender the firms making up Mobile TV entered into a prohibited agreement by agreeing a manner of conduct with respect to the winner, including publicly questioning that company's wholesale product range.

In the appeal proceedings SOKiK stated that the operators acted within the law, and stated among other things that the agreement was not anti-competitive in nature and that when issuing clearance beforehand for the consortium to be formed, the Office could not have examined whether its actions were lawful. UOKiK filed an appeal, arguing that regardless of the consequences of the agreement, the intention behind the agreement was anti-competitive, and that this was against the law. It was also emphasised that the clearance for the concentration did not include permission for the undertakings to employ competition-restricting practices – regardless of whether there was a connection between those practices and the scope of operations of the firm created.

SOKiK judgement of 17 November 2015 concerning a National Health Fund (Narodowy Fundusz Zdrowia – NFZ)¹²¹

In a decision¹²² issued in 2013 UOKiK found selection by the Lower Silesia National Health Fund (NFZ) branch of service providers for MRI and computed tomography services to be abuse of a dominant position. The Office questioned the use of quantitative criteria (number of operations performed per year) as being discriminatory towards new service providers. The NFZ was fined more than PLN 180 000. SOKiK upheld the Office's decision in its entirety, stating that the NFZ's actions led to distortion of competition on the market.

Appeal Court judgement of 24 September 2015 concerning an appeal filed by UOKiK¹²³

The case concerns a decision¹²⁴ issued by UOKiK in 2009 finding that a spray-paint producer (Fabryka Farb i Lakierów Śnieżka) had entered into arrangements constituting a prohibited agreement with 55 distributors of its products. Following an appeal filed by a construction materials warehouse (Grupa Polskie Składy Budowlane – PSB), SOKiK overturned¹²⁵ the decision with regard to the

elements concerning that group. UOKiK appealed against the decision to the Appeal Court, and the Appeal Court dismissed the appeal. The court found that no prohibited agreement had been entered into between Śnieżka and PSB – due to the specific nature of the undertaking's business price-fixing could not take place. The Appeal Court took into consideration the fact that PSB only sells goods to members of its own group, which are shareholders at the same time. The goal of its business activity was therefore to obtain for them the most favourable conditions possible for purchase of goods. The Appeal Court stated that PSB's actions were similar to those of an agency group, and under community law agency agreements are exempt from the rule that competition-restricting agreements are prohibited. The judgement in this case is legally binding and final.

Appeal Court judgement of 6 October 2015 concerning an appeal filed by banks¹²⁶

The Appeal Court upheld a decision¹²⁷ issued by UOKiK in 2006 concerning the interchange fee, which is a commission charged retailers by banks for payment card transactions. The Office found that 20 banks had entered into prohibited agreements by agreeing among themselves the level of interchange fees for transactions made using Visa and MasterCard cards. The undertakings were fined PLN 164 m in total. All of the banks appealed against this decision to SOKiK. In 2008¹²⁸ the court overturned the decision, alleging among other things that UOKiK had not properly determined the market on which a violation of law might have taken place. In 2010–2013 the case was examined in turn by the Appeal Court¹²⁹ and SOKiK¹³⁰, which confirmed that a prohibited agreement had been entered into. Despite an appeal on the part of the banks, in 2015 the Appeal Court confirmed the UOKiK decision. The amount of the fines imposed up until that time was also confirmed; these were considered to be both repressive and preventative in function. The judgement is legally binding and final.

It should be emphasised that the issue of the level of the interchange fee has been regulated in legislation since that time. It is a maximum of 0.2 per cent of the value of the transaction for debit cards and 0.3 per cent for credit cards (only a few years ago it was approximately 1.5 per cent).

¹²¹ Case file number XVII AmA 58/14.

¹²² Decision RWR-42/2013.

¹²³ Case file number VI ACa 1096/14.

¹²⁴ Decision RKT-43/2009.

¹²⁵ Case file number XVII AmA 121/10.

¹²⁶ Case file number VI ACa 1150/14.

¹²⁷ Decision DAR-15/2006.

¹²⁸ Case file number XVII AmA 109/07.

¹²⁹ Case file number VI ACa 607/09.

¹³⁰ Case file number XVII AmA 114/10.

Appeal Court judgement of 16 December 2015 concerning an appeal filed by Sphinx¹³¹

In 2013 UOKiK found¹³² Sphinx to have entered into agreements with its franchisers setting rigid prices for products in restaurants using the brand name. A fine was imposed at that time of more than PLN 464 000. In 2014 SOKiK dismissed¹³³ the undertaking's appeal, but in December 2015 the Appeal Court overturned this judgement and referred the case for re-examination by the court of first instance.

Supreme Court ruling of 5 November 2015 concerning a cassation appeal filed by UOKiK and TP EmiTel¹³⁴

In 2007 UOKiK found¹³⁵ that TP EmiTel had abused its market position by making a distinction between rates for charges for broadcasting radio and television channels via a terrestrial broadcasting network. The undertaking was fined PLN 19 m. In 2009 SOKiK overturned the decision being challenged¹³⁶. In subsequent years the case was reviewed by the Appeal Court¹³⁷, SOKiK¹³⁸ and again by the Appeal Court¹³⁹.

Eventually, in 2015, the Supreme Court confirmed that antimonopoly legislation had not been infringed because TP EmiTel did not hold a dominant position on the radio and television channel terrestrial broadcasting market.

3.4 State aid

State aid is one of the ways in which the state intervenes in free market mechanisms. Intervention without legitimate reason endangers freedom of competition inside the EU market, and for this reason state funding is only allowed under

EU law in exceptional cases. State aid is defined as the provision not only of funds, but also of state resources of any other kind.

In order to assure that all undertakings compete on a level playing field, notification must be submitted to the EC of state aid projects or changes to the requirements according to which state aid is used. Funding granted under so-called group exemptions¹⁴⁰ is an exception. The notification requirement also does not apply to de minimis aid, which is aid that does not exceed a gross amount of EUR 200 000 over a period of three calendar years (in the case of the road forwarding sector EUR 100 000).

The legitimacy of state aid granted to undertakings in the EU can only be determined by the EC. UOKiK does not have the power to issue decisions in this respect, and can only perform preliminary assessments of cases of individual aid and aid programmes with regard to EU law compliance. Acting within this power, UOKiK issued 67 opinions in 2015, of which 43 concerned aid programmes, 22 were related to individual aid, and 2 related to individual aid for restructuring projects. Even though the view taken by the Office is not binding, it is often taken into consideration in practice. During the state aid notification process UOKiK informs the EC of the purpose for which it is granted.

The Office is also responsible for monitoring state aid in Poland. On the basis of reports from institutions which grant aid, each year UOKiK draws up the state aid report¹⁴¹ for the previous year. The report is submitted to the Council of Ministers and next approved by the Sejm.



¹³¹ Case file number VI A Ca 1799/14.

¹³² Decision DOK-1/2013.

¹³³ Case file number XVII AmA 123/13.

¹³⁴ Case file number III SK 7/15.

¹³⁵ Decision DOK-95/2007.

¹³⁶ Case file number AmA 66/08.

¹³⁷ Case file number VI A Ca 126/10.

¹³⁸ Case file number XVII AmA 172/10.

¹³⁹ Case file number VI A Ca 1260/13.

¹⁴⁰ The EC has the power to issue regulations under which certain types of aid are somehow determined in advance to be compatible with the common market; for this reason notification is not required beforehand, and EC permission is not required. These are projects which fall under the so-called group exemptions and de minimis aid.

¹⁴¹ The *Report on state aid granted in Poland in 2014* and report on *de minimis aid granted in 2014* were approved by the Council of Ministers on 28 December 2015.

Table 15. State aid statistics for 2015

Applications for a ruling	594
Government proposals (normative acts, strategy documents, programmes, information, reports) analysed from the point of view of particular funding for state aid	503
Projects for which EC notification was filed via the Office, including:	15
– individual aid projects (including restructuring projects)	2
– aid programme projects	8
Decisions approving projects issued by the EC	11
Withdrawn projects	2
Projects analysed by the EC according to the so-called preliminary examination procedure	23
Projects for which formal preliminary proceedings were conducted ¹⁴²	1
Projects for which EC notification was filed via UOKiK under group exemptions, including:	66
– aid programme projects	41
– individual aid projects	25

With respect to state aid, since 2013 UOKiK has been working closely with the Ministry of Infrastructure and Development, which is responsible for proper use of EU funds. In 2015 joint workshops were organised on state aid in operational programmes for 2014–2020 and the inclusion of state aid in the information and communications system. During the meeting, officials from the two institutions were able to share know-how with respect to application of state aid rules and discuss problems.

3.4.1. Selected projects for which opinions were issued and notification filed by UOKiK

Cases handled in 2015 concerned among other things the energy, transport, and postal service sectors.

Postal services market

In the years 2013–2015 the Polish postal services operator (Poczta Polska S.A.) was given the

function of provider of universal postal services, which encompassed postal services in Poland at affordable prices and of specified quality. Due to the fact that the undertaking does not make a profit on some services, in June 2014 the Polish authorities submitted notification to the EC of aid in the form of reimbursement. The reimbursement is financed by way of a three-year reimbursement mechanism created from contributions made by postal service providers in Poland, including Poczta Polska. If the necessity arises the contributions will be supplemented by direct subsidies from the state budget. In November 2015 the EC approved the reimbursement system proposed by Poland. The system by which it was financed was deemed not to distort competition on the Polish postal services market. Moreover, it was emphasised that this system could be a model for other Member States which reimburse postal service providers which have an obligation to provide universal services.

Table 16. Itemised breakdown of examples of projects for which opinions were issued and notifications filed in 2015.

Aid programme provided for in the Renewable Energy Act, in which operational aid was granted for renewable energy by way of an auction
Aid programme Reimbursement for costs incurred for provision of postal services exempt by law from postal service charges
Individual aid for OGP Gaz-System S.A. for investment in a natural gas transmission network in Poland
Individual aid for restructuring for Przewozy Regionalne Sp. z o.o.
Aid programme for the hard coal mining sector for the years 2015–2018
Aid programme for bailing out and restructuring small and medium-sized undertakings
Investments carried out among others by ZF Polpharma S.A., Volkswagen, Solvay, and POLMLEK

¹⁴² The statistics also cover applications submitted in previous years which were examined by the EC in 2014.

Chapter 4.

Legislative works

An important area of UOKiK activity is its active role in legislative works. The issuing of opinions and cooperation in the development of legal solutions are intended to build a legal system which effectively protects consumer interests and supports growth of competition.

In 2015 UOKiK reviewed a total of 1449 proposals and standpoints on Sejm proposals in order to issue opinions about them in terms of potential impact on competition and the standing of consumers.

4.1. Legislative works carried out at the initiative of UOKiK

Legislative works were commenced on the following at the initiative of the Office in 2015:

- an amendment to the Act on Competition and Consumer Protection and the Civil Procedure Code (amendment of provisions on consumer protection);
- basic principles for an amendment to the Consumer Credit Act;
- regulation issued by the Council of Ministers excluding certain types of agreements on transfer of technology from rules prohibiting competition-restricting agreements;
- regulation issued by the Council of Ministers amending the regulation on reports on granted state aid, information about cases in which state aid was not granted, and reports on default on the part of undertakings with payments due to the public finances sector;
- regulation issued by the Council of Ministers amending the regulation on the scope of information that is to be submitted by an entity applying for aid other than *de minimis* aid or *de minimis* aid in the agriculture or fisheries industries.

Proposal for an amendment to the Act on Competition and Consumer Protection and the Civil Procedure Code (amendment of provisions on consumer protection)¹⁴³

The aim of the proposal was to bring about greater protection of consumer interests, including quicker elimination of prohibited practices and making the monitoring of standard agreements concluded with consumers more efficient.

¹⁴³ The amendment to the Act on Competition and Consumer Protection was published in the Journal of Laws of 16 October 2015 (Journal of Laws of 2015 item 1634) and came into force on 17 April 2016.

The amendments concerned in particular:

- prohibiting misselling of financial services to consumers in order to give consumers better protection on the financial services market;
- interim decisions modelled on proceedings in cases concerning competition-restricting practices, leading to quicker reaction to practices endangering collective consumer interests. Even while the proceedings are pending an undertaking is required under an interim decision to cease certain activities;
- the mystery shopper scheme, used to obtain information which could be used as evidence in cases concerning practices infringing collective consumer interests. The President of UOKiK will only be allowed to employ this method with court permission;
- the possibility of presenting the essential view in a case – the President of UOKiK will be able to express a view concerning a competition and consumer protection case if this is in the public interest;
- the possibility of broadcasting statements and warnings free of charge on public radio and television stations, making it possible to alert consumers quickly and effectively of conduct or problems that pose a threat to consumer interests;
- extending the time limit under the statute of limitations for prosecution for practices infringing collective consumer interests.

The amendment also changes the model for monitoring standard agreements. As of 17 April 2016 it is the President of UOKiK (and not SOKiK) who rules, in an administrative decision, a clause in a standard agreement to be prohibited, and prohibits it being used further. Decisions issued by the President of UOKiK which declare a clause to be a prohibited clause are only effective with respect to the undertaking that applies that clause, and towards all consumers who entered into an agreement with that undertaking on the basis of the standard agreement identified in the

decision. The undertaking will have the option of appealing to SOKiK. Decisions issued by UOKiK will be published on the Office's website. The current register of prohibited clauses will be maintained for 10 years¹⁴⁴.

Amendments to provisions concerning standard agreements also include:

- the right of consumers, consumer ombudsmen, the Financial Ombudsman and consumer organisations to report to UOKiK suspected use of prohibited clauses in standard agreements;
- the option of the President of UOKiK specifying the means whereby the effects of use of clauses of that kind are remedied (for example by informing consumers who are party to agreements that the clause has been declared a prohibited clause);
- the possibility of the President of UOKiK imposing fines for use of prohibited clauses – up to 10 per cent of turnover.

Proposed basic principles for an amendment to the Consumer Credit Act¹⁴⁵

The purpose of the changes submitted by UOKiK is to strengthen the position of the consumer on the consumer credit market, increase transparency, and make more precise provisions concerning consumer credit, and thus increase the comparability and transparency of lenders' products. The basic principles provide among other things for more precise wording with respect to:

- the definition of the entire cost of credit;
- the manner in which compulsory information is provided about the cost of the credit in consumer credit advertising;
- pre-contractual disclosure obligations;
- the time limit for serving notice of termination of revolving credit, harmonised with currently applicable EU legislation in this respect.

Proposal for a regulation issued by the Council of Ministers excluding certain types of agreements on transfer of technology from rules prohibiting competition-restricting agreements¹⁴⁶

On 30 April 2015 the regulation issued by the Council of Ministers of 30 July 2007 excluding certain types of agreements on transfer of technology from rules prohibiting competition-restricting agreements expired. A new regulation on this issue was therefore required. The agreements excluded are those which are a factor contributing to improved manufacture, distribution of goods, or technical and economic progress.

The regulation lays down among other things:

- the requirements for an agreement on transfer of technology to be eligible for exemption from rules prohibiting competition-restricting agreements,
- clauses which constitute a breach of rules prohibiting agreements restricting competition on the market;
- the period for which the exemption applies.

Proposal for an amendment to the regulation issued by the Council of Ministers on reports on granted state aid, information about cases in which aid was not granted, and reports on default on the part of undertakings with payments due to the public finances sector¹⁴⁷

The basic purpose of the regulation was to harmonise the list of designated uses of aid with EU legislation on state aid, amended as a result of a reform implemented in the years 2012–2014. In addition, the time limit for giving notice that aid has not been granted has been shortened from 30 to 7 days from the day on which the calendar year ends.

¹⁴⁴ 10 years counting from the moment the act is published in the Journal of Laws, i.e. from 16 October 2015.

¹⁴⁵ The proposal was submitted to the Government Legislation Centre on 27 May 2015. On 25 December 2015 the Council of Ministers Standing Committee decided to combine work on the UOKiK proposal and the proposal put forward by the Ministry of Finance implementing Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property. The entity handling the joint amendment to the Consumer Credit Act will be the Ministry of Finance.

¹⁴⁶ The proposal was approved by the Council of Ministers on 17 April 2015 and published in the Journal of Laws on 29 April 2015 (Journal of Laws of 2015 item 1618).

¹⁴⁷ The proposal for the regulation was approved by the Council of Ministers on 7 August 2015 and published in the Journal of Laws on 25 September 2015 (Journal of Laws of 2015 item 1474).

Proposal for an amendment to the regulation issued by the Council of Ministers on the scope of information that is to be submitted by an entity applying for aid other than *de minimis* aid or *de minimis* aid in the agriculture or fisheries industries.¹⁴⁸

The aim of the amendment is to harmonise the regulation with new legislation laying down the conditions under which state aid is lawful, and in particular Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty¹⁴⁹ and *Guidelines on state aid for bailing out and restructuring non-financial companies which are having difficulties*¹⁵⁰. The amendments concern the scope of information that is to be submitted to an entity granting state aid by an entity applying for state aid.

In addition, legislative works were conducted concerning proposals submitted in 2014:

- proposals for basic principles for the Act on Alternative Dispute Resolution¹⁵¹;
- the basic principles for the amendment to the Act of 16 September 2011 on Protection of the Rights of a Purchaser of a Dwelling Unit or Detached House.

A proposal for the Act on Alternative Dispute Resolution

The proposal for the act was drawn up due to the need to implement into the Polish legal system an EU legislative package for alternative forms of resolution of consumer disputes. This includes the directive on alternative dispute resolution for consumer disputes (the ADR Directive) and the regulation on online dispute resolution for consumer disputes (regulation on consumer ODR).

The fundamental purpose of the EU ADR/ODR legislative package and legislation enacted on that basis is to afford consumers the option of applying to have disputes with undertakings resolved by entities which provide independent, impartial, transparent, effective, and quick forms of alternative resolution of disputes of this kind. Access to inexpensive and effective means of resolution of consumer disputes will also be

advantageous to undertakings, as they obtain an instrument whereby court proceedings which are expensive and of long duration can be avoided.

The ADR Directive provides for creation throughout all Member States of a single alternative dispute resolution system which will cover any consumer-trader disputes that arise on the EU market in connection with agreements concluded for the sale of items or provision of services, including agreements concluded online and cross-border agreements.

The model proposed for the ADR system in the legislative proposal will cover ADR entities created by undertakings in a particular sector (already operating or newly created); public ADR entities specific to a business sector (for instance the Office of Electronic Communications (Urząd Komunikacji Elektronicznej), Energy Regulatory Office (Urząd Regulacji Energetyki), Civil Aviation Authority (Urząd Lotnictwa Cywilnego), Financial Supervision Authority (Komisja Nadzoru Finansowego), Office of Rail Transport (Urząd Transportu Kolejowego) and the Financial Ombudsman (Rzecznik Finansowy); a horizontal entity (Trade Inspection Authority – Inspekcja Handlowa) – its activities cover cases for which a competent entity specific to a particular business sector has not been set up.

A model of this kind guarantees that any consumer dispute covered by the directive is resolved by the competent ADR entity.

Legislative proposal for amendment of the Act on Protection of the Rights of a Purchaser of a Dwelling Unit or Detached House

This legislative amendment came about as a result of a review of the act currently in force on protection of the rights of a purchaser of a dwelling unit or detached house and of consultations with the Minister of Infrastructure and Development (Ministerstwo Infrastruktury i Rozwoju) (which is now the Minister of Infrastructure and Construction), the Minister of Justice, and the Minister of Finance. The most important recommendations in the proposal concerned among other things more precise information as to the scope of the act, a change to the list of remedies that can be employed to protect payments made by a purchaser by abolishing the open residential escrow account which is offered with no additional security interest in the form of an insurance or bank guarantee, more detailed regulation of issues relating to operation of

¹⁴⁸ The document was approved by the Council of Ministers Committee on 10 December 2015. Information about the current status of the document can be found on the Government Legislation Centre website at: <http://legislacja.rcl.gov.pl/projekt/12275555>.

¹⁴⁹ EU Official Journal L 187, 26.06.2014, p. 1.

¹⁵⁰ EU Official Journal C 249, 31.07.2014 p. 1.

¹⁵¹ Work on the two regulations was not completed in 2015. Information about the current status of the document can be found on the Government Legislation Centre website.

residential escrow accounts, including the rules on a bank's monitoring powers and the rules for disbursements from that account made to a property developer, and more precise wording of provisions on the wording of a property development agreement. The proposal was also intended to regulate the issue of a reservation agreement and provide more specific rules on the procedure for handover of premises, with a view to affording purchasers of a dwelling unit or detached house more effective and efficient protection and making the act more acceptable to undertakings.

The proposal underwent broad consultations, and in addition, given the need to conduct further analysis of the forms of security interest for payments made by purchasers of real property and protective remedies introduced in the act, in particular in the event a property developer goes bankrupt – UOKiK examined the scale of bankruptcy of property developers while the property developer act was in force against the number of cases of that kind in the overall economy. It also attained the results of a comprehensive comparative legal analysis of the situation, protection and enforcement of claims of purchasers in light of the new restructuring and bankruptcy laws compared to the property developer act. In December 2015 the Council of Ministers decided that work on the proposal would continue.

4.1.2. Involvement in legislative works conducted at the initiative of other institutions

In 2015 UOKiK was involved in work on government and non-government legislative proposals, such as:

- the basic principles for the Act on Claims for Remedy of Harm Inflicted due to Infringement of Competition Law;
- the Act on Commercial Activity;
- the Act on Systems of Conformity Assessment and Market Surveillance;
- an amendment to the Act on Explosives intended for Civil Use and certain other acts;
- the Act on Safe Trading in Explosives Precursors;
- an amendment to the Act on Payment Services and certain other acts;
- an amendment to certain acts in connection with provision of support for dispute resolution by arbitration;

- the act on Complaint Handling by Firms on the Financial Market and the Financial Ombudsman;
- the Act on Insurance and Reinsurance;
- a proposal for the basic principles of an act implementing Directive 2014/17/EU on Credit Agreements for Consumers relating to Residential Immovable Property;
- a regulation issued by the Council of Ministers on the Requirements and Procedure for Reverse Financing in a Government Housing Development Programme implemented by Bank Gospodarstwa Krajowego and the Minimum Requirements for Premises Constructed using such Loans and from Funds generated by Bond Issues;
- regulation issued by the Minister of Economy on Funding provided by the National Capital Fund;
- regulation issued by the Minister of Economy on Fuels and Natural Gas.

Examples of legislative proposals to which UOKiK contributed

Legislative proposal – a law on business activity¹⁵²

The proposal was the initiative of the Minister of Economy. Due to numerous amendments, the act that had been in force since 2004¹⁵³ was found to have become unintelligible and not to achieve the main purpose of being a collection of principles applicable to commercial law. The proposal provides for a range of changes such as introduction of a draft ruling, fundamental changes to the administrative fine system, and changes to provisions of law on inspections.

UOKiK questioned some of the solutions proposed, pointing out in particular the following:

- the need to take in consideration the specific nature of the procedure for imposing fines in proceedings before the President of UOKiK;
- the defects in the draft ruling system – introducing this as first described in the proposal could have significantly prolonged the proceedings and resulted in excessive bureaucracy;
- the danger of the consumer protection system being undermined due to introduction of solutions allowing undertakings starting businesses to avoid fines for infringing consumer protection legislation – UOKiK emphasised that the regulation could have led dishonest undertakings to commit abuses;

¹⁵² The proposal was submitted to the Sejm on 8 August 2015 but was withdrawn due to the parliamentary term coming to an end.

¹⁵³ Journal of Laws of 2013, item 672.

- the need to be able to derogate, in cases provided for in the Act, from the obligation to conduct detailed analysis of the risk of infringements occurring. UOKiK pointed out that applying a provision of this kind directly to inspections in antimonopoly proceedings could significantly undermine its effectiveness, and consequently hinder the detection of infringements by the antimonopoly authority.

Most of the comments submitted by UOKiK were taken into consideration during various phases of the legislative process. The proposal was not approved by the Sejm due to the parliamentary term coming to an end and the discontinuation rule being applicable.

Suggested basic principles for a proposal for an Act on Claims for Redress of Harm Inflicted due to Infringement of Competition law¹⁵⁴

The proposal was submitted by the Ministry of Justice for the purpose of implementation of Directive 2014/2014/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringement of the competition law provisions of the Member States and of the European Union.

UOKiK's contribution to the proposal for the basic principles related to:

- the wording of certain definitions in art. 2 of the directive – such as infringement of competition law, a cartel, leniency programme, leniency statement, settlement submission and immunity recipient;
- the issue of disclosure and use of evidence existing in competition authority records.

At the turn of 2015 and 2016 the proposal underwent consultations on an ongoing basis. It will be possible to ascertain the extent to which UOKiK's comments have been incorporated at a later stage of the works.

Proposal for an amendment to the Act on Payment Services and to certain other acts

This proposal, drawn up by the Minister of Finance, implements Directive 2014/92/EU of the European Parliament and of the Council on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (the Payment Accounts Directive – PAD). The

comments submitted by the President of UOKiK during the legislative process concerned primarily granting of accreditation and monitoring how payment gateway comparison tools function. Under the envisaged system, consumers can compare services, which are frequently complex, offered by financial institutions, more easily. The President of UOKiK also submitted comments on the document concerning fees and the suggestion that financial institutions should provide the document each time any of the fees charged a consumer is changed. The President of UOKiK also proposed a change with respect to the functioning of accounts with basic features and fees that a consumer might have to pay in this respect; if this institution is intended to help to eradicate the problem of insufficient access and use of banking services among the public, it would need to be a form of “social account” for which there are no charges or only minimum charges.

Proposal for basic principles for an act of law implementing Directive 2014/17/EU on Credit Agreements for Consumers relating to Residential Immovable Property

Work on a proposal for basic principles for an act implementing Directive 2014/17/EU was conducted by the Minister of Finance. The comments submitted in the course of consultations by the President of UOKiK concerned among other things prohibiting the use of the term “advisor” by lenders and related credit intermediaries, prohibiting of payment of a commission to a credit intermediary (UOKiK suggested changing the dominant business model for credit intermediaries) the obligation to state the annual percentage rate in advertisements in which figures as to the cost of a credit facility are not given, making information provided in an advertisement more intelligible, and the obligation to give consumers an addition warning regarding the particular risk connected with a consumer's financial standing.

Proposal for an amendment to the Act on Financial Market Supervision and certain other acts

The proposal presented by the Ministry of Finance provided among other things for amendments to the Consumer Credit Act. UOKiK's contribution to the works was for instance a cap on costs of consumer credit other than interest, a cap on charges for default on repayment of credit, and an obligation to refund fees charged to a consumer

¹⁵⁴ In 2015 the proposal had not yet been submitted to the Government Legislation Centre.

for failure to enter into an agreement or the credit not being granted within the requisite time limit.

Regulation issued by the Council of Ministers on the Requirements and Procedure for Reverse Financing in a Government Housing Development Programme implemented by Bank Gospodarstwa Krajowego and the Minimum Requirements for Premises Constructed using such Loans and from Funds generated by Bond Issues¹⁵⁵

The proposal lays down the conditions according to which Bank Gospodarstwa Krajowego grants loans and issues bonds in connection with state aid for entities responsible for housing development schemes. This aid will be granted as compensation for services provided in the overall economic interest. For this reason, UOKiK's comments concerned ensuring compatibility of aid with EU legislation on public service compensation. These comments were incorporated in their entirety by the Ministry of Infrastructure and Development.

Opinions issued on other proposals

When working with other institutions, UOKiK not only issued opinions on received legislative acts, but also attended legislative meetings, and thus was involved on an ongoing basis in drafting of proposals for legislation. One example of activities of this kind is working closely with the Ministry of Economy on an Act on Conformity Assessment and Market Surveillance, and on an amendment to the Act on Explosives intended for Civil Use and certain other acts. Both of these proposals were required due to the need to implement EU legislation.

The President of UOKiK was also involved in work on the drafting by the Minister of Economy of a proposal for an amendment to certain acts in connection with support for alternative dispute resolution – suggesting among other things popularising a range of methods of resolution of consumer disputes beyond mere mediation. Close cooperation by the President of UOKiK with the authors of the proposal also concerned a proposal for an Act on Complaint Handling by Firms on the Financial Market and the Financial Ombudsman, and also the Act on Insurance and Reinsurance.

In 2015 participation in legislative works connected with implementation of a package of 8 sector-specific directives on market surveillance continued¹⁵⁶. More detailed information on this subject can be found in the Report on UOKiK Activities for 2014.

4.1.3. UOKiK involvement in legislative work conducted in the EU

UOKiK worked actively with members of the Council of Ministers and representatives of other government administration authorities in matters relating to Poland's membership of the EU.

In 2015 a statement was drawn up on the position of the Polish government with respect to a proposal for an amendment to regulation (EC) 794/2004 of 21 April 2004¹⁵⁷, laying down detailed rules for notification of state aid projects. The amendment commented upon concerned new standard notification forms. Before the statement of position was drawn up public consultations were held, in which departments and other entities responsible for devising and implementing aid programmes in Poland took part.

In addition, the President of UOKiK was involved in work on the drawing up of the Polish government's position on a proposal for a directive of the European Parliament and of the Council on statutory, implementing and administrative provisions of the Member States with respect to product and service availability requirements. Work on this statement of position will continue in 2016. In a preliminary draft the President of UOKiK points out issues which are vital from the point of view of consumer protection and which relate to manufacturers' obligations to ensure that products or services are suitable for disabled persons or persons with other kinds of limitations, including compliance with additional disclosure obligations. The President of UOKiK also submitted an outline of the concept for surveillance of compliance by undertakings of obligations imposed under the new directive.

¹⁵⁵ On 20 October 2015 the regulation was approved by the Council of Ministers, and on 27 October 2015 it was published in the Journal of Laws (Journal of Laws of 2015, item 1720).

¹⁵⁶ The directives relate to decision 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l10141>.

¹⁵⁷ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

Chapter 5.

Social surveys and market analyses

5.1. Market studies and market analyses

Market studies and market analyses are an important part of the monitoring of the current competition situation in selected sectors of the economy¹⁵⁸. They provide and systematise information about individual markets, and thus increase transparency of economic trade. They are often the starting point for discussions on the subject of the needs and areas of change in individual sectors. They can also be used to collect evidence in proceedings being conducted and analyses of consolidation processes. The conclusions drawn from analyses are sometimes grounds for launching proceedings concerning prohibited market practices.

Publication of findings of surveys on UOKiK's website is an element of competition promotion measures. In 2015 a Policy for publication of information about market study findings was issued.

In 2015 UOKiK conducted a total of 27 studies, of which 21 related to the national market, and 6 to local markets. Eleven studies were completed.

5.1.1. Selected market studies and market analyses

Inquiry into the national financial audit services, advisory, and consultancy services market

The global economic crisis led to a loss of confidence in the audit services market – at that time cases came to light of insufficient accuracy and credibility of some audits, leading the EC to adopt new legal solutions to reform policies with respect to auditing of financial statements. The new legislation will be introduced in all of the Member States by 17 June 2016.

In connection with preparations to implement the changes, UOKiK conducted an audit service market study, which was completed in 2015. More than 300 firms were analysed, and one of the goals was to perform a detailed analysis of the factors

determining choice of an auditing firm and rate of change of the structure of the market in Poland.

The study revealed that as in the other EU countries, the auditing market is highly concentrated. On that market there are four distinct leaders (the “big four” Deloitte, EY, KPMG, and PwC). Their position is solidified by powerful market barriers blocking entry for the smaller players. Reputation is a very important factor in the selection of an auditing firm, and this is a factor which works in favour of the “big four”. In certain situations banks operating in Poland, as in other EU countries, limited the choice of auditing firm, using clauses requiring customers to use the services of the auditing firms listed – the “big four exclusivity clause”. The new EU legislation prohibits use of similar clauses. In the UOKiK's view, combining medium-sized networks whereby a firm capable of competing with the largest undertakings on the market is created could be an opportunity for greater competition on the market.

Studies concerning retailing of medicine

Retailing of pharmaceuticals (including medicine) is an essential element of trade – due to the special group of users of products of this kind. In 2015 UOKiK completed a survey of retailing of medicines.

The objectives of the study included analysis of legislation, evaluation of that legislation in terms of competition mechanisms, and comparison of legislation models existing in certain EU Member States. The analysis revealed that the Polish model for legislation regulating activities of pharmacies does not differ from those standards adopted in a number of EU countries, in which less intervention on the part of the state is preferred. Among the restrictions is a provision in the Pharmaceutical Act that states that a permit cannot be issued to open a pharmacy if the undertaking and firms controlled by that undertaking, or the capital group of which it is part, operate more than one per cent of pharmacies within the voivodship in question. Unlike pharmaceutical law, antimonopoly law assumes that an undertaking has a dominant position on a particular market, in this case on the local market, which is not the same as the area

¹⁵⁸ UOKiK may conduct preliminary proceedings such as a sector inquiry, in particular aimed at determining the market structure, the level of competition, and the level of concentration.

of a voivodship – if it has a share of more than 40 per cent. The data obtained by UOKiK shows that pharmacy undertakings compete over small areas. Most of the firms examined considered competitive outlets to be those in the vicinity. In addition, undertakings which hold the most powerful positions over the whole of Poland rarely had the same strength on individual local markets. The survey showed that one of the most common problems is so-called parallel export, which is sale to countries in which the same medicine has a significantly higher price. The uncontrolled transporting of medicines to foreign markets is causing a shortage on the Polish market. This process is to be limited by a change to pharmaceutical law passed in May 2015, which provides among other things for an obligation to provide regular, daily reports of stocks in warehouses and sales volumes, and also the obligation to notify the Pharmaceutical Inspectorate of plans to transport medicines abroad.

5.2. Social surveys

Social surveys commissioned by UOKiK relate above all to consumers and undertakings. They are used among other things to determine the level of awareness of selected legal issues, consumer attitudes, and the level of confidence and feeling of safety of consumers on particular markets. The findings of these surveys are a valuable source of information in the context of information and awareness campaigns conducted by UOKiK. UOKiK makes use of surveys also to make cooperation with stakeholders more effective.

In 2015 UOKiK conducted three surveys, including two relating to consumer attitudes.

5.2.1. Selected social surveys

Consumer attitudes towards financial products in the context of so-called insurance-based investment products¹⁵⁹

A survey on consumer awareness with respect to financial products is in line with proceedings conducted by UOKiK regarding that market (for more information see [chapter 1](#)).

It was revealed that Poles have superficial knowledge about financial products. Simple financial products are the best known, such as a clearing and savings account; the highest number of respondents – 82 per cent – declared that they

know about operation of accounts of this kind. The level of knowledge decreases the more complex the products. The least known are accounts of an investment nature, which at the same time are perceived as bearing the highest risk – such as unit-linked life insurance products, which 20 per cent of Poles say they are familiar with. Twenty-nine per cent of respondents describe this as a risky product, while 43 per cent do not have a clear opinion on the subject. It is disturbing that before selecting a particular product as many as 39 per cent of consumers do not seek information in any way concerning the product. Moreover, one third of respondents do not read the terms and conditions of the agreement for the financial product they choose. The findings of the survey show that not only are consumer awareness measures needed with respect to financial products, but also that broader knowledge of the institutions that can assist in problematic cases is needed.

Consumers on holiday¹⁶⁰

Since 2012 UOKiK has been carrying out surveys on awareness among Polish consumers of their rights in the tourism sector. The surveys reveal a low level of knowledge on this subject, but that the level is steadily increasing. A survey was conducted in 2015 as part of the campaign entitled *Before going on holiday – what you need to know* (more information is given about this in [chapter 6](#)). One of the questions respondents were asked concerned their fears relating to making use of travel agents' services. It was revealed that fears usually concern the travel agent in question going bankrupt, and the ensuing problems (19 per cent). It is worth emphasising that tourists' concerns might be directly linked to the level of awareness of their rights – the greater the level of awareness, the less concern there is about potential problems. This theory is confirmed by the survey findings. The fact that consumers who make use of travel agent services are least concerned about problems with pursuing claims relating to non-performance or improper performance of a tourism service agreement (6 per cent), might be due to the comparatively higher level of knowledge of the procedure for filing a claim relating to services of that kind.

¹⁵⁹ TNS was commissioned to conduct the survey for UOKiK. In December 2014 qualitative surveys were conducted in the form of focus groups. In January 2015 a quantitative survey was conducted on a representative sample of 1100 Poles.

¹⁶⁰ The survey in May 2015 was conducted by TNS and commissioned by UOKiK; sample: 1000 persons.

Chapter 6.

Information and awareness campaigns

In order to reach a wide audience, UOKiK employs various channels of communication in information campaigns, such as working with the media, organising conferences and seminars, press releases, and free-of-charge publications.

While operating an open information policy, UOKiK continually updates and is making improvements to its website and topic-oriented websites. These are a source of information about the Office's activities as well as legislation and legal solutions and tools relating to competition and consumer protection. In 2015 UOKiK published a series of clarifications – concerning both procedural matters and the principles applied in the information policy.

The Public Information Bulletin (BIP) is also available on the website. In 2015 822 applications for public information to be released were filed with UOKiK and reviewed.

6.1. Information campaigns and activities

New consumer legislation

In 2015 UOKiK continued information campaigns concerning changes with regard to consumer rights¹⁶¹. This time the public campaign was aimed primarily at purchasers. It was based on broadcasting of a “*Can do*” law (*Takie prawo, że można*) clips, providing information about important consumer rights – the right to make complaints and rescind an agreement when shopping online. The material also advised visiting the website prawakonsumenta.uokik.gov.pl¹⁶² and learning about the new regulations.

Advertisements were broadcast on television, on the radio, on the Internet, on LCD screens on municipal public transport nationwide, in large retail stores, on cash machines, in newsagents, and on trains¹⁶³. Activities performed in support of the campaign included activities online and posters at post offices¹⁶⁴ providing detailed information about rules with respect to the statutory warranty.

Amendment to the Act on Competition and Consumer Protection

The goal of UOKiK's information-related activities was to prepare market players for enactment of an [amendment to the Act on Competition](#)

and [Consumer Protection](#)¹⁶⁵. Mid-January 2015 saw the launch of the website www.ustawa-antymonopolowa.uokik.gov.pl¹⁶⁶, which provides detailed information about the most important changes: extension of the time limit for action taken with respect to competition-restricting agreements under the statute of limitations, a two-step procedure for analysis of applications regarding concentrations, separation of inspection and search procedures, expansion of the leniency programme for members of cartels, the option of undertakings being required to employ remedies, introduction of the settlements scheme, fines for individuals for being party to unlawful agreements, and public consumer warnings.

The financial market

Surveillance of the financial market and reaction on the part of UOKiK to distortion of competition occurring in this sector led among other things to the launch in April 2015 of the website www.finance.uokik.gov.pl¹⁶⁷. This topic-oriented website is a compendium of information about the current situation on the CHF mortgage market and unit-linked life insurance market¹⁶⁸.

In addition to the [latest information](#) on action taken with regard to banks offering CHF mortgages and insurance companies selling unit-linked life insurance, as well as measures taken by other public authorities and courts, the website also has

¹⁶¹ The Act on Consumer Rights came into force on 25 December 2014. (Journal of Laws of 2014, item 827). A campaign on this subject was commenced in November 2014.

¹⁶² In 2015 there were 960 182 unique views of the site.

¹⁶³ The number of times radio clips were broadcast – more than 4500, on television – more than 3400, on LCD screens – more than 13 438 740.

¹⁶⁴ More than 5 thousand posters were displayed in post offices between 5 January and 28 February 2015.

¹⁶⁵ The amendment to the Act on Competition and Consumer Protection and the Civil Procedure Code came into force on 18 January 2015 (Journal of Laws of 2014, item 945).

¹⁶⁶ In 2015 there were 14 374 unique views of the site.

¹⁶⁷ In 2015 there were 52 846 unique views of the site.

¹⁶⁸ The subject of unit-linked life insurance was featured on the website in May 2015.

forms for consumers to report suspicious practices in these areas to UOKiK.

Also available on the financial market are high-interest, short-term loans (known as payday loans) and financial services which are not subject to detailed state regulation. The Polish public is not fully aware of the danger involved in taking out loans of this kind¹⁶⁹, and this prompted UOKiK to support once again the campaign *Don't get taken in. Read before you sign (Nie daj się nabrać. Sprawdź, zanim podpiszesz!)*. Seven public institutions¹⁷⁰ organised the campaign in conjunction with the National Bank of Poland. The revitalised website www.zanim-podpiszesz.pl, a television clip, and information in the press – these were the main forms in which consumers were informed of how to protect themselves against the adverse consequences of rash financial decisions.

Tourism

For a number of years UOKiK has been studying consumer awareness of the tourism services market. On this basis, in June 2015, an information campaign was held for the sixth time entitled *Before going on holiday – what you need to know (Przed wakacjami: co warto wiedzieć?)*. Due to the involvement of 36 institutions it was possible to devise a comprehensive package containing tips for people planning to travel during the summer break.

Off-premises sales

Unfair practices employed in the signing of off-premises contacts and typical manipulative sales techniques were the subject of an information campaign conducted in October, entitled *Practices of door-to-door salesmen – know your rights (Praktyki akwizytorów: poznaj swoje prawa)*. UOKiK invited 23 institutions to join in the awareness campaign.

Safe reflective products

In 2015 institutions working together within the competition and consumer protection network took measures to ensure safety of reflective products on sale throughout Poland. The Trade Inspection Authority (Inspekcja Handlowa) carried out inspections of products of this kind at the

request of UOKiK. The scale of irregularities in this respect was so extensive that UOKiK drew up two handbooks on the subject, in cooperation with the National Police Headquarters Crime Prevention and Road Traffic Bureau (Biuro Prewencji Ruchu Drogowego KGP), Central Institute for Labour Protection (Centralny Instytut Ochrony Pracy), and the Motor Transport Institute (Instytut Transportu Samochodowego); for consumers – *Buying Reflective Products* and for undertakings – *Safe Reflective Products*.

Dietary supplements

Information received by UOKiK concerning advertising of dietary supplements indicated that consumers are not always informed accurately and fully about the properties of such products. For this reason, UOKiK conducted two information campaigns within the competition and consumer protection network.

The first was joined by the State Sanitary Inspectorate – in October a joint letter was sent to 315 dietary supplement manufacturers and distributors to draw attention to the problem that had come to light. Another campaign in November was organised by 12 institutions¹⁷¹, including the Ministry of Health and the Chief Sanitary Inspectorate (Główny Inspektorat Sanitarny), which jointly took measures to inform consumers of the most important properties of products of this type in a specially prepared guide *What you need to know about dietary supplements*.

6.2. UOKiK conferences and events

World Consumer Day Debate on *what is good advertising of financial services (Jak powinny wyglądać dobre reklamy usług finansowych?)* (13 March 2015)

At the meeting the subject was discussed of the need to improve consumer protection and ensure access to accurate information in marketing messages conveyed with respect to financial services, and of the need for additional legal solutions.

¹⁶⁹ Surveys commissioned by the NBP were conducted by PBS (September/October 2015). Surveys concerning shadow banking issues were conducted on a representative sample of 3000 people, and concerning consumer awareness on a sample of 1000 people.

¹⁷⁰ The following took part in the campaign: the Bank Guarantee Fund (Bankowy Fundusz Gwarancyjny), the Financial Supervision Authority (Komisja Nadzoru Finansowego), the Ministry of Finance, Ministry of Justice, National Bank of Poland, police, and UOKiK.

¹⁷¹ The following took part in the campaign: the Chief Sanitary Inspectorate (Główny Inspektorat Sanitarny), the Main Pharmaceutical Inspectorate (Główny Inspektorat Farmaceutyczny), the Ministry of Health, the Ministry of Finance, the Food and Nutrition Institute (Instytut Żywności i Żywienia), the National Medicines Institute (Narodowy Instytut Leków), the National Institute of Public Health – National Institute of Hygiene (Narodowy Instytut Zdrowia Publicznego – Państwowy Zakład Higieny), the Advertising Council (Rada Reklamy), the Office for Registration of Medicinal Products, Medical Devices and Biocides (Urząd Rejestracji Produktów Leczniczych, Wyrobów Medycznych i Produktów Biobójczych), UOKiK, the Polish Consumer Federation (Federacja Konsumentów), and the Association of Polish Consumers (Stowarzyszenie Konsumentów Polskich).

Ceremony to mark UOKiK's 25th anniversary (13 April 2015)

In 2015 a ceremony was held to mark the 25th anniversary of the existence of antimonopoly law in Poland. In this connection UOKiK also organised a special session, which accompanied the [1. Polish Competition Law Congress](#)¹⁷². The event was opened by Prime Minister Ewa Kopacz, and was also attended by Professor Małgorzata Gersdorf – the first President of the Supreme Court, and Professor Anna Fornalczyk – the first president of the Antimonopoly Office.

This session was an opportunity to summarise the process of creation and application of competition and consumer protection legislation, and also to discuss the current and forthcoming challenges that science and legal practice face in this respect.



6.3. Competitions and campaigns

In 2015 competitions were held once again for the best master theses. In the area of competition protection the prizes were awarded for the seventh time, and for consumer issues – the fifth time. There was a new element of the competition, which was a competition between authors of Ph.D. dissertations in both areas.

June 2015 saw the XI Wielkopolska Consumer Knowledge Competition (Wielkopolska Olimpiada Wiedzy Konsumentkiej) which was sponsored by the President of UOKiK and the Marshal of the Wielkopolska Region. Just under 540 pupils of upper-secondary school age upwards took part in the competition, which was jointly organised by the Poznan UOKiK branch office.

UOKiK took part in the **19. Science Picnic** – the largest open-air popular science event in Europe.

People attending the picnic were able to perform many experiments and thereby learn about the research methods employed by the Specialist Laboratory for Textile Products and Instrumental Analysis in Łódź and the Inspection and Analysis Laboratory in Poznań.



6.4. Publications

Due to a high level of demand, in 2015 UOKiK reprinted publications on consumer-related topics. Handbooks were updated by adding examples taken from the marked subsequent to the Act on Consumer Rights coming into force. These were the following: [Consumer Handbook](#) (brochure), [Consumer Law for Undertakings](#) (brochure), [Guide to Purchasing](#) (leaflet), [Shopping Online](#) (leaflet).

In addition, three works written by the winners of the President of UOKiK competition for the best master thesis were published: two on the subject of competition protection – [Assessment of the market power of undertakings in antimonopoly proceedings](#) and [Delaying entry into the market of generic medical products in light of patent law and competition law](#) – and one on consumer protection – [Legal classification of warnings issued by the Ministry of Foreign affairs for people undertaking travel from the point of view of proper performance of tourism service contracts](#).

All of these publications are distributed free of charge among the interested entities and are available at www.uokik.gov.pl, under the *Edukacja* tab.

6.5. Cooperation with the mass media

What the media say about the activities of UOKiK

UOKiK's fundamental aim when working with the media is to reach as broad an audience as possible, thereby raising awareness of all market participants. UOKiK works with the nationwide, regional, and local media. In 2015 it issued 213

¹⁷² 1. The Polish Competition Law Congress was held on 13–15 April. It was organised by the Centre for Antitrust and Regulatory Studies (Centrum Studiów Antymonopolowych i Regulacyjnych – CARS).

press releases, of which 31 concerned competition protection, 109 – consumer protection, and 40 – concentration control¹⁷³. There was one press release on local topics released to the regional media.

In 2015 there were 60167 publications online (including social media), 12072 press articles, and 5416 radio and television features concerning decisions issued by UOKiK, as well as other measures taken by the Office. UOKiK was also mentioned in foreign online publications (107 mentions in connection with the *Policy and Regulatory Report*, *Global Competition Review* and *MLex Market Insight*).

The President and officials at UOKiK published comments and articles in nationwide daily newspapers and the specialised press (including *Rzeczpospolita* and *Dziennik Gazeta Prawna*), as well as foreign periodicals (such as the *Journal of European Competition Law and Practice*, *ECN Brief* and *The European Antitrust Review 2015*). They also appeared on numerous radio and television programmes.

Examples of featured articles and appearances were:

- *A contract by telephone according to the new rules (Umowy przez telefon na nowych zasadach)* Rzeczpospolita, 23.01.2015 written by Krzysztof Lehmann, Bydgoszcz UOKiK branch office – an article explaining the changes introduced by way of the Act on Consumer Rights;
- Interview with UOKiK President Adam Jasser, 10.02.2015 Polish Public Radio Station III, in the programme *Talking Economics on Three* and in *Dziennik Gazeta Prawna (Salon Ekonomiczny Trójki i Dziennika Gazety Prawnej)* – on the subject among other things of the financial sector, problems of people with CHF mortgages, the role of UOKiK, and the need for self-regulation in the banking sector.

Assessment of UOKiK's activities by foreign industry-specific media

In the annual *Global Competition Review* ranking (*Rating Enforcement*) for 2015, UOKiK was given a three star (level: good) and ↓ performance indicator.

year	2008	2009	2010	2011	2012	2013	2014	2015
rating	★★★	★★★	★★★	★★★★	★★★★	★★★★	★★★★	★★★★
level	fair	fair	fair	good	good	good	good	good
performance indicator	falling ↓	improving ↑	improving ↑	improving ↑	consistent ↔	consistent ↔	consistent ↔	falling ↓

¹⁷³ The other press releases were reports on conferences, statements, etc.

Chapter 7.

International cooperation

Activity on the international forum is an essential element in the forming of an effective competition and consumer protection policy. UOKiK plays a role in determining this policy, by sharing information and experience with authorities in other countries. This is exceedingly important in the context of globalisation and growth of the digital market. As a result of globalisation and growth of the digital market, dangers to competition and consumers extend beyond national borders, and counteracting them requires the governments of individual countries to work together.

Activity on an international scale reflects the openness of UOKiK to the sharing of information and experience, and in particular best practices. UOKiK makes an effort to promote a solution adopted in Poland in other countries – the combining of competition and consumer protection powers in a single authority.

At the European Competition Day conference (Riga, 7 May 2015), during the Latvian Presidency, the President of the Office gave a presentation of UOKiK's experiences in detecting tender collusion.

In turn, at the Third Annual Conference on the Unfair Commercial Practices Directive (Budapest, 22 May 2015) – the President of UOKiK talked about the process of implementing the directive in Poland, about infringements observed in the financial sector, and the amendment to the Act on Competition and Consumer Protection, which was intended to prevent these infringements occurring in future.

UOKiK was also represented at conferences organised during subsequent presidencies – those of Latvia and Luxembourg – in the Council of the European Union. The meetings addressed the issues of future consumer policy priorities in the digital age and internet platform and geo-blocking issues.

UOKiK belongs to international organisations responsible for competition and consumer protection at the domestic, European, and international level. The most important of these are the European Union, OECD, the International Competition Network and the International Consumer Protection Network.

INTERNATIONAL COMPETITION PROTECTION ORGANISATIONS

EUROPEAN COMPETITION NETWORK (ECN)
- A NETWORK FOR SHARING
INFORMATION ABOUT IMPLEMENTATION
OF EU COMPETITION RULES BY
THE NATIONAL COMPETITION AUTHORITIES
OPERATING IN ALL EU COUNTRIES
AND THE DIRECTORATE GENERAL
FOR COMPETITION

**ORGANISATION FOR ECONOMIC
COOPERATION AND DEVELOPMENT
(OECD)**
- AN INTERNATIONAL FORUM
FOR DISCUSSION OF COMPETITION
POLICY AND LAW ISSUES

**INTERNATIONAL COMPETITION
PROTECTION NETWORK (ICN)**
- A PLATFORM FOR COOPERATION
AND SHARING OF EXPERIENCE
OF COMPETITION AUTHORITIES
FROM AROUND THE WORLD

7.1. Multilateral cooperation

Competition protection

European Competition Network

In 2015 UOKiK officials took part in working groups and subgroups concerning cartels, concentration control, cooperation and procedures, transport, fines, professional services, computer forensics, restrictions on online sales, food products, telecommunications, energy, the pharmaceutical sector, banking and the payment services markets, and groups concerning promotion of the principles of competition and communication.

The Cartel Group was responsible among other things for the functioning of leniency programmes in place in particular Member States and analysis of cartels detected in the last year. **The Vertical Agreements Group** focused on the market for online accommodation reservation sites; an additional subgroup was set up to coordinate cooperation with respect to enforcement of competition law in this sector. UOKiK's role in this group's work was particularly important in light of preliminary proceedings being conducted to analyse the conditions according to which hotels and owners of websites offering accommodation reservation services work together. UOKiK also took part in a meeting of the **ECN Professional Services Group**. The meeting concerned legislative changes and activities of antimonopoly authorities with respect to professional services. A representative of the Office gave a presentation on the subject of the most important cases handled by UOKiK with respect to this sector, discussing decisions relating to court enforcement officers and urban planners. During the **Fine Group** meeting, the main subject was the differences in methodology in imposing penalties on undertakings and an attempt to harmonise procedures in this respect. The main area of the work of the **Telecommunications Group** was the issue of neutrality of a network and network sharing. A representative of the Office gave a presentation on the subject of the Office's experiences in this regard, citing the findings of preliminary proceedings in which the structure of the Polish telecommunications market and the rules according to which telecommunications operators work together were examined. **The Food Product Group** worked on a proposal for guidelines for application of detailed provisions in the regulation on common organisation of agricultural markets – in relation to the olive oil, beef, veal, and arable crop sectors. These guidelines will also apply to UOKiK. In addition, the

members of the group held a discussion on a study conducted by the EC on the modern retail channel and the proceedings currently being conducted by domestic competition protection authorities in this sector. The **Transport Group** discussed among other things the railway market and the EC's work on the IV Rail Package. Implementation of a regulation on the interchange fee and work on a payment services directive were the subject of discussions for the **Banking and Payment Services Market Group**. UOKiK's role in this group's work was particularly important in view of a decision issued by the Office concerning interchange fees which was upheld by the Appeal Court in October 2015, and the coming into force in January 2015 of a legislative act setting a cap on the interchange fee (more information is given about this in chapter 3).

In addition, in 2015 a new **Group for Promotion of the Principles of Competition Rules and Communication** was set up. During the group's first meeting, representatives of certain antimonopoly authorities gave presentations on the adopted strategies for communication with the surrounding community and effective information campaigns concerning the importance of application of the rules of free competition. The aim was to raise awareness of public authorities and market players in this respect.

In 2015 Poland, together with France and the Directorate-General for Competition chaired the **Concentration Group**. This group attempted to bring about closer cooperation in selected areas of concentration control, for instance notification requirements.

UOKiK also took part in meetings of **chief economists**. The key topics of discussion were the energy market and the conditions existing with respect to competition in the taxi services sector – in light of new services emerging on the market which use mobile applications. European Competition Network **plenary sessions** were also attended, at which the horizontal issues concerning the functioning of that network, which are the most important in the context of competition policy, are discussed.

The President of the Office attended annual meetings of the **heads of European antimonopoly authorities**. These meetings are an opportunity to share information and experiences and to devise a cohesive and effective European competition policy. The main subjects discussed within the ECN in 2015 were increased convergence of selected

areas of competition protection law in light of conclusions reached on the 10th anniversary of applicability of Regulation 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in art. 81 and 82 of the Treaty, formulating an effective system of early detection of cartels, and efficient sharing of information among ECN members.

The Office also became involved in the network's activity with regard to comment on current issues by publishing articles in the ECN Brief and the internal ECN Newsletter.

Another vital tool for flow of information and sharing of experiences within the ECN is the possibility that antimonopoly authorities have of submitting informal queries. In 2015 UOKiK drew up responses to 44 queries concerning among other things the pharmaceutical market and banking market, the procedure for competition authority inspections in the offices of an undertaking, and the procedure for instigating antimonopoly proceedings. The Office itself submitted 6 queries to members of the ECN, relating for instance to competition-restricting agreements on the perfume and cosmetics market, and definition of the relevant market in terms of product and geographical area in the large-scale retailer sector and postal services sector. The responses received to queries turned out to be very helpful

in preliminary and antimonopoly proceedings conducted by UOKiK.

Organisation for Economic Cooperation and Development

The OECD is one of the most important international forums for discussing competition policy and law. In 2015, during meetings of the Competition Committee and working groups subordinate to it, UOKiK representatives gave a presentation on Poland's experiences among other things with respect to cooperation within the competition protection network, and presented a summary of legislative activities and rulings in 2014.

International Competition Network

The Office is part of the International Competition Network, which is a platform for cooperation and sharing of experiences of more than 130 competition authorities from all over the world. In 2015 representatives of UOKiK took part in the work of five working groups on cartels, unilateral market practices, effectiveness of antimonopoly authorities, promotion of antimonopoly law, and concentration control. When working in the first group, UOKiK participated in work to update information about legislation currently in force with regard to combating cartels. In addition, the Office conducted a review of market studies conducted over the last five years.

INTERNATIONAL CONSUMER PROTECTION ORGANISATIONS

CONSUMER PROTECTION NETWORK (CPN)
- EC PLATFORM USED TO SHARE
EXPERIENCES OF CURRENT
HORIZONTAL CONSUMER PROTECTION
ISSUES AT BOTH NATIONAL AND EU LEVEL

**INTERNATIONAL
CONSUMER PROTECTION
AND ENFORCEMENT NETWORK (ICPEN)**
- AN ORGANISATION MADE UP OF MORE
THAN 50 CONSUMER PROTECTION
AUTHORITIES FROM AROUND THE WORLD,
AIMED AT SHARING INFORMATION REGARDING
HARMFUL MARKET PRACTICES ON A
CROSS-BORDER SCALE, AND PROMOTING COOPERATION

**CONSUMER PROTECTION
COOPERATION (CPC)**
- A COMMITTEE MADE UP OF EU
COUNTRY AUTHORITIES WHICH ARE
PART OF THE EUROPEAN ECONOMIC
ZONE AND ARE RESPONSIBLE FOR
ENFORCEMENT OF CONSUMER
PROTECTION LEGISLATION;
THE COMMITTEE AIMS TO
HARMONISE CONSUMER LAW

Consumer protection

Consumer Policy Network

A member of the Management of UOKiK took part in meetings of the Consumer Policy Network at director general level, which are organised by the European Commission twice a year. For European officials responsible for consumer protection, these meetings are a platform for sharing experiences regarding the latest horizontal issues with respect to consumer protection – both at national and EU level.

Among the most important subjects discussed in 2015 was the Digital Single Market Strategy, which is a package concerning an energy union, and the question of reinforcing the role of European Consumer Centres. CPN meetings are also traditionally an opportunity to exchange information about the latest events and changes forthcoming with respect to consumer protection in the Member States. The President of UOKiK gave a presentation on the changes to Polish law aimed at providing more effective protection for consumers, and measures taken by the Office in the Volkswagen case.

Consumer Protection Cooperation

UOKiK took part in regular meetings of the Consumer Protection Cooperation committee. During the meetings, current issues were discussed concerning consumer protection in the EU. In 2015, the following were among the most important issues:

- the need to ensure harmonisation of EU law with respect to online shopping and digital content, and continued harmonisation of contractual obligations in domestic and cross-border sale of goods online;
- the need to increase the rate of detection of cross-border infringements and remedy of infringements of this kind, to strengthen coordination at EU level, and improve market surveillance mechanisms;
- more effective enforcement of consumer rights, particularly in the context of the single digital market;
- a review of EU consumer law for the purpose of assessment of overall effectiveness, efficiency, and cohesion of legislation;
- raising the level of legal certainty in application of Directive 2005/29/EC on unfair commercial practices;

- negative practices when effecting online transactions (among other things refusal by a foreign entity selling goods to deliver them to the country of residence of a consumer, non-acceptance by the selling party of electronic payments from another country);
- planned adoption of legislation to reduce market barriers, prevention of discrimination against consumers based on nationality or place of residence, and reinforcement of the Services Directive;
- the need for more specific definition of the role and scope of liability of intermediaries, as well as the need to employ new means of counteracting unlawful content on the Internet, taking into consideration the effect of means of that kind on the fundamental right to freedom of speech and information;
- problems related to presentation of social media as free of charge despite personal data being used for marketing purposes, sponsored blogs, content being aimed directly at children in veiled advertising, non-transparent sale of additional insurance products, non-transparency of mobile payments, fast loans, and aggressive debt recovery measures.

UOKiK also participated in **European Unfair Terms Strategy III** workshops organised within the CPC, for the purpose of sharing experiences with respect to combating prohibited clauses in the financial services sector, including better and faster identification of common problems and trends emerging on the EU market. During the meeting, representatives of UOKiK provided information about proceedings being conducted by the Office concerning the conditions for a change in the interest rate and new powers of UOKiK with respect to consumer protection.

UOKiK officials also participated in the **SECIR project**, conducted under the auspices of the CPC and aimed at drawing up guidelines for government administration officials conducting proceedings concerning the e-commerce sector. The ready handbook (*SECIR Internet Researchers Manual*) describes the methods for conducting activities relating to infringement of consumer rights on the Internet. These methods are applied in UOKiK's ongoing operations. The SECIR project made it possible to improve the effectiveness of the procedure used by the Office to block access to websites on which consumer interests are infringed (in particular there was an improvement in effectiveness of proceedings concerning

undertakings which have their registered office outside of the EU), and also brought about expansion of the set of tools used to obtain, consolidate and analyse evidence in cases relating to e-commerce.

In connection with CPC, UOKiK officials attended training in Spain about use of tools described in the handbook. It rendered considerably easier implementation of the methods described in the SECIR project, leading to more effective conducting of e-commerce proceedings.

In addition, in 2015 the European Consumer Centre began to work actively with UOKiK in connection with the powers of the President of UOKiK as an authority responsible for coordination of compliance with the CPC regulation¹⁷⁴. As part of this cooperation, the European Consumer Centre forwarded notifications to UOKiK concerning suspected practices infringing collective interests of Polish consumers by foreign undertakings with their offices in EU Member States. These notifications were a result of complaints submitted to the European Consumer Centre by consumers. The President of UOKiK referred the cases reported, relating among other things to air forwarding services, courier services, online stores and an online dating service – via the CPC System – to the competent authorities in EU Member States, with a request that the necessary measures be taken to have the intra-community infringement stopped. Active and effective cooperation of public authorities in cross-border cases of infringement of consumer rights is of fundamental importance for the attainment of higher levels of consumer protection and a coherent approach to enforcement of law in the EU, due to which consumers will be able to make full use of the potential of the single market.

International Consumer Protection and Enforcement Network – ICPEN

The ICPEN is a group of consumer protection authorities from over 50 countries. The network is intended for the purpose of sharing information about cross-border market practices that might have an adverse effect on consumer interests, and of promoting cooperation between authorities responsible for implementing consumer law.

UOKiK regularly shared information within the network and acted as administrator of its website,

working actively with successive countries which assumed the ICPEN presidency. In the latter half of 2015 the Australian Competition and Consumer Commission took over the role of administrator.

In 2015 UOKiK representatives participated in workshops organised under the UK ICPEN presidency, during which consumer protection in the digital world was discussed (including current consumer problems in e-commerce and unfair pricing practices), as well as the tools and procedures applied when monitoring the activities of undertakings in the e-commerce sector.

The Office also took part in an annual sweep of the Internet, which in 2015 focused on online shopping prices. Irregularities were found on 58 of the 109 websites dealt with in the sweep, and these concerned among other things misleading or concealed information about the true price of a product or service, hidden additional fees, or wording of customer service conditions that was against the law. Preliminary proceedings were then instigated to review the operations of undertakings in the e-commerce sector. The review revealed grounds for concluding that the undertakings were employing measures which were misleading to customers and a breach of the Act on Consumer Rights. Notices were sent to the undertakings asking them to cease the operations that might constitute an unfair market practice voluntarily and asking for information.

OECD Committee on Consumer Policy

UOKiK was also involved in work of the OECD Committee on Consumer Policy, which is made up of representatives of consumer protection authorities in the member countries, experts from social organisations, and businesspeople. In 2015 the work concentrated on e-commerce issues, protection of consumers in the online environment, and broader application of behavioural economics to protect consumers.

UOKiK was also represented at conferences organised during subsequent **presidencies – those of Latvia and Luxembourg – in the Council of the European Union**. The meetings addressed the issues of future consumer policy priorities in the digital age and internet platform and geo-blocking issues.

Cooperation with respect to product safety and market surveillance

In 2015 activities continued with regard to Joint Action 2013 – monitoring of toy safety, Joint Action 2014 – monitoring of pyrotechnical products and

¹⁷⁴ Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

power tools (started: January 2015, ends: April 2018), and Energy Efficiency Complaint Products 2014. UOKiK also joined Joint Action 2015 – monitoring of toy safety (chemical properties) and developing risk calculation methodology. The project has a record number of market surveillance authorities participating in it (37 out of 24 countries, including Norway and Iceland). The project starts at the beginning of 2016 and will last 26 months.

In 2015 UOKiK was host to a general meeting of PROSAFE (Product Safety Forum of Europe). In October, as part of project JA2014, UOKiK took part in a three-day review of the market surveillance system for toys, aimed at making it function more efficiently and for the purpose of sharing best practices (CIMS – *Continuous Improvement in Market Surveillance*). The meeting was attended by representatives of market surveillance authorities in Bulgaria, Estonia, France, Malta, Slovenia, and Italy. The system operating in Poland received a very high rating from the participants in the review.

UOKiK takes part in an employee exchange scheme with respect to market surveillance and non-food product safety financed by the European Commission. In 2015 UOKiK was host to representatives from Croatia and the United Kingdom (August) and sent representatives of the UOKiK Department of Market Surveillance to institutions responsible for market surveillance in the United Kingdom (January), Sweden (May), the Czech Republic (June), Luxembourg (June) and Lithuania (October).

7.2. Bilateral Cooperation

Development of direct contacts between the Polish competition and consumer protection authority and counterparts in partner countries, both within and outside of the EU, is an important area of cooperation for UOKiK.

In 2015 meetings were organised with a delegation from the Ministry of Commerce of the People's Republic of China, a delegation from Croatia and from the United Kingdom, and a delegation from Turkey. The subject of the individual meetings was the market surveillance system in Poland.

UOKiK participated in the Skopje Conference organised by the Ministry of Foreign Affairs. As a forum for consultation, the purpose of the Conference is for Polish pre-accession experiences to be passed on to partners in government institutions in the Republic of Macedonia. UOKiK

representatives provided information as to the actions taken with respect to competition protection (in particular – with regard to combating tender collusion) and also talked about the legal limits with respect to state aid.

7.3. International meetings and conferences

An international seminar on vertical agreements and a conference on economic analysis in competition law (13–14 October 2015)

The events were organised by UOKiK and the Centre for Antitrust and Regulatory Studies (Centrum Studiów Antymonopolowych i Regulacyjnych - CARS). On the first day a seminar was held on vertical agreements – from the point of view of the experiences of various countries the question was asked how agreements of this kind should be evaluated and what form they take in e-commerce. On the second day, solely on a national basis, the theoretical and practical aspects of use of economic analysis in competition law were discussed.

Lecture given by Professor William E. Kovacic (14 October 2015)



A professor of competition law of worldwide renown, William E. Kovacic, came to Poland at the invitation of UOKiK¹⁷⁵ to deliver a lecture on the role of consumer protection in conditions of fair competition. The event was co-organised by the Warsaw University Digital Economy Lab.

¹⁷⁵ Professor Kovacic was invited to Poland above all in connection with organising of a seminar on vertical agreements (13 October 2015).

Postscript

The enactment of the amendment to the Act (April 2016) is the final step in the process of vital changes to the competition and consumer protection system which was started more than two years ago. The effects achieved due to intensive legislative work were as follows:

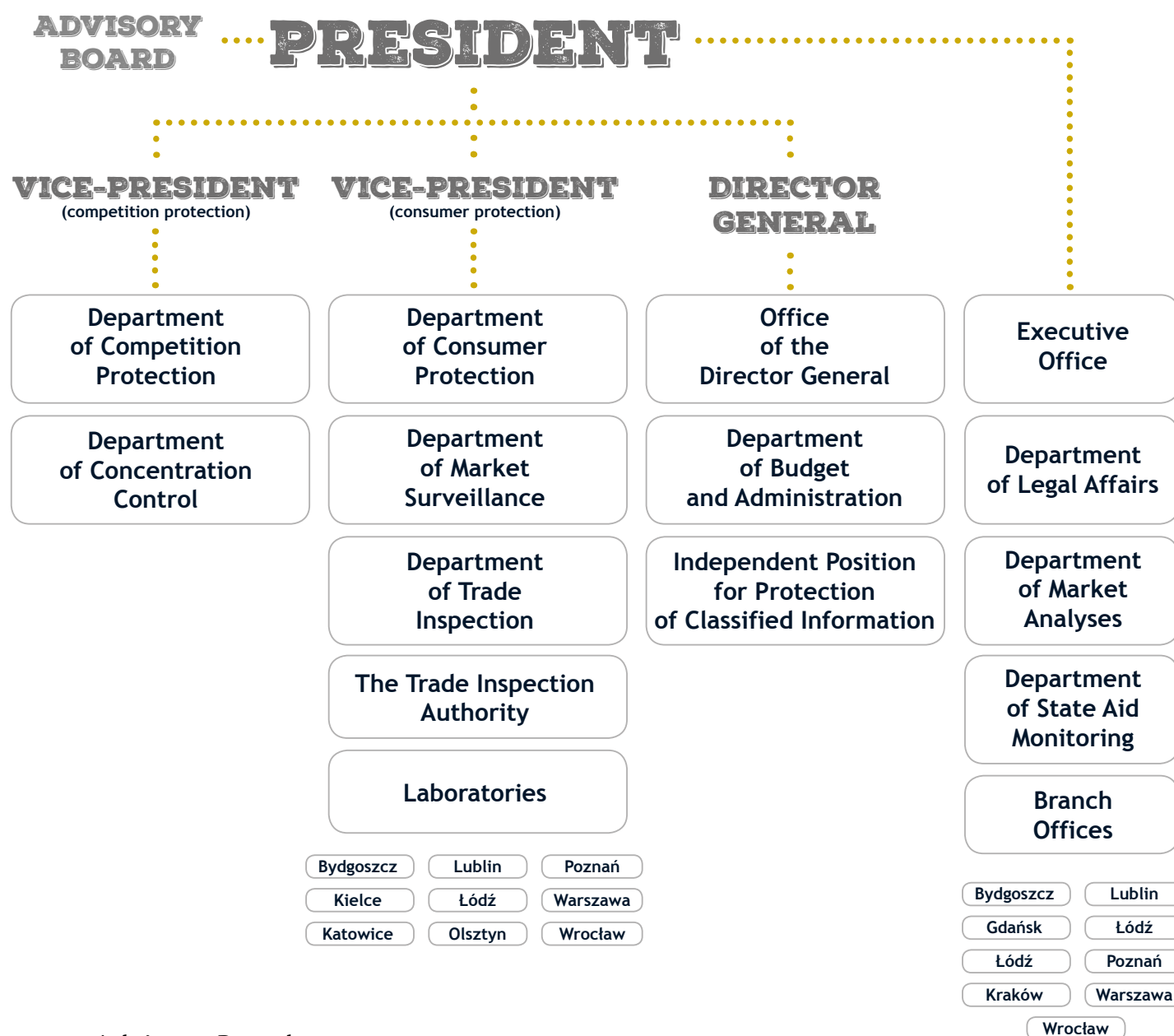
- the Act on Consumer Rights and amendment of the Civil Code (2014) – extension of the time limit for withdrawal of an off-premises contract or distance contract, and return to the system of a statutory warranty when submitting complaints;
- amendment of the Act, primarily with respect to antimonopoly law (2015) – extension of the time limit for action taken with respect to competition-restricting practices under the statute of limitations, introduction of a two-step concentration procedure and financial liability of management, and expansion of the leniency programme and the settlement programme. With respect to consumer issues a system was introduced of public consumer warnings concerning prohibited practices on the part of undertakings;
- amendment of the Act with respect to consumer issues (2016) – rules prohibiting mis-selling, transfer of the powers of courts with respect to finding clauses to be prohibited, the introduction of a system of interim decisions and the mystery shopper system, and free of charge consumer warnings on public radio and television.

The year 2016 is therefore the first year in which all of the changes mentioned came into effect in an all-embracing way. The Office will pursue measures to ensure that the new powers are exercised, and consumer and competition instruments put to use, to the full extent possible. At the same time UOKiK will also monitor whether undertakings comply with obligations provided for in the Act on Consumer Rights. For this reason, special emphasis will be placed on the telecommunications market and e-commerce.

In the sphere of legislation, a major challenge for 2016 will be completion of the process of implementation of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution (ADR), together with an ADR system and online dispute resolution internet platform. The legislative proposal, drawn up on according to basic principles by the Government Legislation Centre, was submitted for consultations on 27 January 2016. Depending on the date on which the bill is passed, an information and awareness-raising campaign is planned to promulgate the idea of ADR and encourage business undertaking organisations to create bodies of that kind.

In 2016 there was a new appointment to the post of President of UOKiK; as of 12 May Marek Niechcial became the new President of UOKiK.

Organisational structure



Advisory Board

The President of UOKiK is advised by the Advisory Board. The principal tasks of the Advisory Board include:

- giving opinions on core legislation and government proposals for strategic papers on protection of competition and consumers;
- making recommendations with regard to amendments to such legislation and documents, and initiating cooperation with external experts, including the academic community. The Board was created on 9 May 2014.

Members of the Board

Professor Tadeusz Skoczny (Chairman of the Board), Centre for Antitrust and Regulatory Studies (Centrum Studiów Antymonopolowych i Regulacyjnych – CARS) Faculty of Management, Warsaw University

Mark Allen, Centre for Social and Economic Research (Centrum Analiz Społeczno-Ekonomicznych – CASE)

Professor Bożena Borkowska, Institute of Economics, Wrocław University of Economics,

Dr Jakub Borowski, Collegiate of World Economies, Warsaw School of Economics,

Professor Sławomir Dudzik, Faculty of Law and Administration, Jagiellonian University,

Dr Krzysztof Jaroszyński, Faculty of Law and Administration, Warsaw University; Collegium of Management and Finance, Warsaw School of Economics

Professor Monika Namysłowska, Faculty of Law and Administration, the University of Łódź

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ISBN 978-83-64681-05-9

Compilation: Anna Plich, Executive Office, UOKiK

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